HOUSE OF REPRESENTATIVES—*Thursday, September 16, 1976*

The House met at 10 o'clock a.m.

The Most Reverend Eugene A. Marino, SSJ, D.D., auxiliary bishop of Washington and titular bishop of Walla Walla, offered the following prayer:

Heavenly Father, we give praise and honor to Your holy name as Jesus has taught us to do. We ask You to establish Your kingdom among us on Earth. We ask You to give us the light to see and the strength to do Your holy will. We pray for Your blessings and Your guidance in our deliberations. We ask You to guide this assembly entrusted with the awesome responsibility of making laws for our Nation. Fill our Representatives with Your justice and Your spirit of righteousness. Let our civic leaders know the meaning of mercy and compassion in their quest to establish a better society. Our Republic was founded 200 years ago: "As one nation under God." I beseech Thee, Heavenly Father preserve our country in the bond of unity and under the mantle of your protection. Almighty God and Father, sanctify us all, so that our lives may serve as a witness that we have come forth from You. May our lives indicate that we are destined to spend our eternal lives with You. May we proclaim this faith and this hope to all mankind.

This we pray through Christ, our Lord. 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. Sparrow, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 10339) entitled "An act to encourage the direct marketing of agricultural commodities from farmers to consumers."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the concurrent resolution (S. Con. Res. 139) entitled "Concurrent resolution revising the congressional budget for the U.S. Government for the fiscal year 1977," and that the Senate receded from its disagreement to the amendment of the House and agreed to the same with an amendment to the foregoing resolution.

The message also announced that the Senate had passed, with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 8228. An act to amend the Federal Aviation Act of 1958 relating to emergency locator transmitters, and for other purposes; and

H.R. 14846. An act to authorize certain construction at military installations, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (S. 2710) entitled "An act to extend certain authorizations under the Federal Water Pollution Control Act, as amended," 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. RANDOLPH, Mr. MUSKIE, Mr. BURDICK, Mr. CULVER, Mr. GARY HART, Mr. BUCKLEY, Mr. BAKER, and Mr. STAFFORD to be the conferees on the part of the Senate.

The message also announced that the Senate disagrees to the amendments of the House to the bill (S. 2657) entitled "An act to extend the Higher Education Act of 1965, to extend and revise the Vocational Education Act of 1963, and for other purposes," agrees to the conference requested by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. PELL, Mr. RANDOLPH, Mr. WILLIAMS, Mr. KENNEDY, Mr. MONDALE, Mr. EAGLETON, Mr. CRANSTON, Mr. HATHAWAY, Mr. BEALL, Mr. JAVITS, Mr. SCHWEIKER, Mr. STAFFORD, and Mr. TAFT to be the conferees on the part of the Senate.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 3664. An act to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such act to maintain accurate records, to prohibit certain bribes, and for other purposes.

THE EDUCATIONAL RECORD OF GERALD R. FORD: NOT ONE TO TRUST

(Mr. BRADEMAS asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. BRADEMAS. Mr. Speaker, Gerald R. Ford left the White House yesterday to make a speech at the University of Michigan.

In his talk, Candidate Ford said:

It is not enough for anyone to say "trust me." Trust must be earned.

I agree with that.

Indeed, who wouldn't?

But, Mr. Speaker, Candidate Ford went on to tell his university audience that "quality education for every young American is my administration's goal," and that on education "this Congress has shown itself to be sitting dead in the water—addicted to the status quo."

Mr. Speaker, for Gerald R. Ford to pretend to be a friend of American education and attack Congress for doing nothing about education is patently absurd.

For the record—not the rhetoric—of Candidate Ford clearly demonstrates that students and teachers, schools and colleges, and parents of children and students have no friend in the White House today.

Candidate Ford, indeed, is trying hard to outdo even Richard Nixon in his hostility to education.

It has been the Congress of the United States—often with Republicans joining Democrats—that has taken the initiative on measures to strengthen American education while Gerald R. Ford, like Richard Nixon before him, said, "No."

Last year, for example, it was Congress that initiated the Education for All Handicapped Children Act, to help meet the challenge of educating America's disabled youngsters.

Candidate Ford opposed the bill but Congress passed it anyway—by huge bipartisan margins. Who was "dead in the water" then, "addicted to the status quo"? It was not Congress; it was Candidate Ford.

Mr. Speaker, last year Congress extended and amended the Vocational Rehabilitation Act, to help train handicapped persons.

Candidate Ford opposed this congressional initiative but Congress passed it anyway.

"Quality education for every young American is my administration's goal," Candidate Ford said yesterday, I would remind you.

But this is the same man who vetoed last December the aid to education bill which provided funds for education for the handicapped, environmental education, drug abuse education, education for the disadvantaged, vocational education, higher education, libraries, educational broadcasting, emergency school aid, bilingual education, occupational and adult education, and the National Institute of Education.

The Congress, however, voted to override the Ford veto with an overwhelmingly bipartisan vote of 379 to 41 in the House and 88 to 12 in the Senate.

And, Mr. Speaker, this is the same President who vetoed the school lunch and child nutrition amendments and thereby sought to curtail reduced price lunches in schools, breakfast programs for children, and food programs for new mothers and infants.

Candidate Ford is the man whose vetoes would have halted Federal support for such programs as Head Start, maternal and child health care, and treatment of drug abuse.

Nor are opposition to congressional initiatives in education or use of the veto the only instruments with which Candidate Ford seeks to attack efforts to strengthen education in our country. He has used as well the device of the recission to cut funds that Congress has already appropriated for a whole range of programs, including loans and grants to students, Follow Through and help for elementary and secondary schools. He is even today holding up $90 million in additional aid which Congress has voted to make available for the education of handicapped children.

Mr. Speaker, Gerald R. Ford's opposition to education programs is not limited to attacks on education legislation and

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education appropriations. He has enmeshed these programs in redtape, and his administration has utilized the process of writing regulations to delay and fragment congressionally approved efforts in education.

Mr. Speaker, even as Candidate Ford attacks Congress for being "dead in the water" on education and "addicted to the status quo," House and Senate conferees, Democrats and Republicans alike, are sitting in this very building working hard—today—to approve a major bill to strengthen vocational education, postsecondary education, and educational research in our country.

Mr. Speaker, one thing Candidate Ford said yesterday was right: "Trust must be earned."

But Mr. Speaker, on the record of Gerald R. Ford on education—not the rhetoric—he has earned the mistrust of the American people.

CLEAN AIR ACT AMENDMENTS

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 3219) to amend the Clean Air Act, as amended, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, will the gentleman from West Virginia (Mr. STAGGERS) tell us what the progress of the talks that he and the gentleman from North Carolina (Mr. BROYHILL), the ranking minority member of the subcommittee, have had today?

Mr. STAGGERS. Mr. Speaker, will the gentleman yield?

Mr. ROUSSELOT. I yield to the gentleman from West Virginia.

Mr. STAGGERS. Mr. Speaker, I have talked to the gentleman from North Carolina this morning by telephone. I asked him what kind of a night he had. He said he had had a good night and everything was fine. I asked him if he would object this morning to bringing the bill up, and he said he would not. We had a discussion and reached some understanding on other things, but he said he would not object to the consideration of the bill.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, will the gentleman tell us what the differences were and how they were resolved?

Mr. STAGGERS. There were no practical differences, because the practical differences were resolved in the bill that passed the House. I said that I could not deviate from what passed the House, but there are chances for compromise in the conference if the views of the conferees meet with and coincide with what we are trying to do here.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, the gentleman then can assure us that many of the items that passed the House, such as the Dingell-Broyhill amendment, will remain or that the House will stand firmly behind it?

Mr. STAGGERS. Indeed. As chairman of the committee, I have always tried to uphold the position of the House in every instance. When we meet in conference, we do have to compromise on certain matters, but there are certain issues on which we do try not to compromise, and that would be one of them.

Mr. ROUSSELOT. Mr. Speaker, I appreciate the gentleman's comment, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The Clerk read the Senate bill as follows:

S. 3219

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

SECTION 1. (a) The third sentence of subsection (b) of section 105 of the Clean Air Act is amended to read as follows: "No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds.".

(b) Subsection (c) of section 105 of the Clean Air Act is amended by adding the following: "In fiscal year 1977 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.".

SEC. 2. Section 107 of the Clean Air Act is amended by adding a new subsection as follows:

"(d)(1) For the purpose of transportation control planning, prevention of significant deterioration, and for other purposes, each State, within one hundred and twenty days after the date of enactment of the Clean Air Amendments of 1976, shall submit to the Administrator a list, together with a summary of the available information, identifying those air quality control regions, or portions thereof, established pursuant to this section in such State which on the date of enactment of the Clean Air Amendments of 1976—

"(A) do not meet a national primary ambient air quality standard for any mobile source related air pollutant;

"(B) do not meet, or in the judgment of the State may not in the time period required by an applicable implementation plan attain or maintain, any national primary ambient air quality standard for any pollutants other than those listed in subparagraph (A) of this paragraph through the application of measures or controls approved or promulgated pursuant to section 110 of this Act;

"(C) do not meet a national secondary ambient air quality standard;

"(D) cannot be classified under subparagraph (B) or (C) of this paragraph on the basis of available information, for ambient air quality levels for sulfur oxides or particulate matter; or

"(E) have ambient air quality levels better than any national primary or secondary air quality standard other than for sulfur oxides or particulate matter, or for which there is not sufficient data to be classified under subparagraph (A) of this paragraph.

"(2) Not later than sixty days after submittal of the list under paragraph (1) of this subsection the Administrator shall promulgate each such list with such modifications as he deems necessary. Whenever the Administrator proposes to modify a list submitted by a State, he shall notify the State and request all available data relating to such region or portion, and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate.

"(3) Any region or portion thereof which is not classified under subparagraph (B) or (C) of paragraph (1) of this subsection for sulfur oxides or particulate matter within one hundred and eighty days after enactment of the Clean Air Amendments of 1976 shall be deemed to be a region classified under subparagraph (D) of paragraph (1) of this subsection.

"(4) A State may from time to time review, and as appropriate revise and resubmit, the list required under this subsection. The Administrator shall consider and promulgate such revised list in accordance with this subsection.".

SEC. 3. The first sentence of section 108(b)(1) of the Clean Air Act is amended by striking the words "technology and costs of emission control" and inserting in lieu thereof the words "cost of installation and operation, energy requirements, air quality benefits, and environmental impact of the emission control technology.".

SEC. 4. Section 108 of the Clean Air Act is amended by adding new subsections as follows:

"(e) The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within one hundred and eighty days after the enactment of this subsection, and from time to time thereafter, publish guidelines on the basic program elements for the transportation planning process assisted under subsection (h) of section 110 of this Act. Such guidelines shall include information on—

"(1) methods to identify and evaluate alternative planning and control activities;

"(2) methods of reviewing plans on a regular basis as conditions change or new information is presented:

"(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

"(4) methods to assure participation by the public in all phases of the planning process; and

"(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

"(f)(1) The Administrator shall publish and make available to appropriate Federal agencies, States, and air pollution control agencies, including agencies assisted under subsection (h) of section 110 of this Act, within six months after enactment of this subsection for clauses (i), (ii), (iii), and (iv) of subparagraph (A) and within one year after the enactment of this subsection for

the balance of this subsection (and from time to time thereafter), (A) information, prepared, as appropriate, in cooperation with the Secretary of Transportation, regarding processes, procedures, and methods to reduce or control each such pollutant, including but not limited to—

"(i) motor vehicle emission inspection and maintenance programs;

"(ii) programs to control vapor emissions from fuel transfer and storage operations and operations using solvents;

"(iii) programs for improved public transit;

"(iv) programs to establish exclusive bus and carpool lanes and areawide carpool programs;

"(v) programs to limit portions of road surfaces or certain sections of the metropolitan areas to the use of common carriers, both as to time and place;

"(vi) programs for long-range transit improvements involving new transportation policies and transportation facilities or major changes in existing facilities;

"(vii) programs to control on-street parking and new offstreet parking facilities;

"(viii) programs to construct new parking facilities and operate existing parking facilities for the purpose of park and ride lots and fringe parking;

"(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of nonmotorized vehicles or pedestrian use, both as to time and place;

"(x) provisions for employer participation in programs to encourage carpooling, vanpooling, mass transit, bicycling, and walking;

"(xi) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

"(xii) programs of staggered hours of work;

"(xiii) programs to institute road user charges, tolls, or differential rates to discourage single occupancy automobile trips;

"(xiv) programs to control extended idling of vehicles;

"(xv) programs to reduce emissions by improvements in traffic flow;

"(xvi) programs for the conversion of fleet vehicles to cleaner engines or fuels, or to otherwise control fleet vehicle operations;

"(xvii) programs for retrofit of emission devices or controls on vehicles and engines, other than light duty vehicles, not subject to regulations under section 202 of title II of this Act; and

"(xviii) programs to reduce motor vehicle emissions which are caused by extreme cold start conditions;

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded during any extension under subsection (h) of section 110 of this Act and during episodes for which an air pollution alert or emergency has been declared; (C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and (D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

"(2) In publishing such information the Administrator shall describe (A) the effectiveness of such processes, procedures, and methods; (B) factors related to the costs and benefits of such processes, procedures, and methods, in different situations; (C) transportation factors related to such processes, procedures, and methods; (D) the environmental, energy, and economic impact of such processes, procedures, and methods; and (E) his assessment of whether each such process, procedure, or method is reasonable for application to attain a primary ambient air quality standard.".

SEC. 5. (a) Section 110 of the Clean Air Act is amended by adding a new sentence at the end of paragraph (1) of subsection (a) as follows: "Each State shall adopt and submit to the Administrator within eight months after the date of enactment of the Clean Air Amendments of 1976, a revision of its implementation plan which provides for implementation, maintenance and enforcement of the provisions of subsection (g) of this section for the prevention of significant deterioration in each appropriate air quality control region (or portion thereof) within such State.".

(b) Section 110(a)(2)(B) of the Clean Air Act is amended to read as follows:

"(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and, in addition, as may be necessary, (i) to assure attainment and maintenance of such primary or secondary standard, such other measures, including, but not limited, to transportation controls, and enforceable supplemental emission reduction strategies for existing nonferrous smelters, and (ii) land-use controls for the purpose of maintenance of, or to prevent further deterioration from, any primary ambient air quality standard: *Provided, however,* That land-use controls shall be included in an implementation plan only after consideration of the energy, environmental, and economic impacts of such controls;".

(c) Section 110(a)(2)(D) of the Clean Air Act is amended by inserting after "(D) it includes" and before "a procedure" the following: "a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit or equivalent program for any major emitting facility, within such region to assure (i) that national ambient air quality standards are achieved and maintained, (ii) that the requirements of subsection (g) of this section are met, and (iii)".

(d) Section 110(a)(2)(H) of the Clean Air Act is amended by striking "or" before "(ii)" and by striking the period and adding at the end thereof: ", or to incorporate the requirements of subsection (g) of this section; or (iii) to incorporate any additional requirements established under the Clean Air Amendments of 1976.".

(e) Section 110(a)(4) of the Clean Air Act is amended by inserting after "primary or secondary standard" the following: "or which will not comply with a standard of performance under section 111, or which does not conform to the requirements of subsection (g) of this section,".

(f) Section 110(d) of the Clean Air Act is amended by striking the period and inserting at the end thereof "and the requirements of subsection (g) of this section.".

SEC. 6. Section 110 of the Clean Air Act is amended by adding a new subsection as follows:

"(g)(1) Each implementation plan shall include requirements applicable to each region identified in the list promulgated pursuant to paragraph (1)(D) of subsection (d) of section 107 of this Act, which shall, in addition to the requirements of paragraphs (2), (3), (4), (5), and (6) of this subsection, provide:

"(A) for designation as class I areas of—

"(i) all international parks, and each national wilderness area, and national memorial park which exceeds five thousand acres in size, and each national park which exceeds six thousand acres in size and which is in existence on the date of enactment of the Clean Air Amendments of 1976;

"(ii) such other areas as the State (and, if appropriate, after notice and consultation with adjacent States) may designate, except that Federal lands may be so designated only with the concurrence of the Federal Land Manager;

"(B) each national park and national wilderness area or any part thereof, which exceeds five thousand acres in size, established after the enactment of the Clean Air Amendments of 1976, shall be classified as either class I or class II by the Congress in the designating legislation for such national park or wilderness area.

"(C) that all remaining areas in such State identified under section 107(d)(1)(D) of this Act and not designated class I pursuant to subparagraph (A) of this paragraph shall be designated as class II areas.

"(2) As it relates to the pollutants particulate matter and sulfur dioxide, the cumulative change in the air quality in any area designated under paragraph (1) of this subsection resulting from the construction and operation of any new major emitting facility or facilities shall be limited to the following projected increases in pollutant concentrations over the baseline air quality concentration:

"Pollutant	(*In micrograms per cubic meter*)
Particulate matter:	
Annual geometric mean	10
Twenty-four-hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	15
Twenty-four-hour maximum	100
Three-hour maximum	700

"(3) Requirements applicable to an area designated as class I or class II shall include a management program to assure that, in the event of the proposed construction of any major emitting facility in any such area, the construction of such facility shall be preceded by an analysis of the ambient air quality, climate and meterology, soils and vegetation, and visibility at the site of the proposed facility and in the area potentially affected by the emissions from the proposed facility for each pollutant regulated under this Act which will be emitted from, or which results from the construction or operation of, such facility. Such analysis shall be included in any permit application required.

"(4) No major emitting facility on which construction is commenced after June 1, 1975, may be constructed in any area designated under this subsection—

"(A) unless a permit has been issued for such proposed facility in accordance with this section, setting forth emission limitations for such facility which conform to the requirements of this subsection,

"(B) unless the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Act emitted from, or which results from, such facility,

"(C) unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not contribute to a cumulative change in the air quality in excess of that allowed in paragraph (2) of this subsection,

"(D) unless the provisions of paragraph (5) of this subsection with respect to protection of class I areas have been complied with for such facility,

"(E) unless there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility, and

"(F) unless there has been opportunity for

a public hearing conducted by a State on any proposed permit for such facility, with an opportunity for interested parties, including representatives of the Administrator, to appear and provide testimony on such facility, including alternatives thereto, and control technology requirements.

"(5)(A) The State shall provide notice of any permit application to the Administrator and the Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

"(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

"(C) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not contribute to a cumulative change in air quality in excess of the following projected increases in pollutant concentrations over the baseline air quality concentration:

"Pollutant	(*In micrograms per cubic meter*)
Particulate matter:	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

Provided, That (i) in any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not exceed for such lands the limitations on projected increases established in this subparagraph, a permit shall not be issued, and (ii) in any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality related values of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will exceed for such lands the limitations on projected increases established in this subparagraph, the State may issue a permit.

"(6) For purposes of this subsection—

"(A) the term 'best available control technology' means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, for control of each such pollutant. In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of this Act;

"(B) the term 'Federal Land Manager' means (i) the Secretary of the department with authority over any lands of the United States, and (ii) Indian tribes which have legal jurisdiction over tribal lands; and

"(C) the term 'commenced' as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time: *Provided*, That in the case of a facility on which construction was commenced in accordance with this definition after June 1, 1975, and prior to the enactment of the Clean Air Amendments of 1976, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to the enactment of the Clean Air Amendments of 1976.

"(7)(A) Until a revision of the implementation plan in accordance with this subsection is submitted and approved, significant deterioration for those pollutants covered by such regulations shall be regulated pursuant to applicable regulations and procedures for prevention of significant deterioration established under authority of the Clean Air Act in effect prior to the enactment of the Clean Air Amendments of 1976, except as those regulations provide for designations of nondeterioration areas which allow increases in emissions of air pollutants or any reduction in air quality inconsistent with paragraphs (1) and (2) of this subsection, or do not require the degree of control required by paragraph (6)(A) of this subsection, or are otherwise inconsistent with the requirements of this subsection.

"(B) For the purpose of this section any State may submit the revision to its implementation plan relating to the prevention of significant deterioration which has been adopted for such State as of the date of enactment of the Clean Air Amendments of 1976. Such requirements shall be the requirements applicable to such State under this section unless the Administrator finds that such requirements or a portion thereof are inconsistent with the requirements of this subsection and notifies the State of such inconsistency.

"(8) The Administrator shall study strategies to control pollutants not covered by paragraph (2) of this subsection in order to prevent significant deterioration of air quality for such pollutants and shall report to the Congress within one year after the date of enactment of the Clean Air Amendments of 1976 recommending control strategies for such pollutants. Such report shall recommend increments, as appropriate, for class I and class II areas applicable to the emissions from stationary sources of nitrogen oxides, hydrocarbons, and such other pollutants and control strategies as the Administrator determines to be appropriate.

"(9) The Administrator shall, and a Governor may, take such measures under section 113 or 304 of this Act, including seeking injunctive relief, as necessary to prevent the issuance of a permit under this subsection or the construction of a major emitting facility which does not conform to the requirements of paragraphs (4) and (5) of this subsection.

"(10) In the event any State adjacent to a State subject to the requirements of this subsection disagrees with the designation of any class I area in the State subject to the requirements, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in an adjoining State which the Governor of the affected State determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this subsection in any class I or class II area within the affected State, the Governor may request the Administrator to enter into negotiations with the States involved to resolve such dispute. If requested by any State involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands in such State. If the States involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.

"(11) Notwithstanding paragraphs (2), (4), and (5) of this subsection, in no instance shall the Administrator approve any requirements or revision of any implementation plan, nor shall any permitting authority issue a permit under this subsection for a new major emitting facility, which would allow for the deterioration of air quality to a level that would exceed any national ambient air quality standard.

"(12) Nothing in this subsection shall alter or affect section 116 of this Act.".

SEC. 7. (a) Section 110 of the Clean Air Act is amended by adding subsection (h) as follows:

"(h)(1) Upon application by the Governor of a State on or after June 1, 1976, the Administrator may extend for not more than five years the deadline for attainment of national primary ambient air quality standards required under this section where transportation control measures are necessary for the attainment of such standards and where the implementation of such control measures by the date established in existing implementation plans would have serious adverse social or economic effects.

"(2) The Administrator may consider extension applications for only those air quality control regions in which the State has:

"(A) implemented or will have implemented by June 1, 1977, (i) the requirements of the applicable implementation plan with respect to stationary source emissions of transportation-related pollutants, and (ii) implemented or will have begun implementing by June 1, 1977, all reasonably available measures of the applicable transportation control plan which do not have serious adverse social or economic effects; and

"(B) completed, or agreed to complete by June 1, 1978, a detailed planning study that evidences public and local governmental involvement in accordance with paragraph (7) of this subsection and includes (i) examination of alternative measures and combinations of measures to attain and maintain the standards after June 1, 1977, (ii) a description of projects to be undertaken together with timetables and resource requirements, and (iii) identification and analysis of social, economic, and environmental effects including public health and energy conservation effects of such measures and projects.

"(3) Each extension application shall be

accompanied by adequate documentation of compliance with the requirements of paragraph (2) above, and shall include a description of the process for the development of an implementation plan for the extension period requested. Such plan shall be submitted no later than June 1, 1978. The plan shall at a minimum:

"(A) identify the remaining emission reductions necessary for attainment of the national primary ambient air quality standards and the additional reasonably available measures to be implemented to accomplish these reductions;

"(B) provide for the implementation of all reasonably available control measures as expeditiously as practicable;

"(C) identify the financial and manpower resources to be committed to carrying out the plan;

"(D) include written evidence that the State, the general purpose local government or governments, or a regional agency designated by general purpose local governments for such purpose, have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules and timetables for compliance, and are committed to implement and enforce the appropriate elements of the plan;

"(E) demonstrate (i) attainment of the national primary ambient air quality standards as expeditiously as practicable, but no later than May 31, 1982, or (ii) that such attainment is not possible within the extension period prior to May 31, 1982, despite implementation of all reasonably available control measures.

"(4)(A) Within one hundred and twenty days following the submission of an application and all supporting materials, and after providing an opportunity for public hearing, the Administrator shall grant an extension, unless he determines that the requirements of this subsection have not been met.

"(B) If the Administrator determines that the requirements of this subsection have not been met, including findings relating to the impacts of the transportation control measures upon the social, economic, energy conservation, and environmental welfare of the air quality control region, he shall notify the Governor of deficiencies in the application, including his judgment as to acceptable dates for implementing measures included in the plan and as to the appropriate duration of an extension. The notification shall also specify a date for the submission of a revised application.

"(5) Where the Administrator grants an extension based on an application meeting the requirements of paragraph (3)(E)(ii) of this subsection, the Governor of the State may, on or after June 1, 1981, apply for a further extension in accordance with and subject to the requirements of this subsection. No extension under this paragraph or other portion of this Act may extend beyond May 31, 1987.

"(6)(A) Where the Administrator denies an extension application or where the Governor of a State in which the national primary ambient air quality standards are not being met does not submit an application or revised application under this subsection, the Administrator shall, after consultation with appropriate State and local elected officials and after opportunity for public hearing in the affected State if no such hearing has been previously held, propose and promulgate an implementation plan (or portion thereof) meeting the requirements of this subsection. In proposing and promulgating such plan, the Administrator shall comply with the time requirements and schedules of this subsection. The United States court of appeals for the appropriate circuit may grant a stay of any provision of such plan upon application by a State pursuant to section 307 of this Act.

"(B) The Administrator may delegate the implementation or enforcement of any portion of a promulgated plan to one or more general purpose local governments or a State.

"(7)(A) The implementation plan required by paragraph (3) of this subsection shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and recognized by the State for this purpose. Where such an organization has not been designated by agreement within six months after the enactment of the Clean Air Amendments of 1976, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, shall designate an organization of elected officials of local governments in the affected area to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative, and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

"(B) The preparation of the implementation plan required by paragraph (3) of this subsection shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23, United States Code, and the air quality maintenance planning process required under this section, and such planning processes shall take into account the requirements of this subsection.

"(8)(A) The Administrator shall make grants to any organization of local elected officials with transportation of air quality maintenance planning responsibilities recognized by the State under paragraph (7) of this subsection for payment of the reasonable costs of developing an air quality transportation control plan under this section.

"(B) The amount granted to any organization under subparagraph (A) of this paragraph shall be 100 per centum of any additional costs of developing an air quality transportation control plan under this section for the first two fiscal years following receipt of the grant under this paragraph, and shall supplement any funds available under Federal law to such organization for transportation or air quality maintenance planning. Grants under this paragraph shall not be used for construction.

"(9)(A) The Administrator shall not approve any projects or award any grants authorized by this Act or any other authority of the Administrator after June 1, 1977, in any State in which any primary ambient air quality standard has not been attained, where transportation control measures are necessary for the attainment of such standard and the Governor has not applied for an extension in accordance with this subsection, or where the Governor has not submitted an implementation plan by June 1, 1978.

"(B) In any area in which the State or, as the case may be, the general purpose local government or governments or any regional agency designated by such general purpose local governments for such purpose, is not implementing any requirement of an approved or promulgated plan under this section, including any condition of the extension under paragraph (2) of this subsection, the Administrator shall decrease funds or grants for any projects authorized by any authority of the Administrator by fifteen per centum for each year during the period any such requirement is not being implemented.

"(10)(A) No department, agency, or instrumentality of the Federal Government shall (i) engage in, (ii) support in any way or provide financial assistance for, (iii) license or permit, or (iv) approve, any activity which does not conform to a plan after it has been approved or promulgated under this section. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under this section. The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

"(B) Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, as amended, title 23 of the United States Code, and the Housing and Urban Development Act, as amended.".

(b) Section 10 of the Clean Air Act is amended by adding a new subsection as follows:

"(i) In carrying out the requirements of subsections (a)(2)(B)(i) and (ii), (g), and (h) of this section and subsections (d) and (g) of section 113, the State shall provide a satisfactory process of consultation with general purpose local governments and designated organizations of elected officials of local governments, in accordance with regulations promulgated by the Administrator to assure adequate consultation. Such regulations shall be promulgated after notice and opportunity for public hearing and not later than four months after the date of enactment of the Clean Air Amendments of 1976. The Administrator may disapprove any portion of a plan relating to any measure described in the first sentence of this subsection or to the consultation process required under this subsection if he determines that such plan does not meet the requirements of this subsection. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for review of such action on the basis of a violation of the requirements of this subsection.".

SEC. 8. The Clean Air Act is amended by adding a new subsection (e) to section 112 as follows:

"(e) For purposes of this section the Administrator may promulgate a hazardous emission standard in terms of a design, equipment, or operational standard if he determines that such standard is necessary to control emissions of a hazardous pollutant or pollutants because, in the judgment of the Administrator, they cannot or should not be emitted through a conveyance designed and constructed to emit or capture such pollutants.".

SEC. 9. (a) Section 113 of the Clean Air Act is amended by adding the following new subsection:

"(d)(1) A State (or, after thirty days notice to the State, the Administrator) may issue an enforcement order for any stationary source which specifies a date for final compliance with an applicable emission limitation later than the date for attain-

ment of any national ambient air quality standard specified in the applicable implementation plan: *Provided*, That (A) such order is issued after notice to the public (and, as appropriate, to the Administrator) containing the content of the proposed order and opportunity for public hearing; (B) the order contains a schedule and timetable for compliance; (C) the order contains any interim control measures the State (or the Administrator) deems to be reasonable, and the order requires the emission monitoring and reporting by the source authorized to be required under sections 110(a)(2)(F) and 114(a)(1); (D) the order provides for final compliance with the emission limitation in the applicable implementation plan as expeditiously as practicable, but in no event later than January 1, 1979; and (E) in the case of a major emitting facility, the order provides that it will be amended no later than January 1, 1978, to contain a provision requiring the source to pay monthly a delayed compliance penalty, in an amount equal to that sum established by the Administrator pursuant to section 120 of this Act, in the event such major emitting facility fails to comply by January 1, 1979.

"(2) An enforcement order proposed by a State shall issue under this subsection unless the Administrator, within ninety days of receipt of any proposed order, objects in writing to the issuance of such order as not consistent with the requirements of paragraph (1) of this subsection. If the Administrator so objects, he shall simultaneously proceed to issue an enforcement order in accordance with this subsection. Nothing in this section shall be construed as limiting the authority of a State or political subdivision to adopt and enforce a more stringent emission limitation or more expeditious schedule or timetable for compliance than that contained in an order by the Administrator.

"(3) If any source not in compliance with an emission limitation in an applicable implementation plan gives written notification to the State (or the Administrator) that such source intends to comply by means of replacement of the facility, a complete change in production process, or a termination of operation, the State (or the Administrator) may issue an order under paragraph (1) of this subsection permitting the source to operate until January 1, 1979, without any interim schedule of compliance: *Provided*, That as a condition of such issuance, the owner or operator of such source shall post a bond or other surety in an amount equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such source by reason of the failure to comply. If a source for which the bond or other surety required by this paragraph has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety and the State (or the Administrator) shall have no discretion to modify the order under this paragraph or to compromise the bond or other surety.

"(4) In the case of a major emitting facility which proposes to comply with an applicable emission limitation through replacing existing production capacity with an innovative production process which will result in an emission reduction significantly greater than required by the emission limitation applicable to such facility, or with the installation of an innovative control technique that has a substantial likelihood for enabling the source to comply with the applicable emission limitation by achieving a significantly greater emission reduction than that required by the applicable emission limitation, or by achieving the required reduction with an innovative system that will have potential for industry-wide application at a significantly lower cost than the systems which have been determined by the Administrator to be adequately demonstrated, the date required for compliance applicable to such facility under paragraphs (1) and (3) of this subsection and section 120 of this Act shall be January 1, 1981.

"(5)(A) In the case of a major emitting facility which—

"(i) is ordered to convert to coal under an order pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974, or

"(ii) within one year after enactment of the Clean Air Amendments of 1976 gives notice of intent to convert to coal as its primary energy source because of actual or anticipated curtailment of natural gas supplies under any curtailment plan or schedule approved by the Federal Power Commission (or, in the case of intrastate natural gas supplies, approved by the appropriate State regulatory commission),

and which thereby would no longer be in compliance with an applicable emission limitation under an implementation plan, an enforcement order may be issued under paragraph (1) of this subsection for such facility which specifies a date for final compliance with the applicable emission limitation later than the date for attainment of any national ambient air quality standard specified in the applicable implementation plan: *Provided*, That the order provides for final compliance with the emission limitation in the applicable implementation plan as expeditiously as practicable, but in no event later than three years after the date of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or three years after giving notice under clause (ii) of this subparagraph, which date shall be the date required for compliance applicable to such facility under paragraphs (1) and (3) of this subsection and section 120 of this Act and in no event shall be later than July 1, 1980.

"(B) In issuing an order under this paragraph, the State shall prescribe (and may from time to time modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions for each facility to which such an order applies. Such limitations, requirements, and measures shall be those which the State determines must be complied with by the facility in order to assure (throughout the period before the date for final compliance established in the order) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

"(C) The Administrator of the Federal Energy Administration may, by regulation, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out this paragraph shall provide such systems to users thereof, if he finds, after consultation with the States and the Administrator, that priorities must be imposed in order to assure that such systems are first provided to sources subject to orders under this paragraph in air quality control regions in which national primary ambient air quality standards have not been achieved. No regulation under this subparagraph may impair the obligation of any contract entered into before the date of enactment of the Clean Air Amendments of 1976.

"(6) For the purposes of sections 110, 304, and 307 of this Act, any order issued or approved by the State (or the Administrator) pursuant to this subsection shall become part of the applicable implementation plan.

"(7)(A) During the period of the enforcement order issued under this subsection, and where the owner or operator is in compliance with the terms of such enforcement order, no other enforcement action pursuant to this section or section 304 of this Act shall be pursued against such owner or operator based upon noncompliance during the period the order is in effect with the emission limitation for the source covered by such order.

"(B) The failure of any source subject to an enforcement order under this subsection to adhere to the schedule and timetable of compliance established under this subsection during the period of the order, shall make such source subject to the provisions of subsections (a), (b), and (c) of this section.

"(8) No extension, postponement, waiver, or delay of any requirement of an implementation plan applicable to a major emitting facility shall be granted except in accordance with this subsection or section 110(f) of this Act: *Provided, however*, That neither this subsection nor section 120 of this Act shall be construed as limiting the authority of any State to revise any deadline for attainment of a national secondary ambient air quality standard.

"(9) Any actions of the Administrator pursuant to this subsection, including any objection under paragraph (2) of this subsection, shall be considered a final action for purposes of section 307 of this Act.

"(10) Any enforcement order issued under subsection (a) of this section or any consent decree in an enforcement action which is in effect on the day of enactment of the Clean Air Amendments of 1976 shall remain in effect to the extent that such order or consent decree is not inconsistent with the requirements of this subsection and section 120 of this Act. Any such enforcement order issued under subsection (a) of this section or consent decree which provides for an extension beyond January 1, 1979, is void unless modified to comply with the requirements of this subsection.".

(b) The Clean Air Act is amended by adding a new section 120 as follows:

"DELAYED COMPLIANCE PENALTY

"SEC. 120. (a) Prior to January 1, 1978, any enforcement order issued under subsection (d) of section 113 of this Act shall be amended to include a delayed compliance penalty established pursuant to this section which shall be imposed automatically and payable monthly for any major emitting facility which for any reason not entirely beyond the control of the owner or operator is not in compliance with an applicable emission limitation on January 1, 1979.

"(b) As an enforceable interim step under any enforcement order issued under section 113(d) of this Act, the owner or operator of any major emitting facility not in compliance with an applicable emission limitation, for which such order specifies a date for compliance after January 1, 1978, shall, prior to January 1, 1977, furnish to the State (with a copy to the Administrator) information containing a detailed description of the control technology or system proposed to achieve compliance with the applicable emission limitation and the estimated cost of compliance, including capital costs, debt service costs, the estimated schedule of expenditures to comply with such limitation or requirement by January 1, 1979, and the estimated annual costs of operation and maintenance of any technology or system required in order to maintain such compliance, together with such information as the State (or the Administrator) may require on the economic value which a delay in compliance beyond January 1, 1979, may have for the owner or operator of such facility.

"(c)(1) A notice of receipt of information pursuant to subsection (b) of this section shall be published in the newspapers in general circulation in such State, and such

notice shall set forth where copies of the information are available for inspection and, for a reasonable charge, copying.

"(2)(A) Within sixty days following the date of publication of the notice issued under paragraph (1) of this subsection there shall be published in the newspapers in general circulation in such State (and, as appropriate, the Federal Register or any publication required as part of any rulemaking activity in such State) the proposed delayed compliance penalty applicable to the major emitting facility, with an announcement of an opportunity for a public hearing on such action.

"(B) Such proposed delayed compliance penalty under subparagraph (A) of this paragraph, determined in accordance with guidelines published by the Administrator, shall be a monthly payment in an amount no less than the monthly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and the economic value which a delay in compliance beyond January 1, 1979, may have for the owner or operator of such major emitting facility.

"(C) The State shall take final action establishing such delayed compliance penalty within sixty days after the date of publication of the proposed penalty under subparagraph (A) of this paragraph.

"(d)(1) A delayed compliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of publication of the proposed penalty under subsection (c)(2)(A) of this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator.

"(2) If the Administrator objects under this subsection, he shall immediately establish a substitute delayed compliance penalty applicable to such facility.

"(e)(1) In the event an owner or operator contests the delayed compliance penalty established under this section, the owner or operator may within sixty days seek review of such penalty in the appropriate United States district court.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, in no event shall any challenge or review taken under this subsection operate to stay or otherwise delay the obligation of a facility not in compliance with an applicable emission limitation to commence monthly payment of the delayed compliance penalty as determined by the State (or the Administrator) on January 1, 1979, pending the outcome of any such review.

"(B) In any challenge of the imposition of the penalty based on an allegation that the failure to comply by January 1, 1979, was due to reasons entirely beyond the control of the owner or operator, the obligation to commence monthly payment of the delayed compliance penalty may be stayed pending the outcome of such challenge: *Provided*, That as a condition of such stay, the owner or operator of such source shall post a bond or other surety in an amount equal to the potential liability for such penalty during the period of the stay.

"(3) If an owner or operator is successful in any challenge or review proceedings under this subsection, the court may award such relief as necessary, including cancellation of the bond, rebate of any payments, or adjustment of the amount of payments required by the order.

"(f) In any case where a State does not have sufficient authority to issue a delayed compliance penalty, the Administrator after thirty days notice to the State shall establish, implement, and enforce such penalty.

"(g) Failure to make any payment required by an order under this section and section 113(d) of this Act or to submit information required under this section shall, in addition to liability for such payments, subject the owner or operator of a major emitting facility operating pursuant to an enforcement order issued under section 113 (d) of this Act to a penalty under subsection (e) of section 113 of this Act.

"(h) Any actions pursuant to this section, including any objection of the Administrator under subsection (d)(1) of this section, shall be considered a final action for purposes of section 307 of this Act.

"(i) Any enforcement orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Act, and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this Act or State or local law.

"(j) In the case of an emission limitation approved or promulgated by the Administrator after the enactment of the Clean Air Amendments of 1976 which is more stringent than the emission limitation for the source under the applicable implementation plan in effect prior to such approval or promulgation, if any, or where there was no emission limitation approved or promulgated before enactment of the Clean Air Amendments of 1976, the date for imposition of the delayed compliance penalty under subsection (a) of this section, and for purposes of subsections (b), (c)(2)(B), and (e) of this section, shall be either January 1, 1979, or the date on which the source is required to be in full compliance with the emission limitation, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation.".

SEC. 10. The Clean Air Act is amended:

(a) By amending subsection (b) of section 113 to read as follows:

"(b) The Administrator shall commence a civil action for appropriate relief, including a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $10,000 per day of violation or both, whenever any person—

"(1) violates or fails or refuses to comply with any order issued under subsection (a) or (d) of this section; or

"(2) violates any requirement of an applicable implementation plan (A) during any period of federally assumed enforcement, or (B) more than thirty days after having been notified by the Administrator under subsection (a)(1) of a finding that such person is violating such requirement; or

"(3) violates section 111(e), 112(c), 119 (g), 120(b), or 120(g); or

"(4) fails or refuses to comply with any requirement of section 114.

Any action under this subsection shall be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, to require compliance, and assess such penalty. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency.".

(b) By amending subsection (c) of section 113—

(1) to amend paragraph (1)(B) to read as follows:

"(B) violates or fails or refuses to comply with any order under subsection (a) or (d) of this section, or"; and

(2) to add a new paragraph (3) as follows:

"(3) For the purpose of this subsection, the term 'person' shall mean, in addition to the definition contained in section 302(e) of this Act, any responsible corporate officer.".

(c) By adding the following new subsections to section 113:

"(e) In any case where a person is in knowing violation of a provision of an implementation plan application to a stationary source, where there has been no request for an enforcement order extending the date of compliance concerning such source filed pursuant to subsection (d) of this section within one hundred and eighty days after enactment of the Clean Air Amendments of 1976 (unless such an order has been issued under this section without any such request), or where a person is in violation of the requirements of subsection (b) or (g) of section 120 of this Act, such person shall be punished by a fine of not more than $25,000 per day of violation.

"(f) If it is alleged that interference with the achievement or maintenance of any national primary or secondary ambient air quality standard will result from any major emitting facility in any region of a State other than the State in which the facility is or may be located, the Administrator, at the request of the Governor of such other State, shall review the operation or proposed operation of such facility and, if necessary to prevent interference with the achievement or maintenance of any national primary or secondary ambient air quality standard in such other State, he shall take such measures, including seeking injunctive relief, as necessary to prevent such interference.".

SEC. 11. Section 113 of the Clean Air Act is amended by adding the following new subsection:

"(g)(1) No major emitting facility shall be constructed or modified in any air quality control region or portion thereof in which any national ambient air quality standard is exceeded, if such facility will emit air pollutants subject to such standard so as to prevent the attainment or maintenance of such standard, except that a facility proposed for construction or modification at an existing site or plant owned or controlled by the owner or operator of such facility may be constructed or modified in such region if the owner or operator demonstrates to the satisfaction of the State that (A) the proposed facility will comply with the best available control technology (as defined in section 110(g)(6)(A) of this Act) applicable to such proposed facility before the proposed facility begins operation, (B) all existing sources owned or controlled by the owner or operator of the proposed facility in the same air quality control region as the proposed facility either are in compliance with all applicable emission limitations or are in compliance with an approved schedule and timetable for compliance under a provision of an applicable implementation plan under section 110 of this Act or an enforcement order issued under section 113(d) of this Act, (C) the total cumulative emissions from the existing sources at the proposed facility location and the proposed facilities will at no time increase, (D) the total allowable emissions from all existing and proposed sources at the proposed facility location will be sufficiently less than the total allowable emissions from the existing sources under the implementation plan or an approved schedule and timetable for compliance applicable prior to the request to construct or modify so as to represent reasonable further progress toward attainment of the applicable national ambient air quality standard, taking into account progress already made.

"(2) After January 1, 1979, only a proposed facility where all existing sources owned or controlled by the owner or operator of the proposed facility in the same air quality control region as the proposed facility are in compliance with all emission limitations under an applicable implementation plan under section 110 of this Act shall be eligible for an exception under paragraph (1) of this subsection.

"(3) The provisions of this subsection shall not be available where a State has not

made any appropriate revision in the applicable implementation plan to include the emission limitations established for sources at the proposed facility location under paragraph (1)(D) of this subsection.".

SEC. 12. Section 115 of the Clean Air Act is amended to read as follows:

"SEC. 115. (a) Whenever the Administrator, upon receipt of requests, reports, surveys, or studies from any duly constituted international agency, has reason to believe that any air pollutant or pollutants emitted in the United States endanger the health or welfare of persons in a foreign country, or whenever the Secretary of State requests him to do so with respect to such pollutant or pollutants which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to such Governor of the State in which such emissions originate.

"(b) The notice of the Administrator shall operate as finding under clause (ii) of subparagraph (H) of subsection (a)(2) of section 110 of this Act and any foreign country adversely affected by the emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

"(c) This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

"(d) Recommendations issued following any abatement conference conducted prior to the enactment of the Clean Air Amendments of 1976 shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 109 of this Act. However, the Administrator, after consultation with all agencies which were party to the conference, may rescind any such recommendation on grounds of obsolescence.".

SEC. 13. Section 117 of the Clean Air Act is amended—

(1) to strike subsections (a) through (c);

(2) to remember subsections (d) and (e) as subsections (a) and (b), respectively; and

(3) to amend redesignated subsection (b)—

(A) by striking the words "the Board and" the first time the word "Board" appears and inserting in lieu thereof the word "any"; and

(B) by striking the words "of the Board" the second time the word "Board" appears.

SEC. 14. Section 118 of the Clean Air Act is amended by striking in the first sentence thereof the words "comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements." and inserting in lieu thereof the words "be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of air pollution in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States nor any agent, employee, nor officer thereof shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such injunctive relief.".

SEC. 15. (a)(1) Section 119 of the Clean Air Act, as amended, is hereby repealed. All references to section 119 or subsections thereof in section 2 of the Energy Supply and Enviromental Coordination Act of 1974 (Public Law 93-319) shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular. Any certification or notification required to be given by the Administrator of the Environmental Protection Agency under section 2 of the Energy Supply and Enviromental Coordination Act of 1974 shall be given instead by the appropriate State.

(2) In the case of any major emitting facility to which any requirement is applicable under section 113(d)(5)(B) of the Clean Air Act and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974, the State shall certify the date which it determines is the earliest date that such facility will be able to comply with all such requirements. In the case of any plant or installation which the State determines (after consultation with the Administrator of the Environmental Protection Agency) will not be subject to an order under section 113(d) of the Clean Air Act and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974, the State shall certify the date which it determines is the earliest date that such plant or installation will be able to burn coal in compliance with all applicable emission limitations under the implementation plan.

(3) Any certification required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or under this subsection may be provided in an enforcement order under section 113(d) of the Clean Air Act.

(b) Section 111(a) of the Clean Air Act, as amended, is amended by adding the following new paragraph:

"(7) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974, or (B) which qualifies under section 113(d)(5)(A)(ii) of this Act, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.".

SEC. 16. (a) Title I of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART B—OZONE PROTECTION

"PURPOSES

"SEC. 150. The purposes of this part are (1) to provide for a better understanding of the effects of human actions on the ozone in the stratosphere, (2) to provide for a better understanding of the effects of changes in the ozone in the stratosphere on the public health and welfare, and (3) to authorize the regulation of activities which affect the ozone in the stratosphere in such a way as to cause or contribute to endangerment of the public health or welfare.

"FINDINGS AND DEFINITIONS

"SEC. 151. (a) The Congress finds, on the basis of presently available information, that—

"(1) halocarbon compounds introduced into the environment potentially threaten to reduce the concentration of ozone in the stratosphere;

"(2) ozone reduction will lead to increased incidence of solar ultraviolet radiation at the surface of the Earth;

"(3) increased incidence of solar ultraviolet radiation is likely to cause increased rates of disease in humans (including increased rates of skin cancer), threaten food crops, and otherwise damage the natural environment; and

"(4) other substances, practices, processes, and activities may affect the ozone in the stratosphere, and should be investigated to give early warning of any potential problem and to develop the basis for possible future regulatory action.

"(b) For the purposes of this part—

"(1) the term 'halocarbon' means the chemical compounds $CFCl_3$ and CF_2Cl_2, other chlorofluoromethanes, and such other halogenated compounds as the Administrator determines may threaten to contribute to reductions in the concentration of the ozone in the stratosphere;

"(2) the term 'stratosphere' means that part of the atmosphere above the tropopause; and

"(3) the term 'aerosol containers' means pressurized dispensing containers.

"STUDIES AND REPORTS

"SEC. 152. (a) The Administrator shall undertake to contract with the National Academy of Sciences to—

"(1) continue the study begun prior to enactment of this part and report to the Administrator and the Congress not later than July 1, 1976, concerning the nature and likelihood of potential direct and indirect effects on the public health and welfare from the release of halocarbons into the atmosphere; and

"(2) perform further studies and report to the Administrator and the Congress not later than October 1, 1977, on—

"(A) the nature and likelihood of potential direct and indirect effects on the ozone in the stratosphere from the release of halocarbons into the atmosphere;

"(B) the nature and likelihood of potential direct and indirect effects on the ozone in the stratosphere from other substances, practices, processes, or activities;

"(C) the nature and likelihood of potential direct and indirect effects on public health or welfare from changes in the ozone in the stratosphere; and

"(D) methods to control or replace halocarbons or other substances, practices, processes, or activities which may affect the ozone in the stratosphere.

"(b) The Secretary of Labor shall study and transmit reports to the Administrator and the Congress (1) not later than October 1, 1976, with respect to the losses and gains to industry and employment which could result from the elimination of the use of halocarbons in aerosol containers and recommended means of alleviating unemployment or other undesirable economic impact, if any, resulting therefrom; and (2) not later than October 1, 1977, with respect to the losses and gains to industry and employment which could result from the control of uses of halocarbon compounds other than in aerosol containers, and recommended means of alleviating unemployment or other undesirable economic impact, if any, resulting therefrom.

"(c)(1) The National Aeronautics and Space Administration shall—

"(A) pursuant to its authority under title IV of the National Aeronautics and Space Act of 1958, as amended by Public Law 94-39, continue programs of research, technology, and monitoring of the stratosphere for the purpose of understanding the physics and chemistry of the stratosphere and for the early detection of potentially harmful changes in the ozone in the stratosphere;

"(B) in implementing this subsection, coordinate the programs of all Federal agencies relating to the research, technology, and monitoring of the phenomena of the upper atmosphere, including the stratosphere;

"(C) transmit reports by October 1, 1976, by October 1, 1977, and from time to time thereafter, but at least once each Congress, to the Administrator and the Congress on the results of the programs authorized in this subsection, together with any appropriate recommendations for Federal action, including regulations.

"(2) Nothing in title IV of the National Aeronautics and Space Act of 1958, as amended, or this Act shall prevent the National Aeronautics and Space Administration from delegating operational monitoring of the stratosphere to another appropriate Federal agency.

"(d) The Administrator of the National Oceanic and Atmospheric Administration

shall continue programs of research and monitoring of the atmosphere for the purpose of early detection of potentially harmful changes in the ozone in the stratosphere and the climatic effects of reduction of ozone in the stratosphere and transmit reports by October 1, 1976, by October 1, 1977, and from time to time thereafter, but at least once each Congress, to the Administrator, the National Aeronautics and Space Administration, and the Congress the results of such programs, together with any appropriate recommendations for Federal action, including regulations.

"(e) The Director of the National Science Foundation shall encourage and support ongoing stratospheric research programs and continuing research programs that will increase scientific knowledge of the effects of changes in the ozone layer in the stratosphere upon living organisms and ecosystems; and transmit reports by October 1, 1976, by October 1, 1977, and from time to time thereafter but at least once each Congress, to the Administrator, the National Aeronautics and Space Administration and the Congress on the results of such programs, together with any appropriate recommendations for Federal action, including regulations.

"(f) The Secretary of Agriculture shall encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon animals, crops, and other plant life: and shall transmit reports by October 1, 1976, by October 1, 1977, and from time to time thereafter but at least once each Congress, to the Administrator and the Congress on the results of such programs together with any appropriate recommendations for Federal action, including regulations.

"(g) The Secretary of Health, Education, and Welfare shall—

"(1) encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon human health; and shall transmit reports by October 1, 1976, by October 1, 1977, and from time to time thereafter, but at least once each Congress, to the Administrator and the Congress on the results of such programs, together with any appropriate recommendations for Federal action, including regulations.

"(2) In carrying out the programs authorized by this subsection, utilize the National Institute of Environmental Health Service to coordinate the programs of all Federal agencies relating to research into the effects upon human health of changes in the ozone layer in the stratosphere.

"(h) The Food and Drug Administration, in cooperation with the Consumer Product Safety Commission, shall consider proposed substitutes for halocarbons in aersol containers and other uses and shall propose regulations to assure that such substitutes do not adversely affect human health, directly or indirectly.

"(i) The Administrator shall—

"(1) encourage and support continuing research programs that will increase scientific knowledge of the effects on public health and welfare of changes in the ozone layer in the stratosphere. Such research shall be coordinated with other Federal agencies identified in this section. He shall report to the Congress on the findings of such research by October 1, 1976, by October 1, 1977, and from time to time thereafter, but at least once each Congress.

"(2) not later than two years after the date of the enactment of the Clean Air Amendments of 1976, submit to the Congress a summary report of the results of the studies and research conducted under this section by the Environmental Protection Agency and other Federal agencies. The Administrator shall include in the report a summary of his actions regulating sources of halocarbons and his recommendations for control of substances, practices, processes, and activities other than those involving halocarbons, which are found to affect the ozone in the stratosphere and which may cause or contribute to harmful effects on public health or welfare.

"(j) In carrying out the programs provided for in subsections (b) through (i) of this section, the agencies responsible shall enlist and encourage assistance from the Nation's institutions of higher education and private organizations, including industrial, labor, consumer, environmental and other organizations, coordinate such activity with the other appropriate agencies, and solicit and consider the views of the Administrator with regard to plans for the research technology and monitoring involved so that such research technology and monitoring will help provide the information base for the Administrator to decide whether regulatory action is necessary and to take such action if it is necessary.

"(k) The Administrator shall convene a Management Council to facilitate coordination of the programs authorized under this part, which Council shall (A) be comprised of the officials responsible for the research efforts of the agencies required to perform research under this part, and of such other agencies as the Administrator may designate; (B) review plans and funding for pertinent research and studies in order to provide the information base for the Administrator to decide what regulatory action, if any, is necessary, and (C) coordinate the preparation of reports authorized or required under this part to minimize duplication and insure that the necessary reports are made available in a timely fashion.

"REGULATION

"SEC. 153. (a) Not later than January 1, 1978, the Administrator, after considering available reports under section 152, and other available information, and after consulting appropriate agencies and scientific entities, if he then finds that halocarbon emissions from aerosol containers may reasonably be anticipated to cause or contribute to the endangerment of public health or welfare, shall publish proposed regulations which prohibit or restrict the manufacture, sale, import, export, or use of aerosol containers which result in discharge of halocarbons into the atmosphere to the extent necessary to avoid any such endangerment of public health or welfare. Not later than April 1, 1978, and after public hearings, the Administrator shall promulgate and transmit to the Congress final regulations, which shall take effect if not disapproved pursuant to subsection (b) of this section.

"(b) Regulations promulgated under subsection (a) of this section and any amendment or revision thereof shall be transmitted to the Congress. A regulation transmitted under this subsection shall take effect at the end of the first period of ninety calendar days of continuous session of Congress after the date on which the regulation is transmitted to it unless, between the date of transmittal and the end of the ninety-day period, either House passes a resolution disapproving such regulation.

"(c) From time to time after April 1, 1978, the Administrator may revise, promulgate, and submit to the Congress, in accordance with subsection (b) of this section any of the regulations promulgated pursuant to this section in the light of new evidence.

"EXPEDITED REGULATION

"SEC. 154. (a) If the Administrator at any time prior to January 1, 1978, finds it necessary to protect the public health or welfare from significant risk of harmful effects which may reasonably be anticipated to arise in whole or in part from halocarbon emissions from aerosol containers, he shall promptly, after public hearings, promulgate regulations which prohibit or restrict the manufacture, production, sale, import, export, or use of aerosol containers discharging halocarbons into the atmosphere. In promulgating such regulations the Administrator shall take into account the public need for such aerosol containers, the costs and feasibility of such action, and all other costs related to depletion of stratospheric ozone.

"(b) To the extent determined essential to protect the public health and welfare pursuant to this section, the Administrator may in the promulgation of regulations pursuant to subsection (a) proceed without regard to such provisions of title 5 of the United States Code, relating to administrative procedure, as he determines necessary.

"(c) From time to time the Administrator may revise any of the regulations issued pursuant to this section in the light of new evidence.

"ADDITIONAL REGULATION

"SEC. 155. The Administrator shall—

"(a) consult with appropriate Federal agencies and scientific entities;

"(b) afford an opportunity for public hearing; and

"(c) if he then finds that halocarbons released from sources other than aerosol containers may reasonably be anticipated to cause or contribute to the endangerment of the public health or welfare, publish not later than April 1, 1978, proposed regulations for the control of these emissions. Such regulations shall restrict the manufacture, sale, import, export, or use of such sources to the extent necessary to avoid such endangerment of public health or welfare, and shall include limitations on emissions from such sources to the maximum extent feasible, taking into account the cost of achieving such limitations and all other costs related to the depletion of stratospheric ozone. The Administrator shall take into consideration the findings of other Federal agencies conducting research on stratospheric ozone pertaining to the public health and welfare, and available reports prepared pursuant to section 152. Regulations proposed under this section shall be promulgated in final form within ninety days. From time to time the Administrator may revise any of the regulations issued under this section in the light of new evidence.

"PENALTIES

"SEC. 156. (a) It shall be unlawful for any person to violate any provision of regulations pursuant to section 153, 154, or 155 of this Act.

"(b)(1) The Administrator shall commence a civil action in the United States district court in the judicial district in which the person alleged to be engaged in conduct prohibited by regulations under section 153, 154, or 155 of this Act is located or conducts business, for appropriate relief, including a temporary restraining order or a preliminary or permanent injunction to restrain any such conduct.

"(2) Any person engaged in conduct prohibited by regulations under section 153, 154, or 155 of this Act, other than use of aerosol containers by an ultimate consumer, shall be subject to a civil penalty of not more than $100,000 per day of violation.

"INTERNATIONAL COOPERATION

"SEC. 157. The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this part, and to develop standards and regulations which protect the stratosphere consistent with regulations under section 153, 154, and 155 of this Act. For these purposes the President through the Secretary of State and the Assistant Secretary of State for

Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements. Research agreements shall be developed in accordance with section 8 of Public Law 94-39, and other existing legislation.

"STATE AUTHORITY

"SEC. 158. Nothing in this part shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation controlling the manufacture, sale, or use of halocarbons except that if any regulation is in effect under this part such State or political subdivision may not adopt or enforce any regulation which is less stringent than the regulation under this part.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 159. For the purpose of carrying out the provisions of this part, there are authorized to be appropriated—

"(i) to the National Aeronautics and Space Administration, the National Science Foundation, and the Department of State, such sums as may be necessary for the fiscal year ending June 30, 1976, the transition quarter ending September 30, 1976, and the fiscal year ending September 30, 1977; and

"(ii) to all other agencies such sums as may be necessary.".

(b) Title I of the Clean Air Act is amended by inserting immediately before section 101 the following:

"PART A—AIR QUALITY AND EMISSION LIMITATIONS".

SEC. 17. (a) Section 202(a) of the Clean Air Act is amended by adding a new paragraph (3) as follows:

"(3) The regulations under paragraph (1) of this subsection applicable to emissions of carbon monoxide, hydrocarbons, particulates, and oxides of nitrogen from heavy duty trucks, buses, and motorcycles and engines thereof manufactured in model years (A) 1979 and 1980 (and, if appropriate in the judgment of the Administrator, 1978) shall contain standards which require a reduction of emissions of such pollutants established by the application of the best available control technology, taking into account the cost of compliance, as determined by the Administrator, and (B) 1981 and thereafter shall contain standards requiring a reduction of emissions of such pollutants equivalent to the levels required by the standards established under subsection (b) of this section, except that for heavy duty motor vehicles over 10,000 pounds and engines thereof such standards shall constitute a reduction from uncontrolled levels of emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen as actually measured from gasoline powered heavy duty motor vehicles over 10,000 pounds and engines thereof equivalent to the percentage reduction required for light duty motor vehicles in model year 1980 compared to the appropriate model year 1970 base or, for oxides of nitrogen, model year 1971 base (unless the Administrator finds and reports to the Congress that the control technology is not available or has not been available for a sufficient period of time to achieve compliance on any class of heavy duty vehicle or engine thereof and establishes standards which are based on the best available control technology and which constitute a reduction from any standards which apply in model years 1978 through 1980). The Administrator may, where appropriate, divide vehicles and engines thereof regulated under this paragraph into classes by size, weight, horsepower, and use patterns.".

(b) Section 206(a)(1) of the Clean Air Act is amended by inserting "(A)" after "(1)" and by adding at the end thereof the following:

"(B) In the case of heavy-duty motor vehicles, the Administrator may perform, or require to be performed, the test provided under subparagraph (A) of this paragraph on heavy-duty motor vehicle engines for application in a range of vehicle configuration and use patterns.".

SEC. 18. Subparagraph (A) of paragraph (1) of section 202(b) of the Clean Air Act is amended by striking the term "1977", and inserting in lieu thereof "1979"; by striking the phrase "and 1976" after the term "1975" where it first appears, and inserting in lieu thereof "1976, 1977, and 1978".

SEC. 19. Subparagraph (B) of paragraph (1) of section 202(b) of the Clean Air Act is amended to read as follows:

"(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light duty vehicles and engines manufactured during (i) model year 1976 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 3.1 grams per vehicle mile, (ii) (subject to the provisions of paragraph (5) of this subsection) model years 1977, 1978, and 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile, and (iii) model year 1980 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile.".

SEC. 20. Section 202(b)(5) of the Clean Air Act is amended to read as follows:

"(5) The Administrator shall promulgate regulations requiring each manufacturer whose sales represent more than 3 per centum of total light duty motor vehicle unit sales in the world to comply during model year 1979 with the emission standards required under paragraph (1) of this subsection for model year 1980 on 10 per centum of the manufacturer's projected total sales in model year 1979, as determined by the Administrator. Such regulations shall provide that no more than 90 per centum of such manufacturer's projected total sales of light duty motor vehicles in model year 1979 may be sold in compliance with the emission standards otherwise required under paragraph (1) of this subsection for model year 1979.".

SEC. 21. Section 202(b) of the Clean Air Act is amended by adding a new paragraph (6) as follows:

"(6) The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after enactment of the Clean Air Amendments of 1976, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this Act. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1978 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems.".

SEC. 22. Section 202(c)(1) of the Clean Air Act is amended to read as follows:

"(c)(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to subsection (a) of this section (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by subsection (b) of this section. The Administrator shall report to the Congress within six months of the date of enactment of this paragraph and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph.".

SEC. 23. Section 202(d) of the Clean Air Act is amended by amending paragraph (2) to read as follows:

"(2) in the case of any motorcycle or any other motor vehicle or motor vehicle engine not included in paragraph (1), be a period of use the Administrator shall determine.".

SEC. 24. (a) Section 203(a) of the Clean Air Act is amended by inserting "(A)" after "(3)" and by adding a new subparagraph (B) at the end of paragraph (3) as follows:

"(B) for any person engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title following its sale and delivery to the ultimate purchaser, or".

(b) Section 205 of the Clean Air Act is amended to read as follows:

"SEC. 205. Any person who violates paragraph (1), (2), or (4) of section 203(a) or any manufacturer who violates paragraph (3) of section 203(a) shall be subject to a civil penalty of not more than $10,000. Any person who violates paragraph (3) of section 203(a) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (2), (3), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.".

SEC. 25. Section 203(a)(4) of the Clean Air Act is amended by striking "or" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", or" in lieu thereof, and by adding a new subparagraph (C) as follows:

"(C) except as provided in subsection (c)(3) of section 207, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this Act is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person.".

SEC. 26. (a) Section 206(b)(1) of the Clean Air Act is amended by inserting "(A)" after "(b)(1)" and adding a new subparagraph (B) at the end of such subparagraph as follows:

"(B) The Administrator shall within six months of the date of enactment of this subparagraph established a test procedure to implement, beginning no later than model year 1977, the authority of subparagraph (A) of this paragraph.".

(b) Section 206(A) of the Clean Air Act is amended by adding the following new paragraph:

"(3) Each new motor vehicle or new motor

vehicle engine shall be certified to conform to the regulations prescribed under section 202 of this Act for the particular vehicle configuration, anticipated use pattern, and Administrator shall certify each vehicle or engine with an allowance to assure conformity with such regulations for air-conditioning or similar equipment to be subsequent equipment of such vehicle or engine. The installed. Such vehicle or engine shall be deemed to be covered by a certificate of conformity only if no equipment is added or other modification made which is not within the allowance provided for in this paragraph.".

SEC. 27. Section 207(a)(1) of the Clean Air Act is amended by adding the following new sentences at the end thereof: "The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for placement during the useful life of the vehicle in order to maintain compliance with regulations under section 202 of this Act, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 per centum of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term 'designed for emission control' as used herein means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. It is not intended to include those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control.".

SEC. 28. (a) Section 207(a) of the Clean Air Act is amended by inserting "(1)" after "(a)" and by adding the following new paragraph at the end thereof:

"(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 202 of this Act. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b). The Administrator shall promulgate such regulations no later than one year after the date of the enactment of this paragraph. Before the effective date of such regulations all parts shall be deemed to have such certification.".

(b) Section 207(b)(2) of such Act is amended by adding the following at the end thereof: "No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2) of this section, nor shall any such warranty be invalid on the basis of the installation or use of any air-conditioning system not installed in the factory of the vehicle manufacturer, where the particular vehicle or engine in which such air-conditioning system is installed is certified in accordance with section 206(a)(3) with an allowance for air-conditioning or similar equipment to be subsequently installed.".

SEC. 29. Paragraph (3) of subsection (c) of section 207 of the Clean Air Act is amended to read as follows:

"(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate.

"(B) The instruction under subparagraph (A) of this paragraph shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent automotive repair facilities with which such manufacturer has no commercial relationship; except that the prohibition of this subsection may be waived by the Administrator if—

"(i) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or service so identified is used in connection with such vehicle or engine, and

"(ii) the Administrator finds that such a waiver is in the public interest.

"(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 202 of this Act. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.".

SEC. 30. Section 207 of the Clean Air Act is amended by adding the following new subsection:

"(g) For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of such vehicle or engine to replace and to maintain, at his expense at any service establishment or facility of his choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of the last three sentences of section 207(a)(1)) that has a design life of less than the useful life of such vehicle or engine, unless such part, item, or device is covered by any warranty not man-dated by this Act or unless such part fails prior to its design life.".

SEC. 31. Section 209 of the Clean Air Act is amended by adding the following new subsection:

"(d) Notwithstanding subsection (a) of this section, any State in which a region or portion thereof has been identified pursuant to section 107(d)(1)(A) of this Act may adopt and enforce for model year 1979 the emission standards for light duty motor vehicles required for model year 1980 under section 202(b)(1) of this Act: *Provided*, That the State shows to the satisfaction of the Administartor that the adoption of the standard in 1979 is required to achieve any ambient air quality standard by 1982 and maintain thereafter. Light duty motor vehicles offered for sale within such State shall be certified to comply with such standards in accordance with the procedures established under section 206 of this Act.".

SEC. 32. Section 211 of the Clean Air Act is amended by adding a new subsection (e) as follows:

"(e) The Administrator shall conduct a study and report to Congress by July 1, 1977, on the emission of sulfur-bearing compounds from motor vehicles and motor vehicle engines and aircraft engines. Such study and report shall include but not be limited to a review of the effects of such emissions on public health and welfare and an analysis of the costs and benefits of alternatives to reduce or eliminate such emissions (including desulfurization of fuel, short-term allocation of low sulfur crude oil, technological devices used in conjunction with current engine technologies, alternative engine technologies, and other methods) as may be required to achieve any proposed or promulgated emission standards for sulfur compounds.".

SEC. 33. (a) Title II of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART C—RAILROAD LOCOMOTIVE EMISSION STANDARDS

"SEC. 235. (a)(1) Within ninety days after the date of enactment of the Clean Air Amendments of 1976, the Administrator shall commence a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine—

"(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

"(B) the technological feasibility of controlling such emissions.

"(2)(A) Within one hundred and eighty days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall publish proposed emission regulations applicable to emissions of any air pollutant from any class or classes of locomotives, locomotive engines and secondary power sources on railroad rolling stock, which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare.

"(B) Such proposed regulations shall include emission standards setting limits on air pollutant emissions which reflect the degree of emission reduction achievable through the application of the best available technology, taking into account the cost of compliance, as determined by the Administrator. Such regulations may identify the type of technology available to achieve such reduction.

"(3) The Administrator shall hold public hearings with respect to such proposed regulations. Within ninety days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

"(b) Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

"(c) Any regulations under this section, or amendments thereto, with respect to locomotives, locomotive engines, and secondary power sources on railroad rolling stock, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for safety.

"SEC. 236. The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 235 by the Administrator. Such Secretary shall insure that all necessary inspections are accomplished and may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

"SEC. 237. After the effective date of regulation under section 235 of this Act no State or political subdivision thereof may adopt or enforce any standard respecting emissions of any air pollutant from any railroad locomotives, locomotive engines, or secondary pwer sources on railroad rolling stock, unless such standard is identical to a standard applicable to emissions prescribed by any regulation under this part.".

(b) Section 116 of the Clean Air Act is

amended by striking out "and 233" and inserting in lieu thereof "233 and 237".

SEC. 34. (a) Section 302 of the Clean Air Act is amended by adding five new subsections as follows:

"(i) The term 'emission limitation' means a requirement established by a State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including a detailed schedule and timetable of compliance.

"(j) The term 'schedule and timetable of compliance' means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

"(k) The term 'major emitting facility' means any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any air pollutant, except that for the purposes of section 110(g) of this Act, the term is limited to the following types of such stationary sources: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities, and such other major emitting facilities as the Administrator determines to be significant potential sources of air pollutants.

"(l) The term 'baseline air quality concentration' refers to the ambient concentration levels which exist at the time of the first application for a permit in an area under section 110(g) of this Act, based on air quality data available in the Environmental Protection Agency or an air pollution control agency and such monitoring data as the permitting authority may require the permit applicant to submit. Such ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall be accounted against the limitations on projected increases in pollutant concentrations established in paragraphs (2) and (5) of section 110(g) of this Act.

"(m) The term 'stationary source' shall have the same meaning as such term has under section 111(a)(3) of this Act.".

(b) Section 302(d) of the Clean Air Act is amended—

(1) by striking out the word "and" immediately preceding "American Samoa";

(2) by striking the period immediately following "American Samoa" and inserting in lieu thereof ", and the Trust Territory of the Pacific Islands.".

SEC. 35. (a) Section 304(a) of the Clean Air Act is amended—

(1) by striking out the period at the end of paragraph (2) and inserting in lieu thereof ", or"; and

(2) by inserting immediately after paragraph (2) the following new paragraph:

"(3) against any person who proposes to construct or constructs any new major emitting facility without a permit required under section 110(g) of this Act or who is alleged to be in violation of any condition of such permit.".

(b) Section 304(f) of the Clean Air Act is amended by inserting "requirement," after "a" in paragraph (1).

SEC. 36. Section 307 of the Clean Air Act is amended by adding a new subsection as follows:

"(d) In any judicial proceeding under this Act in which the United States or an officer or employee thereof is a party (other than as an intervenor), any party other than the United States which prevails in such action shall recover from the United States the reasonable costs for such party's participation in such proceeding, including reasonable attorney's fees, expert witness fees, and the costs of any studies, analyses, tests, or engineering reports that the court finds were necessary to litigate such action. In any case in which such party prevails in part, the court shall have discretion to award such reasonable costs.".

SEC. 37. (a) The Clean Air Act is amended by inserting a new section 314 as follows after section 313 and renumbering succeeding sections accordingly:

"EMPLOYEE PROTECTION

"SEC. 314. (a) No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act or of any applicable implementation plan.

"(b) Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this Act.

"(c) Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

"(d) This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of an applicable implementation plan approved or promulgated under section 110 of this Act, a new source performance standard under section 111 of this Act, a standard for hazardous emissions under section 112 of this Act, any requirement relating to inspections under section 114 of this Act, or any other prohibition or limitation established under this Act.

"(e) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this Act and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, many request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the mater and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this Act or any applicable implementation plan.".

(b) Section 114 of the Clean Air Act is amended:

(1) To amend paragraph (iii) of subsection 114(a) to read as follows:

"(iii) carrying out section 119, 303, or 314.".

(2) To amend paragraph (2) of subsection 114(a) to strike the "and" at the end of section 114(a)(2)(A); to change the period at the end section 114(a)(2)(B) to a comma; and inserting the following:

"and (C) may at reasonable times have access to and copy any employer's records relating to matters being investigated pursuant to section 314.".

SEC. 38. The Clean Air Act is amended by inserting a new section 315 as follows after new section 314 and renumbering succeeding sections accordingly:

"NATIONAL COMMISSION ON AIR QUALITY

"SEC. 315. (a) There is established a National Commission on Air Quality which shall study and report to the Congress on—

"(1) the economic, technological, and

environmental consequences of achieving or not achieving the purposes of this Act and programs authorized by it;

"(2) available alternatives, including enforcement mechanisms to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare, to achieve the other purposes of the Act, including achievement and maintenance of national ambient air quality standards and in accordance with subsection (i) of this section the prevention of significant deterioration of air quality;

"(3) the technological capability of achieving and the economic, energy, and environmental impacts of achieving or not achieving required emission control levels for mobile sources of oxides of nitrogen (including the research objective of 0.4 gram per vehicle mile) in relation to and independent of regulation of emissions of oxides of nitrogen from stationary sources;

"(4) air pollutants not presently regulated, which pose or may in the future pose a threat to public health or public welfare and options available to regulate emissions of such pollutants;

"(5) the adequacy of research, development, and demonstrations being carried out by Federal, State, local, and nongovernmental entities to protect and enhance air quality;

"(6) the ability of (including financial resources, manpower, and statutory authority) Federal, State, and local institutions to implement the purposes of the Act;

"(7) the extent to which the reduction of hydrocarbon emissions is an adequate or appropriate method to achieve primary standards for photochemical oxidants. Such study shall include—

"(A) a description and analysis of the various pollutants which are commonly referred to as 'photochemical oxidants' or chemical precursors to photochemical oxidants;

"(B) an analysis of any pollutants or combination of pollutants which need to be reduced to achieve any photochemical oxidant standard, and the amount of such reduction;

"(C) the relationship between the reductions of hydrocarbons, oxides of nitrogen, and any other pollutants and the achievement of applicable standards for photochemical oxidants;

"(D) the degree to which background or natural sources and long-range transportation of pollutants contribute to measured ambient levels of photochemical oxidants;

"(E) any other oxidant-related issues which the Commission determines to be appropriate;

"(8) alternative strategies for permitting, without impeding the achievement of national ambient air quality standards as expeditiously as possible, the construction of new facilities and the modification of existing facilities in air quality control regions exceeding the national ambient air quality standard for any pollutant regulated under the Act.

"(b) Such Commission shall be appointed within sixty days after enactment of this section and shall be composed of sixteen members, including the chairman and the ranking minority member of the Senate Committee on Public Works and the House Committee on Interstate and Foreign Commerce, who shall serve on such Commission ex officio and without vote, and twelve members of the public appointed by the President. Such Commission shall include four State Governors, who may designate the chief administrative officer of the State's air pollution control agency. The Chairman of such Commission shall be elected from among its members.

"(c) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

"(d) A report, together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning section (a)(3) of this section no later than March 1, 1977, in order that Congress may have this information in a timely fashion if it deems further changes are needed in the requirements for control of emissions of oxides of nitrogen under this Act.

"(e)(1) Except as provided in paragraph (2) of this subsection, a report shall be submitted with regard to all other Commission studies and investigations, together with any appropriate recommendations, not later than three years after the date of enactment of this section.

"(2) A report on the results of the study and investigation of the Commission authorized under subsection (i) of this section, together with any appropriate recommendations, shall be submitted not later than two years after the date of enactment of this section.

"(3) A report on the results of the study and investigation of the Commission authorized under subsection (a)(7) of this section, together with any appropriate recommendations, shall be submitted not later than two years after the date of enactment of this section. During the preparation of this specific study and report, the Commission shall seek the participation and consultation of the Chairman of the Council on Environmental Quality; the Administrator of the National Oceanic and Atmospheric Administration; the Administrator of the Environmental Protection Agency; and Governors of those States having air quality control regions in which primary ambient air quality standards for photochemical oxidants are exceeded at the time of enactment of these amendments or are projected to be exceeded within the period of the study, or the chief administrative officers of their State air pollution control agencies designated by any State Governor. The Commission may contract with nonprofit technical and scientific organizations, including the National Academy of Sciences, for the purpose of developing necessary technical information for the study authorized by subsection (a)(7) of this section.

"(f) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title V of the United States Code, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

"(g) There is authorized to be appropriated, for use in carrying out this section, not to exceed $17,000,000.

"(h) In the conduct of the study, the Commission is authorized to contract with nongovernmental entities that are competent to perform research or investigations in areas within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation.

"(i)(1) The Commission shall, in carrying out the study authorized under this section, give priority to a study of the implementation of the provisions of subsection (g) of section 110 of this Act.

"(2) In carrying out the authority of this subsection the Commission shall study, among others, the following:

"(A) whether the provisions relating to the designation of, and protection of air quality in class I regions under this Act are appropriate to protect the air quality over lands of special national significance, including recommendations for, and methods to (i) add to or delete lands from such designation, and (ii) provide appropriate protection of the air quality over such lands;

"(B) whether the provisions of subsection (g) of section 110 of this Act, including the three-hour and twenty-four-hour increments, (i) affect the location and size of major emitting facilities, and (ii) whether such effects are in conflict or consonance with other national policies regarding the development of such facilities;

"(C) whether the technology is available to control emissions from the major emitting facilities which are subject to regulation under subsection (g) of section 110 of this Act, including an analysis of the costs associated with that technology.

"(D) whether the exclusion of nonmajor emitting sources from the regulatory framework under this Act will affect the protection of air quality in class I and class II regions designated under this Act;

"(E) whether the increments of change of air quality under this Act are appropriate to prevent significant deterioration of air quality in class I and class II regions designated under this Act; and

"(F) whether the choice of predictive air quality models and the assumptions of those models are appropriate to protect air quality in the class I and class II regions designated under this Act for the pollutants subject to regulation under subsection (g) of section 110 of this Act.

"(3) For the study authorized under this subsection there shall be made available by contract to the Commission from the appropriation to the Environmental Protection Agency for fiscal year 1977 the sum of $1,000,000.".

SEC. 39. Section 318 of the Clean Air Act, as redesignated by this Act, is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 318. There are authorized to be appropriated to carry out this Act, other than sections 103 (f)(3) and (d), 104, 110(h)(8), 150 through 159, 212, 315, and 403, not to exceed $300,000,000 for the fiscal year ending June 30, 1976, $75,000,000 for the transition period ending September 30, 1976, and $200,000,000 for each of fiscal years 1977 and 1978. There are authorized to be appropriated to carry out section 110(h)(8) of this Act $75,000,000 to be available until expended.".

SEC. 40. The Federal Trade Commission shall undertake a study of the impact on competition of any warranty required to be provided pursuant to the Clean Air Act, taking into account the objectives of the Act. Such study shall include public hearings. Such study shall include an analysis of any measures implemented by the Administrator of the Environmental Protection Agency to prevent or diminish the impact of such warranties on competition and shall include a finding with respect to whether or not a significant impact on competition would result from such warranty if the warranty applied for the actual useful life of the vehicle. Such study shall be undertaken primarily by the Bureau of Competition in consultation with the Bureau of Consumer Affairs, the Department of Justice, and the Environmental Protection Agency. The report of such study shall be submitted to the Committee on Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives no later than eighteen months after the enactment of the Clean Air Amendments of 1976.

SEC. 41. The Congress finds that emissions of oxides of nitrogen are projected to increase dramatically in coming years and that inadequate controls are currently projected for stationary sources of oxides of nitrogen, and directs the Administrator to study and report to the Congress within one year on the possible creation of a system of penalties on emissions of oxides of nitrogen. Such penalties shall be designed for new major emitting facilities, or existing major emitting facilities, or both, to encourage the development of more effective systems and technologies for control of emissions of oxides of nitrogen. Any proposed penalty system recommended by the Administrator should be planned to terminate, for each category of facilities, at such time as the Administrator is satisfied that adequate technology exists and is available to control oxides of nitrogen to the greatest extent practicable for that category of facilities, and that such controls are being, or will be, installed on all such facilities. As a part of such report, the Administrator shall also recommend a system by which major emitting facilities would be required to compile records to determine any such emission penalty that would be due.

SEC. 42. (a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act, as amended, as in effect immediately prior to the date of enactment of this Act shall abate by reason of the taking effect of the amendments made by this Act. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act, as amended, as in effect immediately prior to the date of enactment of this Act, and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as amended, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act.

(c) Nothing in this Act nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of this Act or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section until modified or rescinded in accordance with the Clean Air Act as amended by this Act.

SEC. 43. This Act may be cited as the "Clean Air Amendments of 1976".

MOTION OFFERED BY MR. STAGGERS

Mr. STAGGERS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. STAGGERS moves to strike out all after the enacting clause of the Senate bill (S. 3219) and to insert in lieu thereof the provisions of H.R. 10498, as passed, as follows:

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Clean Air Act Amendments of 1976".

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AUTHORIZATIONS

SEC. 2. (a) Section 316 of the Clean Air Act (42 U.S.C. 1857l) is amended to read as follows:

"APPROPRIATIONS

"SEC. 316. (a) There are authorized to be appropriated to carry out this Act, other than section 212 and authorities providing for research, development, and demonstration under this Act, $200,000,000 for the fiscal year 1977, $200,000,000 for the fiscal year 1978, and $200,000,000 for the fiscal year 1979.

"(b) There are authorized to be appropriated for the fiscal year 1977, $129,223,500 for carrying out authorities providing for research, development, and demonstration under this Act.".

(b) Section 212(i) of such Act (42 U.S.C. 1857f-6e(i)) is amended to read as follows:

"(i) There are authorized to be appropriated for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section, $25,000,000 for each of the fiscal years 1977, 1978, and 1979.".

(c) The Clean Air Act (42 U.S.C. 1857, et seq.) is amended by adding a new section to read as follows:

"SUNSHINE IN GOVERNMENT

SEC. 325. (a) Each officer or employee of the Administrator who—

"(1) performs any function or duty under this Act; and

"(2) has any known financial interest (A) in any person subject to such Act, or (B) in any person who applies for or receives any grant, contract, or other form of financial assistance pursuant to this Act;

"shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

"(b) The Administrator shall—

"(1) act within ninety days after the date of enactment of the Clean Air Act Amendments of 1976—

"(A) to define the term 'known financial interest' for purposes of subsection (a) of this section; and

"(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

"(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

"(c) In the rules prescribed in subsection (b) of this section, the Administrator may identify specific positions within such agency which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such position shall be exempt from the requirements of this section.

"(d) Any officer or employee who is subject to, and knowingly violates this section or any regulation issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both."

TITLE I—AMENDMENTS RELATING PRIMARILY TO STATIONARY SOURCES

UNREGULATED POLLUTANTS

SEC. 101. (a) Title I of the Clean Air Act (42 U.S.C. 1857 and following) is amended by adding at the end thereof the following new section:

"LISTING OF CERTAIN UNREGULATED POLLUTANTS

"SEC. 120. (a) In the case of vinyl chloride, cadmium, arsenic, and polycyclic organic matter, unless the Administrator finds, after notice and opportunity for public hearing, that the substance will not cause or contribute to air pollution which may reasonably be anticipated to endanger public health, he shall (not later than one year after the date of the enactment of the Clean Air Act Amendments of 1976) include such

substance in the list published under section 108(a)(1) or 112(b)(1)(A) (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 111(b)(1)(A), or take any combination of such actions.

"(b) Nothing in subsection (a) shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) with respect to any substance (whether or not enumerated in subsection (a)).".

(b) Section 109 of such Act (42 U.S.C. 1857c-4) is amended by adding the following new subsection at the end thereof:

"(c) The Administrator shall, not later than one year after the date of the enactment of the Clean Air Act Amendments of 1976, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than one hour unless, based on the criteria issued under section 108(c), he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.".

(c) Section 108(c) of such Act (42 U.S.C. 1857c-3(c)) is amended by adding the following at the end thereof: "Not later than six months after the date of the enactment of the Clean Air Act Amendments of 1976, the Administrator shall revise and reissue criteria relating to concentrations of NO_2 over a period of not more than one hour. Such criteria shall include a discussion of nitric and nitrous acid, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.".

(d) The Administrator shall conduct a study, in conjunction with other appropriate agencies, concerning the effect on the public health and welfare of sulfates, vinyl chloride, cadmium, arsenic, and polycyclic organic matter which are present or may occur in the ambient air. Such study shall include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects, if any, of sulfates, vinyl chloride, cadmium, arsenic, and polycyclic organic matter.

BASIS OF ADMINISTRATIVE STANDARDS

SEC. 102. (a)(1) Section 108(a)(1)(A) of the Clean Air Act (42 U.S.C. 1857c-3(a)(1)(A)) is amended to read as follows:

"(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;".

(2) Section 108(a)(1) of such Act is amended by adding the following at the end thereof: "Such list shall also include air pollutants required to be listed as provided in section 120.".

(b) The second sentence of section 111(b)(1)(A) of such Act (42 U.S.C. 1857c-6(b)(1)(A)) is amended to read as follows: "He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare or if it is required to be listed as provided in section 120.".

(c) Paragraph (1) of section 112(a) of such Act (42 U.S.C. 1857c-7(a)(1)) is amended to read as follows:

"(1) The term 'hazardous air pollutant' means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.".

(d)(1) Section 202(a)(1) of such Act (42 U.S.C. 1857f-1(a)(1)) is amended by striking out "which in his judgment causes or contributes to, or is likely to cause or contribute to, air pollution which endangers the public health or welfare" and inserting in lieu thereof "which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.".

(2) Section 202(e) of such Act is amended by striking out "which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers" and substituting "which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger".

(e) Section 211(c)(1)(A) of such Act (42 U.S.C. 1857f-6c(c)(1)(A)) is amended to read as follows: "(A) if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes to, air pollution which may reasonably be anticipated to endanger the public health or welfare, or".

(f) Section 231(a)(2) of such Act (42 U.S.C. 1857f-9(a)(2)) is amended to read as follows:

"(2) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.".

ECONOMIC IMPACT STATEMENT

SEC. 102A. Title III of the Clean Air Act, as amended by sections 306, 201, 304, 312, 313, 108, and 211 of this Act, is further amended by adding the following new section at the end thereof:

"ECONOMIC IMPACT STATEMENT

"SEC. 325. (a) This section applies to action of the Administrator in promulgating or revising—

"(1) any new source standard of performance under section 111(b),

"(2) any regulation under section 111(d),

"(3) any regulation establishing a schedule of rates of excess emission fees under section 122(b),

"(4) any regulation under subtitle B of title I (relating to stratosphere protection),

"(5) any regulation under subtitle C of tittle I (relating to prevention of significant deterioration of air quality),

"(6) any regulation establishing emission standards under section 202 and any other regulation promulgated under that section,

"(7) any regulation controlling or prohibiting any fuel or fuel additive under section 211(c),

"(8) any aircraft emission standard under section 231, and

"(9) any railroad emission standard under section 235.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (9) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date 90 days after the date of enactment of this section. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

"(b) Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact statement respecting such standard or regulation. Such statement shall be included in the docket required under section 307(d)(2) and shall be available to the public as provided in section 307(d)(4). Notice of proposed rulemaking shall include notice of such availability together with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact statement. In proposing the action the Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a). Each such explanation shall be part of the statements of basis and purpose required under sections 307(d)(3) and 307(d)(6).

"(c) Subject to subsection (d), the statement required under this section with respect to any standard or regulation shall contain an analysis of:

"(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;

"(2) the potential inflationary or recessionary effects of the standard or regulation;

"(3) the availability of capital to procure the necessary means of compliance with the standard or regulation;

"(4) the direct and indirect effects on employment of the standard or regulation;

"(5) the effects on competition of the standard or regulation, particularly the effects on small business;

"(6) the effects of the standard or regulation on consumer costs, including costs especially affecting economically vulnerable segments of the population;

"(7) the effects of the standard or regulation on energy use or availability;

"(8) the impact of the standard or regulation on the potential for long-term economic growth;

"(9) the impact of the standard or regulation on productivity;

"(10) the impact of the standard or regulation on the Nation's balance of payments;

"(11) the economic impact of postponing the standard or regulation or of not promulgating such standard or regulation;

"(12) alternative methods to such standard or regulation for achieving equal or greater degree of emission reduction (or health or environmental protection) at lesser economic costs;

"(13) comparative expenditures required to achieve incremental levels of reduction of emissions (or enhancement of health or environmental protection); and

"(14) any possible alternatives for minimizing or eliminating part or all of any adverse economic impacts of such standard or regulation.

"(d) The statement required under this section shall be as extensive as practicable, in the judgement of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this Act.

"(e) Nothing in this section shall be construed:

"(1) to alter the basis on which a standard or regulation is promulgated under this Act; or

"(2) to preclude the Administrator from carrying out his responsibility under this Act to protect public health and the environment.

A standard or regulation subject to this section shall be invalid on the basis of a failure to comply with this section only if the Administrator acted arbitrarily and capriciously—

"(A) in failing to prepare and publish an adequate economic impact statement as required by this section, or

"(B) in failing to comply with the procedural requirements of subsection (b)."

COMPLIANCE DATE EXTENSIONS UNDER STATE PLAN

SEC. 103. (a) Title I of the Clean Air Act (42 U.S.C. 1857 and following), as amended by section 101 of this Act, is further amended by adding the following new section at the end thereof:

"COMPLIANCE DATE EXTENSIONS UNDER STATE PLAN

"SEC. 121. (a) For purposes of this section, the term—

"(1) 'compliance date extension' means an order issued by the State or by the Administrator to a stationary source postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan;

"(2) 'means of emission limitation' means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics); and

"(3) 'major stationary source' means a source listed as provided in section 111 (relating to new source performance standards) or section 112 (relating to hazardous pollutants) or a source which is a major stationary source within the meaning of section 160 (relating to prevention of significant deterioration of air qualtiy).

"(b) Upon application by the owner or operator of a stationary source, and after notice and public hearing on the record, a compliance date extension may be issued to the source under subsection (c)—

"(1) by the Administrator with the written consent of the Governor of the State in which such source is located, or

"(2) by the State in which such source is located, but—

"(A) in the case of any major stationary source, no such extension shall take effect until the Administrator determines that such extension has been issued in accordance with the requirements of this section, and

"(B) in the case of any source other than a major stationary source, such extension shall cease to apply upon a determination by the Administrator that it was not issued in accordance with the requirements of this section.

Before any hearing conducted under this section, the applicant shall furnish the Administrator or the State (as the case may be) with a statement of the grounds on which such application is based (including all supporting documents and information). Such statement (including such documents and information) shall be made available to the public for a thirty-day period before such hearing and shall be considered as part of the record of such hearing. No such extension may be granted unless the applicant establishes that he meets the conditions required for the issuance of such extension. Any decision with respect to the issuance of such an extension shall be accompanied by a concise statement of the findings based on the hearing conducted under this section. Not later than ninety days after submission by any State to the Administrator of notice of its determination to issue a compliance date extension under this section to a major stationary source within such State, the Administrator shall determine whether or not such extension has been issued by the State in accordance with the requirements of this section.

"(c)(1) A compliance date extension with respect to any requirement of an applicable implementation plan may be issued to a stationary source under this paragraph if—

"(A) no means of emission limitation applicable to such class of sources and necessary for compliance by such source with such requirement has been adequately demonstrated (as determined by the Administrator taking into account the cost of compliance, non-air quality health and environmental impact, and energy considerations),

"(B) there is a shortage of the means of emission limitation necessary for compliance with such requirement and such means is unavailable to such source,

"(C) the necessary means of emission limitation is unavailable to such source by reason of an embargo, strike, or other event primarily beyond the control of the owner or operator of the source.

"(D) operation of the source is necessary in order to continue production which was scheduled to be transferred to a new source, the construction or operation of which is delayed for reasons primarily beyond the control of the owner or operator of the source applying for such extension, or

"(E) it is impossible for the owner or operator of the source to obtain financing from its own resources or from outside sources for procurement and use of the necessary means of emission limitation due to temporary conditions in capital markets making necessary capital unavailable to such owner or operator.

No extension may be issued under subparagraph (E) of this paragraph if capital is available to the owner or operator of the source for the purpose of improvement or expansion of productive capacity. No extension may be issued under any provision of this paragraph unless, taking into account the aggregate effect on air quality of such extension together with all extensions, variances, exemptions, and compliance orders, previously issued under this Act, the extension will not permit continued emissions of any air pollutant from such source which may cause, or materially contribute to, a significant risk to public health after the primary standard attainment date for such pollutant or unless the continued operation of the source is essential to public health, welfare, or public well-being.

"(2) A compliance date extension with respect to any requirement of an applicable implementation plan may be issued to a stationary source under this paragraph if—

"(A) the source will expeditiously use new means of emission limitation determined by the Administrator to be adequately demonstrated (within the meaning of subsection (c)(1)(A)),

"(B) such new means of emission limitation is not likely to be used by such source unless an extension is granted under this section,

"(C) such new means of emission limitation is determined by the Administrrator to have a substantial likelihood of—

"(i) achieving greater continuous emission reduction than the means of emission limitation which, but for such extension, would be required; or

"(ii) achieving an equivalent continuous reduction at lower cost in terms of energy, economic, or non-air quality environmental impact; and

"(D) compliance by the source with the requirement for which the extension is sought would be impracticable prior to, or during, the installation of such new means because—

"(i) it would require excessive capital expenditures,

"(ii) operating costs would be excessive, or

"(iii) scarce energy resources would be unnecessarily wasted.

No extension may be issued under this paragraph unless, taking into account the aggregate effect on air quality of such extension together with all extensions, variances, exemptions, and compliance orders previously issued under this Act, the extension will not permit continued emissions of any air pollutant from such source which may cause, or materially contribute to, exceeding the national primary ambient air quality standards for such pollutant after the primary standard attainment date or unless the continued operation of the source is essential to public health, welfare, or public well-being. If the new means of emission limitation is determined by the Administrator to possess substantial potential for achieving significantly greater continuous emission reduction and significantly less energy consumption than the use of the means of emission limitation which, but for such extension, would be required, the Administrator or the State (as the case may be) may issue an extension only if such extension will not permit continued emissions of any air pollutant from such source which may cause, or materially contribute to, a significant risk to public health, taking into account the aggregate effect on air quality of such extension together with all extensions, variances, exemptions, and compliance orders previously issued under this Act.

"(3)(A) Not in excess of two compliance date extensions for not more than five years each may be issued with respect to any requirement of an applicable implementation plan to any primary nonferrous smelter in existence on the date of enactment of this section if the owner or operator of the smelter applying for such extension demonstrates that it is necessary to use other measures to attain and maintain any national ambient air quality standard to which the requirement relates because no means of emission limitation applicable to such smelter and necessary for compliance by such smelter with such requirement has been adequately demonstrated to be reasonably available (as determined by the Administrator, taking into account the cost of compliance, nonair quality health and environmental impact, and energy considerations). No extension may be issued under this paragraph unless, taking into account the aggregate effect on air quality of such extension together with all extensions previously issued under this section, the extension will not permit continued emissions of any air pollutant from such smelter which may cause, or materially contribute to, exceeding the national primary or secondary ambient air quality standard for the pollutant to which the requirement relates after the attainment date for such standard.

"(B) The Administrator may authorize a smelter to which a compliance date extension is issued under this paragraph to use such other measures as may be necessary to meet the requirements of the last sentence of subparagraph (A) of this paragraph if the owner or operator of the smelter agrees—

"(i) to comply with such conditions as the Administrator determines are necessary to maximize the reliability and enforceability of such a system, as applied to the smelter, in attaining and maintaining the national ambient air quality standards to which the compliance date extension relates, and

"(ii) that any violation of any national ambient air quality standard to which the compliance date extension relates occurring within a liability area designated by the Administrator or of any condition under clause (i), shall be treated as a violation of a requirement of the applicable implementation plan by the owner or operator of the smelter.

In issuing a compliance date extension to which this paragraph applies, the Administrator shall designate as the smelter's liability area, for the purpose of clause (ii), that area within which emissions from the smelter may be anticipated to cause, or materially contribute to, violations of any national ambient air quality standard to which the compliance date extension relates.

"(d) A compliance date extension issued to a source under this section shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable. Where the Administrator has determined under subsection (c)(1)(A) that

no means of emission limitation has been adequately demonstrated for a class of sources (or in the case of primary nonferrous smelters under subsection (c)(3), for a particular source), the increments of progress shall be limited to requiring compliance with subsection (e) and to procuring, installing and operating the necessary means of emission limitation as expeditiously as practicable after the Administrator determines such means have been adequately demonstrated. Except with respect to compliance date extensions issued under subsection (c)(3) (relating to primary nonferrous smelters), the aggregate of all such extensions issued to a source under this section shall not result in the postponement of such requirement beyond the date five years from the date on which, but for this section and but for any order issued under section 113 before enactment of this section, compliance would have been required.

"(e)(1) A source to which a compliance date extension is issued under this section shall use the best practicable system or systems of emission reduction (as determined by the Administrator taking into account the requirement with which the source must ultimately comply) for the period during which such extension is in effect. In the case of an extension issued under subsection (c)(3) (relating to primary nonferrous smelters), the best practicable system or systems of emission reduction shall be determined on a source-by-source basis.

"(2) A major source to which a compliance date extension is issued under subparagraph (A) of subsection (c)(1) (relating to no means of emission limitation adequately demonstrated) or under subsection (c)(3) shall commit such resources as the Administrator determines to be reasonable for the owner or operator of that source to undertake, or assist in the conduct of, research on, and development of, the necessary means of emission limitation unless the Administrator determines that such commitment will not expedite or improve such research and development.

"(3) A major source to which a compliance date extension is issued under subsection (c)(1)(B) (relating to shortages), shall make such advance financial commitments as the Administrator determines to be reasonable for the owner or operator of that source to assure timely availability of the necessary means of emission limitation.

"(4) A source to which a compliance date extension is issued under subsection (c)(1)(C) (relating to strikes, embargoes, etc.) shall comply with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include, but need not be limited to,

"(A) a requirement that the persons receiving the extension comply with such reporting requirements as the Administrator determines may be necessary.

"(B) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and

"(C) requirements that the extension shall be inapplicable during any period during which the necessary means of emission limitation are in fact reasonably available (as determined by the Administrator) to such source.

"(5) A source to which a compliance date extension is issued under subsection (c)(2) (relating to new means of emission limitation) shall comply with the requirement of subparagraph (A) of such subsection (c)(2) (relating to the expeditious use of new means of emission limitation).

"(6) Any extension under subsection (c)(1) or (c)(3) shall be terminated if the Administrator determines on the record, after notice and hearing, that the conditions upon which the extension was based no longer exist. If the owner or operator of the source to which the extension is issued demonstrates that prompt termination of such extension would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under the last sentence of subsection (d).

"(f) If the Administrator determines that a source to which a compliance date extension is issued under this section is in violation of any requirement of subsection (c)(3)(B), (d), or (e) he shall either—

"(1) enforce such requirement under section 113, or

"(2) (after notice and opportunity for public hearing) revoke such extension and enforce compliance with the requirement with respect to which such extension was granted.

"(g) Except for a compliance date extension issued under this section or under section 119 (relating to energy-related authority), a variance or waiver under section 111(f) (relating to variances for technology innovation), or an exemption under section 118 (relating to Federal facilities), or a plan revision under section 110(a)(3), no extension, plan revision, or other action changing a requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator."

(b) Section 113(b)(4) of such Act (42 U.S.C. 1857c-8(b)(4)) is amended by inserting ", 121(c)(3)(B), (d), or (e)," after "114".

(c)(1) Section 110(a) of such Act (42 U.S.C. 1857c-5(a)) is amended by adding the following new paragraph at the end thereof:

"(5) Neither the State, in the case of a plan approved under subsection (a), nor the Administrator, in the case of a plan promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more variances, exemptions, or compliance date extensions have been granted under section 111(f) (relating to technology innovation), 118 (relating to Federal facilities), 119 (relating to energy-related authority), 121 (relating to extensions under State plan), 123 (extension of transportation control compliance dates), or 124 (respecting variances for indirect sources), if such plan would have met the requirements of section 110 if no such variances, exemptions, or extensions had been granted.".

(2) Section 110(a)(2)(H)(ii) of such Act is amended by inserting "except as provided in paragraph (5)," before "whenever".

(3) Section 110(d) of such Act is amended by striking out "implements" and all that follows down through the period at the end thereof and inserting in lieu thereof "implements the requirements of this section.".

(4) Section 110(c)(1)(A) of such Act is amended to read as follows:

"(A) the State fails to submit an implementation plan which meets the requirements of this section,".

(d) Section 110(f) of such Act (42 U.S.C. 1857c-5(f)) is hereby repealed.

(e) Section 307(a)(1) of such Act (42 U.S.C. 1857h-5(a)(1)) is amended by striking out "110(f)" and inserting in lieu thereof "121".

(f) Section 119(b) of such Act (42 U.S.C. 1857c-10(b)) is hereby repealed.

(g)(1)(A) Section 113(a)(3) of such Act (42 U.S.C. 1857c-8(a)(3)) is amended by adding the following at the end thereof: "No order issued under this subsection shall have the effect of permitting any delay or violation of any requirement of this Act (including any requirement of an applicable implementation plan).".

(B) The third sentence of section 113(a)(4) of such Act (42 U.S.C. 1857c-8(a)(4)) is amended by striking out the first comma and all that follows down to the period at the end thereof.

(2) The amendments made by paragraph (1) shall take effect on the date of enactment of this Act with respect to orders issued on or after such date of enactment.

(h) Section 302 of such Act (42 U.S.C. 1857h), as amended by sections 106(f) and 201(e) of this Act, is further amended by inserting the following new subsection at the end thereof:

"(1) 'Primary standard attainment date' means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

ASSESSMENT OF CIVIL PENALTIES

SEC. 104. (a) So much of section 113(b) of the Clean Air Act (42 U.S.C. 1857c-8) as precedes paragraph (1) thereof is amended to read as follows:

"(b) The Administrator may commence a civil action for a permanent or temporary injunction, to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever any person—".

(b) Section 113(b) of such Act is amended by striking out the penultimate sentence thereof and substituting: "Any action under this subsection may be brought in the district court of the United States for the district in which the violation occurred or in which the defendant has his principal place of business, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty and to collect any excess emission fee (and non-payment penalty) owed under section 122. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into consideration (in addition to other factors) the size of the business, the economic impact of the penalty on the business, and the seriousness of the violation.".

EXCESS EMISSION FEE

SEC. 105. (a) Title I of the Clean Air Act, as amended by sections 101 and 103 of this Act, is further amended by adding at the end thereof the following new section:

"EXCESS EMISSION FEE

"SEC. 122. (a)(1) At the time a compliance date extension is granted or approved under section 121(c)(1) to any major stationary source, the Administrator shall determine (on the record of the hearing required to be conducted under section 121) whether or not the circumstances which made such source eligible for such extension were primarily beyond the control of the owner or operator of such source. The Administrator shall promptly notify such owner or operator if the Administrator determines that such circumstances were not primarily beyond the control of the owner or operator. Under regulations promulgated by the Administrator after notice and opportunity for public hearing, a major stationary source granted a compliance date extension under section 121(c)(1) shall pay a fee based on the amount of any air pollutant emitted by such source in excess of the requirement with respect to which such extension is granted if the circumstances which made such source eligible for such extension were not primarily beyond the control of the owner or operator of such source. Regulations under this section shall be promulgated no later than nine months after the date of enactment of this section. The fee imposed under such regulations shall apply only to emissions of an air pollutant which occur after the date one year after such date of enactment.

"(2) The Administrator shall promulgate such regulations as are appropriate to assure

the reasonably expeditious conduct of any hearing with respect to a compliance date extension under section 121(c)(1) and the imposition of a fee under this section.

"(3) No compliance date extension under section 121(c)(1) for a major source shall take effect before the date on which the Administrator makes the determination required under paragraph (1) of this subsection.

"(b)(1) The regulations promulgated under subsection (a) shall provide for the imposition of such fee on an annual basis according to a schedule of rates prescribed by the Administrator in such regulations taking into account—

"(A) the objective of preventing any such extension from creating a competitive advantage for sources issued an extension, and

"(B) the objective of encouraging compliance as expeditiously as practicable with the requirement extended.

Such rates may vary with respect to each pollutant and each category of sources. The aggregate amount of any fee imposed under this section with respect to any source shall not exceed an amount equal to $5,000 for each day during which such fee is imposed.

"(2) The amount of the fee imposed with respect to a compliance date extension granted to any source shall be based on the schedule of rates prescribed under this subsection on the basis of the record at which the extension was granted or after compliance with the procedures of section 307(d). Any such reduction shall take into account—

"(A) the degree to which the owner or operator of the source was at fault in failing to meet the requirement extended, and

"(B) such other factors as the Administrator deems equitable.

"(c)(1) The regualtions promulgated under subsection (a) shall—

"(A) provide for the times and manner of payment of such fee by the owner or operator of the source within a reasonable time following any annual period during which such fee applied to such source, and

"(B) require computation of such fee on (i) the basis of continuous monitoring and reporting of emissions by such owner or operator or (ii) such other basis as may be required by the Administrator in any case to which paragraph (2)(B) applies.

Reports required under subparagraph (B) of this paragraph shall specify the amount of the fee for which such owner or operator calculates he is liable with respect to each source for which he is so liable.

"(2)(A) Regulations promulgated under subsection (a) shall specify the types and methods of monitoring to be used for purposes of paragraph (1)(B), but shall permit the use of types and methods of monitoring which the Administrator determines are equivalent to those so specified.

"(B) No such monitoring shall be required if the Administrator determines it to be economically or technologically infeasible.

"(3) Upon petition of the owner or operator of a source subject to a fee under regulations pormulgated under subsection (a), or on his own motion, the Administrator shall provide notice and hearing on the record and may adjust the amount of such fee in any case in which he determines that the amount of such fee is computed improperly or on the basis of incorrect monitoring data.

"(d) Any owner or operator of a stationary source who fails or refuses to pay the amount of any fee imposed under the authority of this section shall, under regulations promulgated under subsection (a), in addition to liability for such fee, pay a nonpayment penalty of 20 percent of the amount of the unpaid balance of the fee owed.

"(e) As used in this section, the term 'major stationary source' has the same meaning as provided by section 121(a)(3).".

(b) Section 113(b) of such Act (42 U.S.C. 1857c-8(b)) is amended by inserting the following after the first sentence thereof: "The Administrator may commence a civil action to recover any excess emission fee, to recover any nonpayment penalty for which any person is liable under section 122, or both. The amount of such fee (and penalty) collected shall be deposited in the general fund of the Treasury.".

(c) Section 113 of such Act (42 U.S.C. 1857 c-8) is amended by adding the following new subsection at the end thereof:

"(d)(1) Whenever notice is required to be provided prior to the bringing of a civil or criminal action under this section, the amount of the civil or criminal penalty imposed shall be computed beginning on the day on which such notice is provided.".

COMPLIANCE DATE EXTENSIONS FOR COAL CONVERSION

SEC. 106. (a)(1) Section 119(c)(1) of the Clean Air Act (42 U.S.C. 1857c-10(c)(1)) is amended by striking out "1979" and inserting in lieu thereof "1980".

(2) The second sentence of section 119 (c)(2)(C) of such Act is amended by striking out "1978" and inserting in lieu thereof "1979" and by striking out "1979" and inserting in lieu thereof "1980".

(b) The first sentence of section 119(c)(2)(C) of such Act is amended to read as follows: "Regulations under subparagraph (B) shall require that the source achieve the degree of emission reduction required under the applicable implementation plan for the date on which the compliance date extension expires.".

(c)(1) Section 119(c)(1) of such Act is amended by inserting after such first sentence thereof the following: "Except as provided in paragraph (2) of this subsection, the Administrator shall also issue a compliance date extension to any coal-burning stationary source which is prohibited from using petroleum products or natural gas, or both by reason of an order which is in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 and with respect to which a variance or compliance schedule had been obtained under the applicable implementation plan prior to issuance of such order in order to permit compliance with the applicable implementation plan by means of conversion to the use of petroleum products or natural gas as its primary energy source. Notwithstanding the preceding provisions of this subsection, the Administrator may refuse to grant a compliance date extension under this subsection in any case in which he finds that such extension may result in a significant endangerment to the public welfare. In making a finding under the preceding sentence the Administrator shall specify the basis of such finding.".

(2) Subparagraph (A) of such section 119 (c)(1) is amended by striking out "or natural gas" and inserting in lieu thereof ", natural gas, or both".

(3) Section 119(c)(2)(B) of such Act is amended by adding the following at the end thereof: "Regulations under this subparagraph shall be amended not later than ninety days after the date of enactment of the Clean Air Act Amendments of 1976 to take into account such Amendments and may be amended or revised from time to time thereafter.".

(d) Section 119(c)(2)(D) of such Act is amended to read as follows:

"(D) No compliance date extension issued to a source under this subsection with respect to an air pollutant shall be effective if the national primary ambient air quality standard with respect to such pollutant is being exceeded at any time in the air quality control region in which such source is located. The preceding sentence shall not apply to a source if, upon submission by any person of evidence satisfactory to the Administrator, the Administrator determines (after notice and public hearing)—

"(i) that emissions of such air pollutant from such source will affect only infrequently the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time;

"(ii) that emissions of such air pollutant from such source will have only insignificant effect on the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time; and

"(iii) with reasonable statistical assurance that emissions of such air pollutant from such source will not cause or contribute to air quality concentrations of such pollutant in excess of the national primary ambient air quality standard for such pollutant.".

(e) Section 119(c)(3) is amended to read as follows:

"(3) A source to which this subsection applies may, upon the expiration of a compliance date extension under this section, receive compliance date extensions under the conditions, and in the manner, provided in section 121.".

(f) Section 302 of such Act (42 U.S.C. 1857h) is amended by adding the following new subsection at the end thereof:

"(i)(1) The terms 'emission limitation' and 'emission standard', and 'standard of performance' mean a requirement of continuous emission reduction.

"(2)(A) The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under title I shall not be affected in any manner by (i) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator) or (ii) any other dispersion technique. The preceding sentence shall not apply with respect to stack heights in existence before the date of enactment of the Clean Air Amendments of 1970 or dispersion techniques implemented before such date.

"(B) For the purpose of this paragraph, the term 'dispersion technique' includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions.

"(C) Not later than six months after the date of enactment of this subsection, the Administrator shall, after notice and opportunity for public hearing, promulgate regulations to carry out this paragraph. For purposes of this paragraph, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this paragraph, such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.".

(g) Section 119(c)(2)(A) of such Act is amended by striking out "and" at the end of clause (ii), striking out the period at the end of clause (iii) and inserting in lieu thereof ", and", and by adding the following new clause at the end thereof:

"(iv) the Governor of the State in which is located the source to which the proposed

compliance date extension is to be issued gives his prior written concurrence.".

STRATOSPHERE AND OZONE PROTECTION

SEC. 107. (a) Title I of the Clean Air Act (42 U.S.C. 1857 and following) is amended by adding at the end thereof the following new subtitle:

"Subtitle B—Stratosphere and Ozone Protection

"PURPOSES

"SEC. 150. The purposes of this subtitle are (1) to provide for a better understanding of the effects of human actions on the stratosphere, especially the ozone in the stratosphere, and (2) to provide for a better understanding of the effects of changes in the stratosphere, especially the ozone in the stratosphere, on the public health and welfare.

"DEFINITIONS

"SEC. 151. For the purposes of this subtitle—

"(1) the term 'halocarbon' means the chemical compounds $CFCl_3$ and CF_2Cl_2 and such other halogenated compounds as the Administrator determines by rule may reasonably be anticipated to contribute to reductions in the concentration of ozone in the stratosphere;

"(2) the term 'stratosphere' means that part of the atmosphere above the tropopause.

"STUDIES AND RESEARCH BY ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY

"SEC. 152. (a) The Administrator shall conduct a study of the cumulative effect of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere. The study shall include an analysis of the independent effects on the stratosphere especially such ozone in the stratosphere of—

"(1) the release into the ambient air of halocarbons,

"(2) the release into the ambient air of other sources of chlorine,

"(3) the uses of bromine compounds, and

"(4) emissions of aircraft and aircraft propulsion systems employed by operational and experimental aircraft.

The study shall also include such physical, chemical, atmospheric, biomedical, or other research and monitoring as may be necessary to ascertain (A) any direct or indirect effects upon the public health and welfare of changes in the stratosphere, especially ozone in the stratosphere, and (B) the probable causes of changes in the stratosphere, especially the ozone in the stratosphere.

"(b) The Administrator shall undertake research on—

"(1) methods to recover and recycle substances which directly or indirectly affect the stratosphere, especially ozone in the stratosphere,

"(2) methods of preventing the escape of such substances,

"(3) safe substitutes for such substances, and

"(4) other methods to regulate substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere.

"(c)(1) The studies and research conducted under this section may be undertaken with such cooperation and assistance from universities and private industry as may be available. Each department, agency, and instrumentality of the United States having the capability to do so is authorized and encouraged to provide assistance to the Administrator in carrying out the requirements of this section, including (notwithstanding any other provision of law) any services which such department, agency, or instrumentality may have the capability to render or obtain by contract with third parties.

"(2) The Administrator shall encourage the cooperation and assistance of other nations in carrying out the studies and research under this section. The Administrator is authorized to cooperate with and support similar research efforts of other nations.

"(d)(1) The Administrator shall undertake to contract with the National Academy of Sciences to study the state of knowledge and the adequacy of research efforts to understand (A) the effects of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere; (B) the health and welfare effects of modification of the stratosphere, especially ozone in the stratosphere; and (C) methods of control of such substances, practices, processes, and activities including alternatives, costs, feasibility, and timing. The Academy shall make an interim report of findings one year after the date of the enactment of this subtitle and a final report thirty days after the submission of the final report of the Administrator called for in subsection (f)(1) of this section.

"(2) The Administrator shall make available to the Academy such information in his possession as is needed for the purposes of the study provided for in this subsection.

"(e)(1) The Administrator shall establish and act as Chairman of a Coordinating Committee for the purpose of insuring coordination of the efforts of other Federal agencies carrying out research and studies related to or supportive of the research provided for in subsections (a) and (b) of this section.

"(2) Members of the Coordinating Committee shall include the appropriate official responsible for the relevant research efforts of each of the following agencies:

"(A) the National Oceanic and Atmospheric Administration,

"(B) the National Aeronautics and Space Administration,

"(C) the Federal Aviation Administration,

"(D) the Department of Agriculture,

"(E) the National Cancer Institute, and

"(F) the National Institute of Environmental Health Sciences,

and the appropriate officials responsible for the relevant research efforts of such other agencies carrying out related efforts as the Chairman shall designate. A representative of the Department of State shall sit on the Coordinating Committee to encourage and facilitate international coordination.

"(3) The Coordinating Committee shall review and comment on plans for, and the execution and results of, pertinent research and studies. For this purpose, the agencies named in or designated under paragraph (2) of this subsection shall make appropriate and timely reports to the Coordinating Committee on plans for and the execution and results of such research and studies.

"(4) The Chairman may request a report from any Federal agency for the purpose of determining if that agency should sit on the Coordinating Committee.

"(5) Upon submission of the final report called for in subsection (f)(1) of this section, the Chairmanship of the Coordinating Committee shall be assumed by the Administrator of the National Oceanic and Atmospheric Administration; and the Environmental Protection Agency shall nominate an appropriate official to serve as a member. The purpose of the Coordinating Committee shall thenceforth be to ensure the coordination of research and study efforts related to the program of research provided for in section 102 of this Act. The responsibilities and duties of the Chairman and the Coordinating Committee shall otherwise be as provided in the preceding paragraphs of this subsection.

"(f)(1) Not later than two years after the date of the enactment of this subtitle, the Administrator shall report to the Interstate and Foreign Commerce Committee and the Science and Technology Committee of the House of Representatives and to the appropriate committees of the Senate, the results of the studies and research conducted under this section and the results of related research and studies conducted by other Federal agencies. The Administrator shall include in the report his recommendations for control of substances, practices, processes, and activities which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, which effect may reasonably be anticipated to endanger public health or welfare. In devising these recommendations the Administrator shall take into account the feasibility and costs of achieving such control.

"(2) Prior to the submission of such final report, the Administrator shall submit quarterly interim reports to the Congress describing the progress of the research and studies and, insofar as possible, indicating anticipated results and conclusions. The first such report, due ninety days after the date of the enactment of this subtitle, shall include the plan and schedule for the research and study to be carried out. Subsequent interim reports shall update this plan and schedule and shall describe and explain revisions to and deviations from the plan.

"(3) If at any time prior to the submission of such final report, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, he shall promptly promulgate and submit regulations to the Congress respecting the control of any such substance, practice, process, or activity. Such regulations shall take effect as provided in section 155.

"(4) Any reports and recommendations required to be submitted under this subsection which are first submitted to the President, the Office of Management and Budget, or any other department or agency of the United States in proposed form shall be submitted to the Congress in such proposed form as well as in final form.

"RESEARCH AND MONITORING BY NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

"SEC. 153. (a) The Administrator of the National Oceanic and Atmospheric Administration is directed to establish a continuing program of research and monitoring of the stratosphere for the purpose of early detection of potentially harmful changes in the stratosphere. He shall report to the Congress annually on the findings of such research and monitoring, with the first such report being due two years after the date of the enactment of this subtitle and containing plans for the research and monitoring to be carried out. Each report shall contain recommendations for actions (especially regulatory actions) by the Congress and by other Federal agencies.

"(b) In carrying out the program provided for in subsection (a) of this section the Administrator of the National Oceanic and Atmospheric Administration (1) shall enlist and encourage cooperation and assistance from other Federal agencies, universities, and private industry, and (2) shall solicit the views of the Administrator with regard to plans for the research involved so that any such research will, if regulatory action by the Administrator is indicated, provide the preliminary information base for such action.

"REGULATIONS

"SEC. 154. Upon submission of the report required under section 152(f)(1), and after consideration of the research and study under section 152 and, consultation with appropriate Federal agencies and scientific entities, the Administrator shall propose regulations for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgment may

reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control. Not later than three months after proposal of such regulations the Administrator shall promulgate such regulations in final form. From time to time, and under the same procedures, the Administrator may revise any of the regulations submitted under this subsection.

"DISAPPROVAL BY CONGRESS

"SEC. 155. (a) Regulations promulgated under section 154 and any amendment or revision thereof shall be transmitted to the Congress. A regulation (or amendment or revision) transmitted under this subsection and any regulation submitted under section 152(f)(3) shall take effect at the end of the first period of sixty legislative days of continuous session of Congress after the date on which the regulation (or amendment or revision) is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that that House does not favor such regulation (or amendment or revision).

"(b) For the purpose of subsection (a) of this section—

"(1) continuity of session is broken only by an adjournment of Congress sine die; and

"(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

"(c) Under provisions contained in a regulation (or amendment or revision) if the Administrator determines that no endangerment of the public health or welfare may reasonably be anticipated to result, a provision of the regulation (or amendment or revision) may be effective at a time later than the date on which the regulation (or amendment or revision) would be effective under subsection (a).

"(d) This section (other than subsection (a)) is enacted by Congress—

"(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection (e), and they supersede other rules only to the extent that they are inconsistent therewith; and

"(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

"(e) For the purpose of this section, 'resolution' means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: 'That the does not favor the regulations numbered transmitted to Congress by the Administrator of the Environmental Protection Agency on , 19 ,', the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled.

"(f) A resolution with respect to a regulation (or amendment or revisions) shall be referred to a committee (and all resolutions with respect to the same regulation (or amendment or revisions) shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be.

"(g)(1) If the committee to which a resolution with respect to a regulation has been referred has not reported it at the end of ten calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the regulation which has been referred to the committee.

"(2) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same regulation), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(3) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the commitee be made with respect to any other resolution with respect to the same regulation.

"(4) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to a regulation, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(5) Debate on the resolution shall be limited to not more than ten hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

"(6) Motions to postpone, made with respect to the discharge from committee of, or the consideration of, a resolution with respect to a regulation, and motions to proceed to the consideration of other business, shall be decided without debate.

"(7) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a regulation shall be decided without debate.

"OTHER PROVISIONS UNAFFECTED

"SEC. 156. Nothing in this subtitle shall be construed to alter or affect the authority of the Administrator under section 303 (relating to emergency powers), under section 231 (relating to aircraft emission standards), or under any other provision of this Act.

"STATE AUTHORITY

"SEC. 157. (a) Nothing in this subtitle shall preclude or deny any State or political subdivision thereof from adopting or enforcing any requirement respecting the control of any substance, practice, process, or activity for purposes of protecting the stratosphere or ozone in the stratosphere unless a regulation of such substance, practice, process, or activity is in effect under this subtitle.

"(b) If a regulation of any substance, practice, process, or activity is in effect under this subtitle in order to prevent or abate any risk to the stratosphere, or ozone in the stratosphere, no State or political subdivision thereof may adopt or attempt to enforce any requirement respecting the control of any such substance, practice, process, or activity to prevent or abate such risk, unless the requirement of the State or political subdivision is identical to the requirement of such regulation. The preceding sentence shall not apply with respect to any law or regulation of any State or political subdivision controlling the use of halocarbons as propellants in aerosol spray containers.".

(b) Title I of such Act is amended by inserting immediately before section 101 the following:

"Subtitle A—Air Quality and Emission Limitation".

(c)(1) Section 113(b)(3) of such Act (42 U.S.C. 1857c-8(b)(3)) is amended by striking out "or 119(g)" and inserting in lieu thereof "119(g), or any regulation effective under section 155".

(2) Section 113(c)(1)(C) of such Act is amended by striking out "or section 119(g)" and inserting in lieu thereof "section 119(g), or any regulation effective under section 155".

PREVENTION OF SIGNIFICANT DETERIORATION

SEC. 108. (a) Title I of the Clean Air Act (42 U.S.C. 1857 and following), as amended by section 107 of this Act, is further amended by adding at the end thereof the following new subtitle:

"Subtitle C—Prevention of Significant Deterioration

"PREVENTION OF SIGNIFICANT DETERIORATION

"SEC. 160. (a) The purposes of this subtitle are as follows:

"(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution (or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air), notwithstanding attainment and maintenance of all national ambient air quality standards;

"(2) to preserve, protect, and enhance the air quality in national parks, national monuments, national seashores, national recreation areas, and other areas of special national or regional natural, recreational, scenic, or historic value;

"(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

"(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

"(5) to assure that any decision to permit increased air pollution in any area where the national primary and secondary ambient air quality standards for any pollutant are not being exceeded is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

"(b) In accordance with the policy of section 101(b)(1), each applicable implementation plan shall contain such measures as may be necessary, as determined under regulations promulgated under subsection (c), to prevent significant deterioration of air quality.

"(c)(1) Except as may otherwise be permitted under subsection (d) in the case of air pollutants other than sulfur oxides and particulates, each applicable implementation plan shall contain an area classification plan based on maximum allowable increases in ambient concentrations of, and maximum allowable levels of ambient concentrations of, any air pollutant for which a national ambient air quality standard is established. In the case of increases based on concentrations permitted under national ambient air quality standards for any period of twenty-four hours or less, such regulations shall permit such limitations to be exceeded during one such period per year. Such classification plan shall apply to all areas in each State where the national primary and secondary ambient air quality standards for any air pollutants are not being exceeded. Such classification plan shall provide for designation of all such areas as either class I, class

II, or class III as to each such pollutant. Until such designation is effective, all such areas shall be considered class II, except those areas required to be class I under paragraph (3)(B).

"(2)(A) For any class I area, the maximum allowable increase over the baseline concentration of any pollutant subject to a national ambient air quality standard for each period of exposure shall not exceed 2 percent (10 percent in the case of particulates) of the pollution concentration permitted for each such period with respect to such pollutant under the national primary or seocndary ambient air quality standard whichever is lower.

"(B) For any class II area, the maximum allowable increase over the baseline concentration of any pollutant subject to a national ambient air quality standard for each period of exposure shall not exceed one-fourth of the pollution concentration permitted for each such period with respect to such pollutant under the national primary or secondary ambient air quality standard, whichever is lower.

"(C) For each class III area, the maximum allowable increase over the baseline concentration of any pollutant subject to a national ambient air quality standard for each period of exposure shall not exceed one-half of the pollution concentration permitted for each such period with respect to such pollutant under the national primary or secondary ambient air quality standard whichever is lower.

"(D) The maximum allowable concentration of any air pollutant for which an increase is permitted under subparagraph (A), (B), or (C) above shall not exceed a concentration for such pollutant for each period of exposure equal to—

"(i) the concentration permitted under the national secondary ambient air quality standard, or

"(ii) 90 percent of the concentration permitted under the national primary ambient air quality standard,

whichever concentration is lowest for such pollutant for such period of exposure.

"(E) For the purposes of this section, the term 'baseline concentration' means, with respect to a pollutant, the level of concentration of such pollutant determined by adding—

"(i) the level of concentration determined for each period of exposure on the basis of plant capacity in existence on the date on which regulations respecting classification systems for prevention of significant deterioration of air quality initially became effective January 1, 1975,

"(ii) the concentrations for each such period of exposure attributable to new sources which (before the date of enactment of this section) received permits under provisions of applicable implementation plans adopted pursuant to sections 110(a)(2)(D) and 110(a)(4),

"(iii) in the discretion of the Governor of the State, the concentrations for each such period of exposure attributable to any new or modified source which had filed, on or before January 1, 1975, a completed application (as determined in accordance with regulations of the Administrator) for such a permit (but only if such permit is subsequently granted), and

"(iv) in the discretion of the Governor of the State, the concentrations for each such period of exposure attributable to other new sources which are not subject to permit requirements under such provisions but which have reached a stage, on or before the date of enactment of this section, comparable to the stage at which permits are normally required under such provisions in the case of sources subject to such permit requirements.

"(F)(i) For purposes of determining the maximum allowable increases permitted under subparagraphs (A), (B), and (C), the allowable percentages shall be determined on the basis of national primary or secondary ambient air quality standards as in effect on the date of enactment of this section.

"(ii) In the case of any standard promulgated on or after such date of enactment for a pollutant, or for a period of exposure, for which no such standard was promulgated before such date, the maximum allowable increases shall be determined on the basis of such standards as first promulgated and not on the basis of any subsequent revision thereof.

"(3)(A)(i) Prior to designation or redesignation of the classification of any area, notice shall be afforded and public hearings shall be conducted in areas proposed to be designated or redesignated and in areas which may be affected by the proposed designation or redesignation. Prior to any such public hearing, a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed designation or redesignation shall be prepared and made available for public inspection and prior to any such designation or redesignation the description and analysis of such effects shall be reviewed and examined by the designating authorities.

"(ii) Prior to the hearing conducted under clause (i) respecting the designation or redesignation of any area under this subsection, if such area includes any Federal lands, the State shall afford the appropriate Federal agency (or agencies) having authority over such lands adequate opportunity to submit an analysis of the proposed designation or redesignation and its recommendations with respect to such designation or redesignation.

"(iii) The Administrator shall promulgate regulations not later than six months after date of enactment of this subtitle to assure, insofar as practicable, that prior to any public hearing on designation or redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major stationary source or development which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

"(B) In designating or redesignating areas under this subsection, the State (or the Administrator who may make an initial designation in the case of a failure of the State to submit a plan which meets the requirements of this section) shall make specific findings as to the desirability of designating or redesignating as class I each area of special environmental concern such as national recreation areas, wild and scenic rivers, national lakeshores and seashores, national forests, or other areas of specific national or regional natural, recreational, scenic or historic value, but in no event shall any unit of the national wilderness preservation system or national park be designated or redesignated other than class I, if such unit or park is in existence on the date of enactment of this section and, as of such date, exceeds twenty-five thousand acres in size. Any—

"(i) unit of the national wilderness preservation system or national park, other than a unit or park referred to in the previous sentence but which exceeds one thousand acres,

"(ii) international park (in excess of one thousand acres),

"(iii) national preserve, national monument, national recreation area, or national primitive area, which preserve, monument, or area exceeds ten thousand acres,

shall initially be designated as class I, and may be redesignated if such redesignation meets the conditions specified in clauses (i) through (ii) of paragraph (3)(C)) only as class II. In no event shall any wild and scenic river, national lakeshore or seashore, national wildlife refuge, or national forest, be designated or redesignated other than class I or class II, if such river, lakeshore, seashore, refuge, or forest exceeds ten thousand acres in size.

"(C) An area may be designated or redesignated by the State (or the Administrator who may make an initial designation in the case of a failure of the State to submit a plan which meets the requirements of this section) as class III if—

"(i) such designation or redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such designation or redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so designated or redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's (or the Administrator's) designation or redesignation;

"(ii) such designation or redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase level or maximum allowable concentration permitted under the classification of any other area; and

"(iii) such designation or redesignation is otherwise consistent with the requirements of this section.

The requirements of clauses (i) through (iii) of this subparagraph shall also apply as provided in subparagraph (B).

"(D) The Administrator may disapprove the designation or redesignation of any area only if he finds, after notice and opportunity for public hearing, that such designation or redesignation does not meet the requirements of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the designation or redesignation which was disapproved.

"(4)(A) Each applicable implementation plan shall require each new or modified major stationary source to obtain a permit to construct prior to commencement of construction and shall contain provisions for review prior to granting such a permit for any major stationary source in order to determine the effect that emissions from such source will have on air quality concentrations in any area which may be affected by emissions from such source. This paragraph shall not apply in the case of new sources described in paragraphs (2)(E)(ii), (iii), and (iv).

"(B) The review provided for in subparagraph (A) shall be preceded by an analysis, which may be conducted by the State (or any general purpose unit of local government) or by the major stationary source applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from such source for each pollutant subject to regulation under this section which will be emitted from such source. Such analysis shall be performed in accordance with regulations of the Administrator. Effective one year after date of enactment of this section, the analysis required by this subparagraph shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such source will exceed the maximum allowable increases or the maximum allowable concentration permitted under paragraph (2). Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under subparagraph (A), unless the Administrator or the State (in accordance with the regulations of the Administrator) determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of

such analysis, in terms established by regulations of the Administrator, shall be included in any application for such permit. In promulgating regulations respecting the analysis under this paragraph, the Administrator shall not require the use of any automatic or uniform buffer zone or zones. Such regulations shall authorize such analysis to take into account the terrain and meteorology of the areas affected, the size and nature of the proposed source, the degree of continuous emission reduction which could be achieved by such source, and such other factors as may be relevant in determining the effect of emissions from a proposed source on any classified area. Any model or models designated under such regulations shall be adjusted, upon a determination after notice and opportunity for public hearing by the Administrator that such an adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this paragraph.

"(C) A permit under this paragraph may be issued to any major stationary source—

"(i) if any proposed permit has been subject to a public hearing with opportunity for interested persons to appear and submit written or oral presentations on the air quality impact of such source and other appropriate considerations;

"(ii) if emissions from such source will not cause, or contribute to, air pollution in excess of any maximum allowable increase or maximum allowable concentration for any pollutant in any area; and

"(iii) if the requirements of this section applicable to such source have otherwise been met.

Each applicable implementation plan shall require any completed permit application (as determined in accordance with regulations of the Administrator) under this paragraph, or under section 110(a)(2)(D), to be granted or denied not later than 180 days after the date of filing of such completed application.

"(D) Each applicable implementation plan shall contain provisions requiring any person who owns or operates, or proposes to own or operate, a major stationary source for which a permit is required under this paragraph to conduct such monitoring as may be necessary to determine the effect which emissions from any such source may have, or is having, on air quality in any area which may be affected by emissions from such source.

"(E) For the purpose of this title, the term 'major stationary source' means any stationary source of air pollutants which directly emits, or has the design capacity to emit, one hundred tons per year or more of any air pollutant for which a national ambient air quality standard is promulgated under this Act.

"(F) For the purpose of this section, the term 'commencement of construction' means that the owner or operator, or prospective owner or operator, of a stationary source has undertaken a continuous program of construction or modification of such source.

"(5)(A) In the case of a proposed construction or modification of any source the emissions from which may affect any area required to be designated as class I which may not be redesignated as class II or III under this section, before the issuance of the permit required under paragraph (4), such source may apply for a variance from such emission limitations as may be imposed for purposes of compliance with the maximum increases of SO_2 allowable under paragraph (2) for such area. Nothing in this paragraph shall authorize the granting of a variance from any new source standard of performance.

"(B) A variance may be granted by the Governor under this paragraph if the Governor, after notice and opportunity for public hearing (which may be conducted in conjunction with the permit hearing under paragraph (4)(C)(i)), determines that—

"(i) the source has demonstrated that—

"(I) compliance by the source with such emission limitation is not feasible by the date the source is to commence operation,

"(II) alternative locations of the source which would not necessitate a variance under this section are not reasonably available (taking costs and other appropriate factors into account), and

"(III) the values (including visibility and other esthetic values) for which the area affected was established as a protected category of Federal land will not be adversely affected by such variance,

"(ii) the source agrees to comply with the emission limitations under clause (iii) with respect to which the variance is granted as expeditiously as practicable (but not later than 5 years after the date on which the variance is granted),

"(iii) the source agrees to comply with such interim emission limitations as may be necessary to assure that

"(I) emissions of SO_2 from such source, together with emissions of such pollutant from all other sources will not cause or contribute during more than 3 percent of the days of the year, to levels which exceed the concentrations permitted for the applicable period under paragraph (2),

"(II) during any such time when such concentrations are exceeded, emissions from all such sources will not cause or contribute to levels which exceed the concentrations permitted for such period for a class II area, and

"(III) during any year that the variance is in effect the median concentration of SO_2 for each period of exposure (other than an annual period) (not taking into account such times when such concentrations are exceeded) shall not exceed the median concentrations for such period of exposure which would have occurred during such year if no such variance had been granted, and

"(iv) the source agrees to make adequate commitments to such research and development as may be necessary to insure compliance with the emission limitations with respect to which such variance is granted following the expiration of such variance. Upon making the determinations required under this subparagraph the Governor shall notify the Administrator and the appropriate Federal land manager. Not later than 90 days following the date of such notice, such Federal land manager shall concur or refuse to concur with the Governor's finding under clause (i)(III) and the Administrator shall determine whether or not the requirements of this paragraph have been met. Such concurrence or refusal to concur by such Federal land manager and such determination by the Administrator shall be published together with a detailed explanation of such action, and such action shall be subject to the provisions of section 307(d) (including the provisions respecting judicial review under paragraph (8) thereof). No permit may be issued under paragraph (4) on the basis of a variance under this paragraph before the date on which such Federal land manager has issued notice of such concurrence and the Administrator has published his determination that such requirements have been met.

"(C) a variance granted under this paragraph may be extended for one or more additional 5 year periods if the requirements of this paragraph (other than subparagraph (B)(i)(II)) are met in the same manner as required for the issuance of the original variance and if the Governor determines that the agreement under clause (iv) has been complied with by the source during the preceding 5 year period.

"(6) Not later than one year after the date of enactment of the Clean Air Act Amendments of 1976, the Administrator shall promulgate regulations under this section specifying with reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this section.

"(d) With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulates, an area classification plan such as that referred to in subsection (c) shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under subsection (e)(2) of this section contains other provisions which the Administrator finds will carry out the purposes in subsection (a) at least as effectively as such a classification plan.

"(e)(1) Each State shall adopt and submit to the Administrator, after notice and public hearing, a plan or revision of a plan containing measures meeting the requirements of this section. With respect to sulfur oxides and particulates, such plan or revision shall be submitted no later than one year after the date of enactment of this section. With respect to any other pollutant for which a national ambient air quality standard has been promulgated prior to enactment of this section, such plan or revision shall be submitted no later than two years after the date of enactment of this section. With respect to any air pollutant for which a national ambient air quality standard is promulgated or revised after date of enactment of this section, such plan or revision of such plan shall be submitted not later than eighteen months after the date of promulgation or revision of such standard.

"(2) The Administrator shall, within four months after the date required for submission of a plan under this subsection, approve such plan, or any portion thereof, if he determines that such plan was adopted in accordance with, and meets the requirements of, this section. If a State fails to submit such a plan or if any plan, or portion thereof, is disapproved, the Administrator shall, within four months after the date required for submission of such a plan or after such disapproval, prepare and propose such regulations for such State as are necessary to meet the requirements of this section. After notice and opportunity for public hearing, but not later than ninety days after proposal, the Administrator shall promulgate such regulations with such modifications as he deems appropriate.

"(3) Notwithstanding the maximum allowable concentrations permitted under subsection (c)(2)(D), in the case of any area where such concentrations are exceeded on the basis of plant capacity in existence on the date of the enactment of this section, no plan shall be required, as a condition for approval by the Administrator under this section, to reduce pollution concentrations in such area to such maximum allowable concentrations.

"(f)(1) In the case of any State which has a plan approved by the Administrator under subsection (e)(2), the Governor of such State may, after notice and opportunity for public hearing, issue orders or promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account—

"(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under sections 2 (a) and (b) of the Eenergy Suppy and Environmental Coordination Act of 1974 over the emissions from such sources before the effective date of such order,

"(B) the concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan,

"(C) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities,

"(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration determined under subsection (c)(2)(E), and

"(E) concentrations of naturally occurring particulate matter.

"(2) No action taken with respect to a source under paragraph (1)(A) or (1)(B) shall apply more than five years after the effective date of the order referred to in paragraph (1)(A) or the plan referred to in paragraph (1)(B), whichever is applicable. If both such order and plan are applicable, no such action shall apply more than five years after the later of such effective dates.

"(3) No action under this subsection shall take effect unless the Governor submits the order or rule providing for such exclusion to the Administrator and the Administrator determines that such order or rule is in compliance with the provisions of this subsection.

"(g) The Administrator shall provide such technical assistance to States and localities as may be necessary to assist in carrying out this section.

"(h)(1) Until such time as an applicable implementation plan is in effect for any area which plan meets the requirements of this section to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under the Clean Air Act prior to enactment of this section shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant, except as otherwise provided in paragraph (2) of this subsection.

"(2) If any regulation in effect prior to enactment of this section to prevent significant deterioration of air quality would be inconsistent with the requirements of subsections (c)(2) and (c)(3)(B), then such regulations shall be deemed amended so as to conform with such requirements.".

(b) Section 110(a)(2) of such Act (42 U.S.C. 1857c-5(a)(2)), as amended by section 201(c) of this Act, is further amended by inserting the following new subparagraph at the end thereof:

"(J) it complies with the requirements of subtitle C of title I (relating to prevention of significant deterioration of air quality).".

(c) Title III of such Act, as amended by sections 306, 201, 304, 211(a), 312, and 313, of this Act is further amended by adding the following new section at the end thereof:

"STANDARDIZED AIR QUALITY MODELING

"SEC. 323. (a) Not later than six months after the date of the enactment of the Clean Air Act Amendments of 1976, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out subtitle C of title I (relating to prevention of significant deterioration of air quality).

"(b) The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation, the National Oceanic and Atmospheric Administration, and the National Bureau of Standards.

"(c) Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

"(d) The comments submitted and the transcript maintained pursuant to subsection (c) shall be included in the docket required to be established for purposes of promulgating or revising any regulation relating to air quality modeling under subtitle C of title I."

(d) Not later than one year after the date of enactment of this Act, the Administrator shall publish a guidance document to assist the States in carrying out their functions under subtitle C of part I of the Clean Air Act (relating to prevention of significant deterioration of air quality) with respect to pollutants, other than sulphur oxides and particulates, for which national ambient air quality standards are promulgated. Such guidance document shall include recommended strategies for controlling photochemical oxidants on a regional or multi-State basis for the purpose of implementing section 160 and section 110 of such Act.

(e) Not later than two years after the date of enactment of this Act, the Administrator shall complete a study and report to the Congress on the progress made in carrying out subtitle C of title I of the Clean Air Act (relating to significant deterioration of air quality) and the problems associated with carrying out such section, including recommendations for legislative changes necessary to implement strategies for controlling photochemical oxidants on a regional or multi-State basis.

(f) The Clean Air Act, as amended by sections 306, 201, 304, 312, 313, 108, and 211 of this Act, is further amended by adding the following new section at the end thereof:

"National Commission on Air Quality

"SEC. 325. (a) There is established a National Commission on Air Quality which shall study and report to the Congress on—

"(1) the effects of the implementation of requirements on the States or the Federal Government under this Act to identify and protect from significant deterioration of air quality, areas which have existing air quality better than that specified under current national primary and secondary standards;

"(2) the economic, technological, and environmental consequences of achieving or not achieving the purposes of this Act and programs authorized by it;

"(3) available alternatives, including enforcement mechanisms to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population and to achieve the other purposes of the Act;

"(4) the technological capability of achieving and the economic, energy, and environmental and health effects of achieving or not achieving required emission control levels for mobile sources of oxides of nitrogen in relation to and independent of regulation of emissions of oxides of nitrogen from stationary sources;

"(5) air pollutants not presently regulated, which pose or may in the future pose a threat to public health or public welfare and options available to regulate emissions of such pollutants;

"(6) the adequacy of research, development, and demonstrations being carried out by Federal, State, local, and nongovernmental entities to protect and enhance air quality;

"(7) the ability of (including financial resources, manpower, and statutory authority) Federal, State, and local institutions to implement the purposes of the Act.

The Commission's study and report under paragraph (4) shall include analysis of the health effects of pollutants which are derivatives of oxides of nitrogen.

"(b) Studies and investigations conducted pursuant to paragraphs (1) and (2) of subsection (a) shall include—

"(1) the effects of existing or proposed national ambient air quality standards on employment, energy, and the economy (including State and local), their relationship to objective scientific and medical data collected to determine their validity at existing levels, as well as their other social and environmental effects;

"(2) the effects of limiting deterioration of air quality in areas identified as having air quality better than that required under existing or proposed national ambient standards on employment, energy, the economy (including State and local), the relationship of such policy to the protection of the public health and welfare as well as other national priorities such as economic growth and national defense, and its other social and environmental effects.

"(c) The Commission shall, as a part of any study conducted under subsection (a)(1) of this section, specifically identify any loss or irretrievable commitment of resources (taking into account economic feasibility), including mineral, agricultural and water resources, as well as land surface-use resources.

"(d) Such Commission shall be composed of eleven members, including the chairman and the ranking minority member of the Senate Committee on Public Works and the House Committee on Interstate and Foreign Commerce (or delegates of such chairmen or member appointed by them from among representatives of such committees) and seven members of the public appointed by the President, by and with the advice and consent of the Senate. The chairman of the Commission shall be elected from among the members thereof.

"(e) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

"(f) A report; together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning subsection (a)(4) of this section no later than March 1, 1978, and the results of the investigation and study concerning subsection (a)(1) of this section no later than two years after the date of enactment of the Clean Air Act Amendments of 1976. The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the same matters required to be studied by the Commission under subsection (a)(1) and to submit such study to the Congress at the same time as required for the report of the Commission concerning such subsection. Funds shall be available in the same manner, and the Administrator shall have the same authorities and duties respecting such study, as provided in the case of the study authorized pursuant to section 202(c).

"(g) A report shall be submitted with regard to all other Commission studies and investigations, together with any appropriate recommendations, not later than three years after the date of enactment of this section. Upon submission of such report or upon expiration of such three-year period, whichever is sooner, the Commission shall cease to exist.

"(h) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title V of the United Stataes Code, including travel-

time and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

"(i) There are authorized to be appropriated, for use in carrying out this section, not to exceed $17,000,000.

"(j) In the conduct of the study, the Commission is authorized to contract with nongovernmental entities that are competent to perform research or investigations in areas within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation.".

TRAINING

SEC. 109. Section 103(b) of the Clean Air Act (42 U.S.C. 1857b(b)) is amended by striking out paragraph (5), redesignating the following paragraphs accordingly, and adding the following at the end thereof: "In carrying out the provisions of subsection (a), the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications. Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.".

REVIEW OF STANDARDS

SEC. 110. Section 109 of the Clean Air Act (42 U.S.C. 1857c-4), as amended by section 101(b) of this Act, is further amended by adding the following new subsection at the end thereof:

"(d)(1) Not later than eighteen months after the date of the enactment of this subsection, and at two-year intervals therafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards promulgated under this section and shall promulgate such new standards and make such revisions in existing standards as may be appropriate under subsection (b).

"(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

"(B) Not later than one year after the date of enactment of this subsection, and at two-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 108 and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing standards as may be appropriate under subsection (b).

"(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.".

NEW SOURCE STANDARDS OF PERFORMANCE

SEC. 111. (a)(1)(A) Section 111(a)(1) of the Clean Air Act (42 U.S.C. 1857c-6(a)(1)), defining standard of performance, is amended to read as follows:

"(1) The term 'standard of performance' means—

"(A) with respect to any air pollutant emitted from a particular category of sources to which subsection(b) applies, the standard which reflects the degree of emission reduction achievable through the application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated; and

"(B) with respect to any air pollutant emitted from a particular source to which subsection (d) applies, a standard which the State (or the Administrator under the conditions specified in subsection (d)(2)) determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.".

(B) Section 111(a) of such Act is further amended by adding the following new paragraph at the end thereof:

"(7) The term 'technological system of continuous emission reduction' means—

"(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

"(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air.".

(2) Section 111 of such Act as amended by section 112(a) of this Act, is further amended by inserting after subsection (f) the following new subsection:

"(g) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative technological system of continuous emission reduction will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the technological system applicable to a source under subsection (a)(1), the Administrator shall permit the use of such alternative technological system by the source for purposes of compliance with such subsection (a)(1) with respect to such pollutant.

"(h)(1) Not later than nine months after the date of enactment of this subsection, the Administrator shall promulgate regulations specifying the categories of major stationary sources which are not included on the list required under subsection (b)(1)(A). Not later than one year after such date of enactment, and at annual intervals thereafter for three additional years, the Administrator shall include 25 percent of such specified categories of sources in such list under subsection (b)(1)(A).

"(2) In determining priorities for listing of unlisted categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider—

"(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

"(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

"(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

"(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

"(4) For the purpose of this subsection, the term 'major stationary source' means any stationary source of air pollutants which directly emits, or has the design capacity to emit, one hundred tons per year or more of any air pollutant for which a national ambient air quality standard is promulgated under this Act.

"(i)(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (h)(1) any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

"(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

"(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (h)(2). The Administrator shall revise the list under subsection (b)(1)(A) to apply properly such criteria.

"(4) Upon application of the Governor of a State showing that—

"(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

"(B) as a result of such technology or process, the new source standard of performance in effect under subsection (b) for such category no longer reflects the greatest degree of emission limitation achieveable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

"(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 112, the Admiinstrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

"(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 112 is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.

"(7) Unless later deadlines for action of the Administrator are otherwise prescribed under this section or section 112, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

"(A) find that such application does not contain the requisite showing and deny such application, or

"(B) grant such application and take the action required under this subsection.

"(8) Before taking any action required by

subsection (h) or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

"(j) as a condition for issuance of any permit required under this title, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source.".

(b)(1) Section 111(d)(1) of such Act is amended by striking out "emissions standards" in each place it appears and inserting in lieu thereof "standards of performance" and by adding at the end thereof the following new sentence: "Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the exitsing source to which such standard applies.".

(2) Section 111(d)(2) of such Act is amended by adding at the end thereof the following new sentence: "In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.".

VARIANCES FOR TECHNOLOGY INNOVATIONS

SEC. 112. (a) Section 111 of the Clean Air Act (42 U.S.C. 1857c-6), as amended by section 111 of this Act, is further amended by inserting after subsection (e) the following new subsection:

"(f)(1)(A) Any person proposing to own or operate a new source may request the Administrator for a variance from the requirements of this section with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction which have not been determined by the Administrator to be adequately demonstrated. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a variance under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

"(i) there is a substantial likelihood that the proposed system will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or non-air quality environmental impact, and

"(ii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction.

In determining whether an unreasonable risk exists under clause (ii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under subsection (b) this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (ii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emited, or was emitted in significantly lesser amounts without use of such system.

"(B) A variance under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

"(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

"(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 113.

"(C) The number of variances granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the objectives specified in clauses (i) and (ii) of subparagraph (A).

"(D) A variance under this paragraph shall extend to the sooner of—

"(i) a date (not more than ten years after the date on which the variance is granted) determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

"(ii) the date on which the Administrator determines that such system has failed to—

"(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

"(II) comply with the condition specified in paragraph (1)(A)(ii),

and that such failure cannot be corrected.

"(2)(A) If a variance under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant a waiver from the requirements of this section for such period as may be necessary for procurement, installation, and test operation of a technological system or systems such as will comply with standards of performance under subsection (b) of this section. Such period shall not extend beyond the date two years from the time such waiver is granted.

"(B) A waiver granted under this paragraph shall set forth a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practical and include such measures as are necessary and practicable in the interim to minimize emission. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section 113.".

CONTROL OF POLLUTION FROM FEDERAL FACILITIES

SEC. 113. (a) Section 118 of the Clean Air Act (42 U.S.C. 1857f), relating to control of pollution from Federal facilities, is amended by striking out "comply with Federal, State, interstate, and local requirements respecting control and abatement of air pollution to the same extent that any person is subject to such requirements" and by inserting in lieu thereof "be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, respecting control and abatement of air pollution in the same manner, and to the same extent, as any nongovernmental entity. Neither the United States nor any officer, agent or employee thereof shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such requirement.".

(b) Section 113(d) of such Act (42 U.S.C. 1857c-8), as added by section 105(c) of this Act, is amended by adding the following new paragraph at the end thereof:

"(2) For purposes of this section, the term 'person' includes any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.".

(c) Section 118 of the Clean Air Act (42 U.S.C. 1857f) is amended by inserting the following immediately before the last sentence thereof: "In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals.".

WAIVER OF MAINTENANCE OF EFFORT REQUIREMENT

SEC. 114. Section 105(b) of the Clean Air Act (42 U.S.C. 1857c(b)) is amended by inserting at the end thereof the following: "The Administrator, after notice and opportunity for a public hearing and upon making a general finding of good cause and appropriate specific findings, may waive the prohibition of the third sentence of this subsection. For the purpose of this subsection, the term 'finding of good cause' may include a finding that—

"(1) denial of the grant would result in extreme hardship;

"(2) the general purpose unit of government, or higher applicable unit of government, of which such agency is a part has declared the existence of a financial emergency and is thus unable to meet the requirements of this subsection; or

"(3) the circumstances which made such agency unable to meet the requirements of this section were beyond its control.".

TEMPORARY EMERGENCY REVISIONS

SEC. 115. Section 110 of the Clean Air Act (42 U.S.C. 1857c-5), as amended by section 103 of this Act, is amended by adding at the end thereof the following new subsection:

"(f)(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and public hearing on the record, an emergency revision of an implementation plan with respect to such source may be made by the Governor of the State in which such source is located and may take effect immediately pending approval or disapproval by the Administrator.

"(2) An emergency revision under this subsection shall be made only if the Governor of such State finds that—

"(A) there exists in the vicinity of such source an economic emergency involving actual or threatened high levels of unemployment;

"(B) such unemployment can be totally or partially alleviated by such emergency revision; and

"(C) such emergency revision, together with all other revisions effective under this subsection, will not result in emissions from such source of any air pollutant which may cause, or materially contribute to any delay in the attainment of, or preventing the maintenance of, any national ambient air quality standard for such pollutant.

"(3) A temporary emergency revision made by a Governor under this subsection shall remain in effect for a maximum of four months. The Administrator shall, within such

four month period, approve such revision if he determines that it meets the requirements of paragraph (2) of subsection (a) of this section.

"(4) This subsection shall not apply in the case of a plan promulgated by the Administrator under subsection (c) of this section.

"(5) No emergency revision may be effective pursuant to this subsection if such revision contains any plan provision which has been disapproved by the Administrator (or any plan provision which would have the effect of a provision which has been disapproved by the Administrator) at any time during the 18 months preceding the date of application for such revision.".

TITLE II—AMENDMENTS RELATING PRIMARILY TO MOBILE SOURCES

LIMITATION ON INDIRECT SOURCE REVIEW AUTHORITY

SEC. 201. (a) Title III of the Clean Air Act (42 U.S.C. 1857 and following), as amended by section 306 of this Act, is further amended by adding the following new section at the end thereof:

"INDIRECT SOURCE REVIEW PROGRAM STUDY

"SEC. 318. The Administrator shall conduct a study to determine if, and under what conditions, indirect source review programs (as defined in section 124(g) contained in, or which could be contained in, State implementation plans are necessary to, and are likely to be effective to reduce, or prevent or minimize any projected increase in, emissions of any mobile source-related air pollutant or otherwise assist in attaining or maintaining any national primary ambient air quality for such pollutant. Not later than one year after the date of enactment of the Clean Air Act Amendments of 1976, the Administrator shall report to the Congress the results and findings of the study conducted under this section. In carrying out this section, the Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences for an independent study to be conducted by the Academy. In conducting such study, the Administrator shall consult with other appropriate governmental agencies. In making the report under this section, the Administrator shall consider the study and advice of the Academy and of other appropriate governmental agencies. Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out such independent study.".

(b) Section 110(a) of such Act (42 U.S.C. 1857c-5(a), as amended by section 103(c) of this Act, is further amended by adding at the end thereof the following new paragraph:

"(6) Except as may be otherwise provided under paragraph (2)(I) and section 124—

"(A) no applicable implementation plan, nor any amendment or revision thereof, shall be required under any provision of this Act, as a condition of approval of such plan under paragraph (2), to include, and no plan promulgated by the Administrator shall include, any indirect source review program (as defined in section 124(g)), and

"(B) any State may revise an applicable implementation plan approved under section 110(a) to suspend or revoke any such program included in such plan.

This paragraph shall not prevent the Administrator from approving any such program if it is adopted and submitted by a State as part of an applicable implementation plan.".

(c) Section 110(a)(2) of such Act (42 U.S.C. 1857c-5(a)(2)) is amended by striking out the period at the end of section 110(a)(2)(H) and inserting in lieu thereof a semicolon and by adding the following new subparagraph at the end thereof:

"(I) it includes an indirect source review program meeting the requirements of section 124 if the Administrator determines—

"(i) as provided under section 124(a), that such program would be necessary in an air quality control region, or portion thereof, in the State in order to assist in attaining or maintaining a national primary ambient air quality standard, and

"(ii) as provided under section 124(b), that such program is likely to be effective in reducing emissions of a mobile source-related air pollutant, in preventing or minimizing any projected increase in such emissions, or otherwise assisting in attaining or maintaining any national primary ambient air quality standard for such pollutant; and".

(d) Title I of the Clean Air Act (42 U.S.C. 1857c-5), as amended by section 101, 103, 105, and 202 of this Act, is further amended by adding at the end thereof the following new section:

"LIMITATIONS ON INDIRECT SOURCE CONTROLS

"SEC. 124. (a) Regulations promulgated by the Administrator under subsection (c) shall not require a State to include in the State implementation plan, as a condition of approval of such plan, an indirect source review program for any air quality control region, or portion thereof, unless, after notice and opportunity for public hearing, he determines, on the basis of the study conducted under section 318 (together with such other information as may be available to the Administrator), that such a program would be necessary to assure attainment of the national primary ambient air quality standards for mobile source-related pollutants by the primary standard attainment date for such pollutant or to assure maintenance of such standards thereafter assuming the following conditions existed—

"(1) Light-duty motor vehicles and engines manufactured during and after model year 1975 had achieved a reduction in emissions of carbon monoxide and hydrocarbons of 90 per centum from the emissions of such pollutants allowable under standards under section 202 applicable to model year 1970, and such vehicles and engines manufactured during and after model year 1976 had achieved a reduction in emissions of oxides of nitrogen of 90 per centum from the emissions of such pollutant allowable under such standards applicable to model year 1971.

"(2) All practicable emission limitations and transportation control measures in the applicable implementation plan had been implemented as provided in such plan.

"(b)(1) Regulations promulgated by the Administrator under subsection (c) shall not require a State to include in the State implementation plan, as a condition of approval of such plan under section 110(a)(2), an indirect source review program for any air quality control region, or portion thereof, unless, after notice and opportunity for public hearing, he determines, on the basis of the study conducted under section 318 (together with such other information as may be available to the Administrator), that such program is likely to be effective in such State to reduce emissions of a mobile source-related air pollutant, to prevent or minimize any projected increases in such emissions, or otherwise to assist in attaining or maintaining any national primary ambient air quality standard for any such pollutant—

"(A) in general,

"(B) under any specified set of conditions, or

"(C) in any designated air quality control region, or portion thereof.

"(2) If the Administrator makes the determination in paragraph (1) (B) or (C), then any such regulations may apply only in any air quality control region where the conditions sepcified in paragraph (1)(B) exist or in any region designated in paragraph (1)(C).

"(c)(1)(A) Within three months after the date required for completion of the study conducted under section 318, the Administrator shall publish proposed regulations requiring adequate State indirect source review programs to be included in appropriate State plans, as a condition of approval of such plans, subject to the limitations of subsections (a) and (b). Not later than three months after proposal of such regulations, the Administrator shall promulgate final regulations with appropriate modifications. Regulations promulgated under this section may be revised from time to time.

"(B) Within nine months after the later of (i) promulgation of final regulations under subparagraph (A) or (ii) determinations made under subsections (a) and (b), each State required to include an indirect source review program in the applicable implementation plan as a condition of approval under section 110(a)(2) shall submit to the Administrator a plan revision containing such a program.

"(C) Within eight months from the date required for submission of a plan revision under subparagraph (B), the Administrator shall approve or disapprove so much of the implementation plan as provides for the implementation of, enforcement of, or variance from, such indirect source review program. The Administrator shall approve such provisions of such plan if he determines that the plan revision meets the requirements of regulations prescribed under this subsection. The Administrator may not disapprove any indirect source review program which he has previously approved unless he determines that the State in a substantial number of instances, has failed to carry out the requirements of such program in accordance with the provisions of this section. No determination of disapproval under the preceding sentence shall take effect for a period of three months following the date of such determination.

"(2) Regulations (or revisions thereof) published or promulgated under this subsection shall specify each State implementation plan with respect to which a plan revision will be required to comply with such regulations at the time such regulations (or revisions) are promulgated.

"(3) No indirect source (other than a parking facility which the Administrator determines will be used predominantly as part of a park-and-ride portion of a public transportation system which will assist in reducing regional air pollution concentrations) shall commence construction or modification after the date three months after the date required under paragraph (1)(C) for approval or disapproval of a State plan revision submitted under paragraph (1)(B) in any air quality control region for which the State is required to submit such a revision, unless the State's plan revision has been approved by the Administrator and such construction or modificaiton complies with such approved plan.

"(d)(1) Except as provided in paragraph (2), any violation of a term or condition of any indirect source review program contained in an approved State plan (or in a plan promulgated under section 110(c), as permitted under subsection (e)(3), any violation of a term or condition of any permit or variance under such an indirect source review program, and any violation of subsection (c)(3) of this section shall be treated as a violation of a requirement of an applicable implementation plan for purposes of this Act.

"(2) No person who has received a permit to construct or modify an indirect source from a governmental unit with an approved indirect source review program and who complies with the terms and conditions of such permit shall be deemed to be in violation of an applicable implementation plan under

this subsection with respect to such construction or modification and no such permit may be withdrawn or revoked by the Administrator.

"(3) The regulations promulgated under subsection (c) may not require any indirect source which commences construction or modification before the date six months after any revision of an applicable implementation plan required by reason of a revision or amendment of the regulations promulgated under subsection (c) to comply with any requirement of such revised or amended implementation plan.

"(e)(1) Except as provided in paragraph (3) of this subsection, the Administrator shall have no authority to promulgate regulations under section 110(c)(1) relating to an indirect source review program for any air quality control region or any portion thereof located in any State.

"(2) In the event an indirect source review program is required for any air quality control region or part thereof in any State and such State fails to adopt a program which meets the requirements of this section, the State's indirect source review program shall be disapproved by the Administrator.

"(3) Paragraph (1) shall not apply to promulgation, implementation, or enforcement of regulations respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources. Nothing in this section shall be construed to limit the authority of the Administrator to conduct preconstruction or premodification review of a federally assisted highway, airport or other major federally assisted indirect source or federally owned or operated indirect source, which commences construction or modification on or before the date three months after the date required under subsection (c)(1)(C) for approval or disapproval of a State plan revision.

"(f)(1) The regulations promulgated by the Administrator under subsection (c) shall provide that variances may be granted by the Governor of a State with an approved indirect source review program permitting construction (or modification) and operation of an indirect source notwithstanding the requirements of the indirect source review program in any case in which such variance will encourage development of long-term transportation patterns and modes which will—

"(A) improve, in the long term, air quality and protect public health, and

"(B) be energy efficient, or

which will prevent any requirement of the indirect source review program from creating any economic advantage or disadvantage for urban, suburban, or rural areas.

"(2) Except for a variance granted under this section or a plan revision under section 110(a)(3), no variance, extension, compliance order, plan revision, or other action deferring or modifying a requirement of an applicable implementation plan may be taken with respect to any indirect source by the State or by the Administrator.

"(3) Any variance granted under this section shall terminate not later than January 1, 1985. Upon termination of any variance under this section, the indirect source to which such variance was granted shall be subject to all requirements and limitations of the applicable implementation plan.

"(4) A variance may be granted under this subsection only if the Governor determines that—

"(A) emissions from vehicles attracted to the indirect source with respect to which such variance is granted will not cause or contribute to air pollution concentrations in excess of any national primary ambient air quality standard for any mobile source-related pollutant in any part of the air quality control region in which such source is located upon expiration of such variance or thereafter (taking into account all other variances previously granted under this subsection),

"(B) any new indirect source receiving such a variance will be located so as to be (upon expiration of the variance) compatible with, and conveniently and economically served by, public transportation and such location will be compatible with any comprehensive public transportation measures under section 123(b)(5),

"(C) such indirect source will be designed and constructed so as to minimize emissions of mobile source-related pollutants from vehicles attracted to such source and will use the best practicable traffic flow measures, and

"(D) such indirect source as newly constructed or modified will become compatible with transportation control measures provided in the applicable implementation plan.

No subsequent variance may be granted under this subsection if the Administrator determines, after notice and opportunity for public hearing, that variances have been granted without regard to the requirements of this paragraph in a substantial number of instances. The prohibition contained in the preceding sentence shall be for such period as the Administrator deems necessary to assure compliance with such requirements.

"(g)(1) For purposes of this section the term 'indirect source review program' means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

"(A) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

"(B) preventing maintenance of any such standard after such date.

"(2) Such term shall include measures which—

"(A) require a prior permit for construction (or modification) of any such indirect source and require operation of such source in the manner approved pursuant to such permit; and

"(B) limit the issuance of any such permit to indirect sources which will not have the effects referred to in subparagraph (A) or (B) of paragraph (1).

"(h)(1) The Administrator may not deny, on the basis of any provision of this Act (other than section 111 or section 112), an application for Federal financial assistance under any other provision of law for construction of a sewage treatment plant (with a specified capacity level), except as otherwise provided in paragraph (2).

"(2) The prohibition contained in paragraph (1) shall not apply if the Administrator determines that the effects of the sewage treatment plant (with such capacity level) would (A) cause or contribute to air pollution which exceeds the national ambient air quality standard for any air pollutant after the attainment date required for such standard in the applicable implementation plan or (B) violate any requirement of an applicable implementation plan. The Administrator shall, within 30 days after the determination under the first sentence of this paragraph, notify the State of such determination and provide opportunity for the State to revise the implementation plan accordingly. If, at any time after a determination under the first sentence of this paragraph, the applicable implementation plan is revised and approved under section 110(a)(3) so as to assure that the effects of such plant will not cause or contribute to such pollution or violate any such requirement, the Administrator may not deny any such application on the basis of any provision of this Act (other than section 111 or section 112).

"(3) In making the determination referred to in aparagraph (2)(A) of this subsection, the Administrator must apply the assumptions specified in subsections (a)(1) and (2).".

(e) Section 302 of such Act (42 U.S.C. 1857h), as amended by section 106(f) of this Act, is further amended by adding the following new subsections at the end thereof:

"(j) The term 'indirect source' means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of section 110(c)(2)(D)(ii)).

"(k) The term 'mobile source-related air pollutant' means any air pollutant which is subject to regulation under section 202, 211(c)(1)(A), 231, or 235 of this Act.".

(f) Section 110(a) of the Clean Air Act (42 U.S.C. 1857c-5(a)) is amended by striking out "land use and" in paragraph (2)(B) and by inserting after "transportation controls" the following: ", air quality maintenance plans, and preconstruction review of direct sources of air pollution".

EXTENSION OF TRANSPORTATION CONTROL COMPLIANCE DATES

SEC. 202. Title I of the Clean Air Act (42 U.S.C. 1857 and following), as amended by sections 101, 103, and 105 of this Act, is further amended by adding at the end thereof the following new section:

"EXTENSION OF TRANSPORTATION CONTROL COMPLIANCE DATES

"SEC. 123. (a)(1) Upon application submitted by the Governor of a State, the Administrator may extend the date required for compliance with any transportation control measure adopted by a State and included in an applicable implementation plan.

"(2) Upon application submitted by the chief executive officer of a general purpose unit of local government which is carrying out responsibility delegated under section 110(c)(3), or on his own motion, the Administrator may extend the date required for compliance with any transportation control measure which was promulgated by the Administrator under section 110(c). In the case of an application submitted by such officer, such extension shall apply only to the extent that such measure applies within the jurisdiction of such unit.

"(b)(1)(A) No extension may be granted under subsection (a) with respect to any transportation control measure unless such measure is applicable in an air quality control region in which the State or unit of local government (or the Administrator, as the case may be) has implemented within such jurisdiction all requirements (except as provided in subparagraph (B)) of the applicable implementation plan which are required to be implemented as of the date of application and are intended to control any mobile source-related pollutant. Such implementation includes initiating and diligently pursuing enforcement actions to bring noncomplying persons into compliance.

"(B) For purposes of subparagraph (A), the State or unit of local government (or Administrator) shall not be required, as of the date on which such extension is granted, to have implemented:

"(i) transportation control measures with respect to which a finding has been made under paragraph (2), and

"(ii) requirements for indirect source review programs (as defined in section 124).

"(2) No extension may be granted under

subsection (a) for any transportation control measure unless—

"(A) the Administrator finds that implementation of such measure on the required date would (i) cause, or contribute to, a failure to meet basic transportation needs of the area, (ii) be infeasible, or (iii) otherwise cause seriously disruptive and widespread economic or social effects,

"(B) the Administrator states with reasonable specificity the factual basis of the finding made under subparagraph (A), and

"(C) the applicant has submitted (or the Administrator has prepared, if acting on his own motion)—

"(i) a detailed planning study identifying and quantifying the respect (if any) in which the basic transportation needs of the area could not be met if the applicable measure were not extended, the seriously disruptive and widespread economic or social effects (if any) of not extending such measure, the respects (if any) in which implementation of such measure would be infeasible, and the effects on public health and welfare expected to result from the continued air pollution associated with the extension,

"(ii) an examination of measures (including establishment, improvement, or expansion of public transportation) other than those measures for which an extension is sought, which could be implemented and used to attain and maintain national ambient air quality standards as expeditiously as practicable, and

"(iii) a detailed description of the measures to be undertaken during all such extensions to minimize any risk to public health.

"(3) No extension may be granted under subsection (a) unless there has been prior notice and opportunity for public hearings.

"(4) No finding may be made under paragraph (2)(A)(i) unless the Administrator finds that implementation of public transportation (or other means) which would meet such needs by such required date would be impracticable.

"(5)(A) Except as provided in subparagraph (B) of this paragraph, each transportation control measure for which an extension is granted under subsection (a) shall be required to be implemented (under a compliance schedule containing increments of progress prescribed pursuant to such extension) as expeditiously as practicable but not later than January 1, 1980.

"(B) Such measure shall be required to be implemented as expeditiously as practicable but not later than January 1, 1985, if the applicable implementation plan is revised within the one-year period specified in paragraph (6)—

"(i) to include comprehensive measures (including compliance schedules containing increments of progress) to, as expeditiously as practicable, establish, expand, or improve public transportation to meet basic transportation needs while implementing transportation control measures necessary to attain and maintain national ambient air quality standards, and

"(ii) to meet the requirements of paragraphs (1) and (2) of subsection (d).

"(6) No extension for any transportation control measure under subsection (a) shall remain in effect for more than one year after such extension is granted unless, before such date, the applicable implementation plan is revised to include—

"(A) requirements to use (insofar as necessary), for the purpose of implementing the transportation control measures with respect to which such extension was granted, funds which are reasonably available to the State or local government; and

"(B) in the case of an area which has been granted an extension beyond January 1, 1980, requirements to use (insofar as necessary), for the additional purpose of implementing the comprehensive public transportation measures required under paragraph (5)(B), funds which are reasonably available to the State or local government.

"(c) In the case of any applicable implementation plan containing measures requiring—

"(1) retrofits on other than commercially owned in-use vehicles, or

"(2) gas rationing which the Administrator finds would have seriously disruptive and widespread economic or social effects if implemented before January 1, 1985,

the Administrator may, after notice and opportunity for public hearing, approve elimination of such measures from the plan notwithstandinig the requirements of section 110(a). No later than nine months after approval of the elimination of any such measure is granted with respect to any applicable implementation plan, a revised plan must be submitted (as provided in section 110(a)(2)(H)) to meet such requirements.

"(d) Not later than one year after date of enactment of this section, the Administrator shall complete a review of all applicable implementation plans for mobile source-related pollutants to determine whether or not such plans would be adequate as of such date to attain, by the date required under section 110, the national primary ambient air quality standards for such pollutants and maintain them thereafter if no extensions, exemptions, or variances had been granted under sections 111(b), 118, 119, 121, 124, and this section. Unless the Administrator determines that any such plan would be adequate (within the meaning of the preceding sentence) he shall require revision of such plan. The revised plan shall be such as would be adequate (within the meaning of the first sentence of this subsection). The Administrator shall promptly notify the State when any plan revision is required under this subsection and shall require submission of such revised plan on such date (not sooner than sixty days or later than six months after such notice) as he may determine. Such revised plan shall—

"(1) identify and provide for implementation of the remaining emission reductions necessary for the plan to be adequate within the meaning of this subsection with respect to mobile source-related pollutants and the measures to be implemented to accomplish these reductions;

"(2) identify the financial and manpower resources necessary to carry out such measures, and commit the State or local government to provide those resources; and

"(3) include emission limitations, applicable to stationary sources which emit any mobile source-related air pollutant in significant amounts, requiring reduction of such emissions to the maximum extent technologically feasible (or a finding that any such emission limitation not so included is not necessary for the plan to be adequate within the meaning of this subsection and a justification for such finding).

If the Administrator determines that a proposed plan revision does not incorporate the most expeditious practicable date for achievement of adequacy within the meaning of this subsection, he shall notify the Governor of the deficiencies in the proposed revision. This notification shall include the Administrator's judgment as to the additional control strategies that should be incorporated, and the most expeditious dates which are practicable for implementing the measures included or to be included in the plan. The notification shall also specify a date for submission of the modified plan revision not more than one hundred and twenty days from the date of notification.

"(e) Except for a compliance date extension issued under this section, a plan revision under section 110(a)(3), or an elimination approved under subsection (c), no extension, compliance order, plan revision, or other action deferring or modifying a requirement of an applicable implementation plan may be taken with respect to any transportation control measure by the State or by the Administrator.

"(f)(1) For purposes of this section and section 110(a)(2)(B), the term 'transportation control measure' does not include any measure for management of parking supply (as defined in section 110(c)(D)(ii) except that such definition shall be applied without regard to whether or not a facility is new) or any indirect source review program (as defined in section 124).

"(2) For purposes of subsection (b)(6), the term 'funds which are reasonably available' means—

"(A) grants which have been made to a State or local government under Federal law,

"(B) funds which have been appropriated under State or local law, or

"(C) any combination of such grants and funds, which may, consistent with the terms of the legislation providing for such grant or making such appropriation, be used for the purposes referred to in such subsection (b)(6).".

LIGHT-DUTY MOTOR VEHICLE EMISSIONS

SEC. 203. (a) Subparagraph (A) of section 202(b)(1) of the Clean Air Act (42 U.S.C. 1857f-1(b)(1)(A)) is amended to read as follows:

"(A) The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the interim standards which were prescribed (as of December 1, 1973) under paragraph (5)(A) of this subsection for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per mile of hydrocarbons and 15.0 grams per mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1980 and 1981 shall contain standards which provide that the emissions from such vehicles and engines may not exceed .9 grams per mile of hydrocarbons and 9.0 grams per mile of carbon monoxide. The regulations under subsection (a) applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1982 shall contain standards which require a reduction of at least 90 per centum from emissions of carbon monoxide and hydrocarbons allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970."

(b) Subparagraph (B) of such section 202(b)(1) is amended to read as follows:

"(B) The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1975 and 1976 shall contain standards which are identical to the standards which were prescribed (as of December 1, 1973) under subsection (a) for light-duty vehicles and engines manufactured during model year 1975. The regulations under subsection (a) applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1981 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per mile."

(c) Section 202(b) of such Act is amended

by striking out paragraph (5) thereof and substituting the following:

"(5)(A)(i) The Administrator, after notice and opportunity for hearing (as provided in section 307(d)), shall promulgate, affording a sufficient period to permit the development and application of the requisite technology (giving appropriate consideration to the cost of compliance within such period), regulations containing standards applicable to emissions of oxides of nitrogen which shall apply to light-duty vehicles or engines manufactured during the model years 1982 and 1983 and, in the discretion of the Administrator, subsequent model years.

"(ii) Standards established under regulations promulgated under this paragraph shall provide for the maximum reduction of emissions which the Administrator determines to be technologically practicable for the model year to which they apply, giving appropriate consideration to the cost of compliance, the need for such standards to protect public health and the impact of such standards on motor vehicle fuel consumption.

"(B) Regulations promulgated under this paragraph may be revised pursuant to clause (ii) of subparagraph (A). A standard established in any such revised regulation shall apply for two or more model years within the period specified in subparagraph (A)(i).

"(6)(A) Upon promulgation of a regulation under paragraph (5) applicable to any period of two or more model years, the Administrator shall report to the Congress respecting the motor vehicle fuel consumption consequences, if any, of the standards applicable for such period in relationship to the motor vehicle fuel consumption associated with the standards applicable for the model year immediately preceding such period.

"(B) The Secretary of Transportation and the Federal Energy Administration shall each submit to Congress, as promptly as practicable following submission by the Adminstrator of the fuel consumption report referred to in subparagraph (A), separate reports respecting such fuel consumption.".

"(7)(A) Any manufacturer may file with the Administrator an application requesting the suspension for any model year before the model year 1985 of the effective date of any standard applicable to light-duty motor vehicles or engines under this section (including any interim standard prescribed under paragraph (5)(C)) for emissions of carbon monoxide, hydrocarbons, oxides of nitrogen, or for suspension of any combination thereof. During any calendar year, no manufacturer may file an application with respect to more than one model year. The Administrator shall grant such suspension for such model year only if—

"(i) standards applicable to emissions of sulfates or sulfuric acid, or both, from such vehicles or engines have been promulgated under subsection (a)(1) for such model year,

"(ii) the Administrator finds, after notice and public hearing, that the applicant has established that—

"(I) effective control technology, processes, or operating methods, or other alternatives are not available or have not been available for a sufficient period of time prior to their effective dates to achieve compliance with the standards applicable in such model year to emissions of carbon monoxide, hydrocarbons, oxides of nitrogen, and the standard or standards applicable to sulfates and sulfuric acid, or

"(II) fuel economy of such vehicles or engines would be substantially less in the case of vehicles or engines meeting standards applicable to emission of all such pollutants than the fuel economy of light-duty vehicles or engines meeting standards applicable for such model year only to emission of carbon monoxide, hydrocarbons, and oxides of nitrogen,

"(iii) the Administrator finds, after notice and public hearing, that emissions of sulfates or sulfuric acid, or both, from light-duty vehicles or engines cause or contribute to air pollution which may reasonably be anticipated to endanger the public health or welfare to a greater extent than emissions from such vehicles of the pollutant or pollutants with respect to which application is made under this paragraph,

"(iv) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c), issued a report contrary to the findings of the Administrator under clauses (ii) and (iii), and

"(v) notice of such suspension has been reported to the Congress by the Administrator and neither House has passed a resolution disapproving such suspension before the expiration of sixty calendar days of continuous session of Congress after receipt of such notice by such House.

For purposes of congressional action under clause (v), the provisions of subsection (b) and subsections (d) through (g) of section 155 shall apply to suspensions under this paragraph in the same manner as to regulations of the Administrator under subtitle B of title I (relating to stratosphere and ozone protection).

"(B) No suspension under this paragraph of any standard with respect to a pollutant may permit emissions of such pollutant in excess of the levels (expressed in grams per vehicle mile) specified in the following table:

Suspension of oxides of nitrogen standard	2.0
Suspension of hydrocarbon standard	1.5
Suspension of carbon monoxide standard	15.0

"(C) During any calendar year, no suspension under this paragraph may be granted with respect to any standard for more than one model year and no suspension shall be granted with respect to an application filed for vehicles or engines manufactured during the model year specified in the left-hand column below unless such application is filed on or after November 1 of the year specified in the right-hand column below:

"Model year:	Earliest application year
1980	1977
1981	1978
1982	1979
1983	1980
1984	1981

"(D) In any case in which the requirements of clauses (i) and (ii) of subparagraph (A) are met, if the Administrator finds, after notice and public hearing, that emissions of sulfates or sulfuric acid, or both, from light-duty vehicles and engines do not in his judgment cause or contribute to air pollution which may reasonably be anticipated to endanger the public health or welfare to a greater extent than emissions of the other pollutants referred to in subgraph (A), and if the National Academy of Sciences has not issued a report under subsection (c) contrary to such finding or contrary to the finding under subparagraph (A)(ii), he shall suspend the standard applicable to emissions of sulfates or sulfuric acid, or both (as may be consistent with such finding), subject to the requirements and limitations contained in subparagraphs (A) (other than clauses (iii) and (iv) thereof) and (C) of this paragraph. Such suspension shall not permit emissions of such pollutant in excess of the level which the Administrator determines to be technologically feasible for vehicles or engines to meet without resulting in substantially less fuel economy in relation to the fuel economy which would result if no standard for such pollutant were applicable."

(d) Section 202(c)(1) of such Act, relating to arrangements for NAS study, is amended by striking out "subsection (b) of".

(e) Part A of title II of such Act is amended by redesignating section 214 as section 218 and by inserting after section 213 the following new section:

"STUDY OF UNREGULATED POLLUTANTS FROM MOTOR VEHICLES

"SEC. 214. (a) The Administrator shall conduct a study concerning the effects on health and welfare of emissions from motor vehicles or motor vehicles engines to which section 202 applies of sulfuric acid mist, other pollutants which are not subject to standards under section 202, and pollutants which may be present in the ambient air which are derivatives of any pollutant emitted from motor vehicles. Such study shall characterize and quantify such emissions, and determine the effects of such pollutants emitted from diesel, rotary, stratified charge, lean burn, catalytically equipped, and conventional internal combustion engines as well as engines or control devices which the Administrator determines are likely to come into common use.

"(b) The Administrator shall report to Congress the findings and results of the study conducted under subsection (a) not later than one year after the date of the enactment of the Clean Air Act Amendments of 1976 and annually thereafter.

"(c) The reports required to be submitted to the Congress under this section shall be submitted directly to the Congress by the Administrator before disclosure or submission of such reports to the Office of Management and Budget, the President, or any other department or agency of the United States. Nothing in this subsection shall be construed to preclude the Office of Management and Budget from submitting its comments concerning any such report to the Congress.".

(f) Section 203(a) of the Clean Air Act (42 U.S.C. 1857f-2(a)) is amended by striking out "or" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and substituting "; or", and by adding the following new paragraph at the end thereof:

"(5) for any manufacturer applying for a suspension under section 202(b)(5) or to which a revised or changed standard under section 202(a)(3) applies, to fail to make maximum efforts which are feasible for such manufacturer to comply with the standard with respect to which such suspension was granted or with such revised standard.".

(f) Section 204(a) and the first sentence of Section 205 of such Act are each amended by striking out "paragraph (1), (2), (3) or (4) of".

EMISSION STANDARDS FOR HEAVY DUTY VEHICLES OR ENGINES AND CERTAIN OTHER VEHICLES OR ENGINES

SEC. 204. (a) Section 202(a) of the Clean Air Act (42 U.S.C. 1857f-1) is amended by adding the following new paragraph at the end thereof:

"(3)(A)(i) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen from classes or categories of heavy-duty vehicles or engines manufactured during and after model year 1978. Such regulations applicable to such pollutants from such classes or categories of vehicles or engines manufactured during model years 1978 through 1984 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, en-

ergy, and safety factors associated with the application of such technology.

"(ii) Unless a different standard is temporarily promulgated as provided in subparagraph (B) or unless the standard is changed as provided in subparagraph (E), regulations under paragraph (1) of this subsection applicable to emissions from vehicles or engines manufactured during and after model year 1985 shall contain standards which require a reduction of at least 65 percent in the case of oxides of nitrogen and a reduction of at least 90 percent in the case of carbon monoxide and hydrocarbons from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during the baseline model year.

"(iii) In establishing classes or categories of vehicles or engines for purposes of regulations under this subsection, the Administrator may base such classes or categories on gross vehicle weight, horsepower, or such other factors as may be appropriate.

"(iv) For the purpose of this paragraph, the term 'baseline model year' means, with respect to any pollutant emitted from any vehicle or engine, or class or category thereof, the model year immediately preceding the model year in which Federal standards applicable to such vehicle or engine, or class or category thereof, first applied with respect to such pollutant.

"(B) During the period of June 1, through December 31, 1979, and during each period of June 1 through December 31 of each third year after 1979, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning five model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production for such period and shall prescribe a revised emission standard in accordance with such determination.

"(C) Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if—

"(i) he finds that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

"(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c), issued a report substantially contrary to the findings of the Administrator under clause (i).

"(D) A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

"(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

"(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under section 160 (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply,

"(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

"(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.

"(E)(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1979, and before June 1 of each third year thereafter.

"(ii) On the basis of such study and such other information as is available to him (including the studies under sections 214 and 215), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year five years after the model year during which regulations containing such changed standard are promulgated.

"(F) For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category.".

(b) Section 202(b)(3) of such Act is amended by adding the following new subparagraph at the end thereof:

"(C) The term 'heavy duty vehicle' means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.".

(c) Section 312 of such Act is amended by inserting "AND STUDIES ON COST-EFFECTIVENESS ANALYSIS" at the end of the heading thereof and by adding the following new subsection at the end thereof:

"(c) Not later than January 1, 1979, the Administrator shall study the possibility of increased use of cost-effectiveness analyses in devising strategies for the control of air pollution and shall report its recommendations to the Congress, including any recommendations for revisions in any provision of this Act. Such study shall also include an analysis and report to Congress concerning whether or not existing air pollution control strategies are adequate to achieve the purposes of this Act.".

(d) Part A of title II of such Act (as amended by sections 203 and 216 of this Act) is further amended by inserting after section 215 the following new section:

"STUDY OF PARTICULATE EMISSIONS FROM MOTOR VEHICLES

"SEC. 216. (a)(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emissions from motor vehicles or motor vehicle engines to which section 202 applies. Such study shall characterize and quantify such emissions and analyze the relationship of such emissions to various fuels and fuel additives.

"(2) The study shall also include an analysis of particulate emissions from mobile sources which are not related to engine emissions (including, but not limited to tire debris, and asbestos from brake lining).

"(b) The Administrator shall report to the Congress the findings and results of the study conducted under subsection (a) not later than two years after the date of the enactment of the Clean Air Act Amendments of 1976. Such report shall also include recommendations for standards or methods to regulate particulate emissions described in paragraph (2) of subsection (a).".

(e) Section 206 of such Act (relating to compliance testing and certification) is amended by adding the following new subsection at the end thereof:

"(f)(1) In the case of any class or category of heavy-duty vehicles or engines or motorcycles to which a standard promulgated under section 202(a) of this Act applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) and shall not be suspended or revoked under subsection (b) for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standard if such manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing.

"(2) No certificate of conformity may be issued under paragraph (1) if the degree by which the manufacturer fails to meet any standard promulgated under section 202(a) exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. Such regulations shall require testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or engines which are not in compliance with the regulations with respect to which a certificate of conformity was issued and shall be promulgated not later than December 31, 1977.

"(3) The regulations promulgated under paragraph (1) shall, not later than December 31, 1977, provide for nonconformance penalties in amounts determined under a formula established by the Administrator. Such penalties under such formula—

"(A) may vary from pollutant-to-pollutant;

"(B) may vary by class or category or vehicle or engine;

"(C) shall be based on the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 202;

"(D) shall create incentives for the development of production vehicles or engines which achieve the required degree of emission reduction; and

"(E) shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction.".

AIRCRAFT EMISSION STANDARDS

SEC. 205. (a) Section 231(c) of the Clean Air Act (42 U.S.C. 1857f-9(c)) is amended to read as follows:

"(c) Any regulations in effect under this section on date of enactment of the Clean Air Act Amendments of 1976 or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the Secretary of Transportation, after notice and opportunity for public hearing, on the basis of a finding that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made."

(b) Section 231(a) of such Act is amended

by adding the following new paragraph at the end thereof:

"(4) Not later than 12 months after the date of the enactment of this paragraph and after fulfillment of the procedural requirements contained in paragraph (3) (whether before or after the enactment of this paragraph), the Administrator shall issue final regulations containing emission standards under this section applicable to emissions of air pollutants from nonmilitary supersonic aircraft or supersonic aircraft engines.".

ASSURANCE OF PROTECTION OF PUBLIC HEALTH AND SAFETY

SEC. 206. (a) Section 202(a) of the Clean Air Act (42 U.S.C. 1857f-1(a)), as amended by section 204(a) of this Act, is further amended by inserting "paragraph (1) of" before "this subsection" in paragraph (2) thereof and by adding a new paragraph at the end thereof:

"(4)(A) Effective with respect to vehicles and engines manufactured after model year 1977, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction.

"(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to standards prescribed under this subsection without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 214.".

(b) Section 206(a) of such Act (42 U.S.C. 1857f-5(a)) is amended by adding at the end thereof the following:

"(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 202(a)(4).

"(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.".

(c)(1) Section 206(b)(2)(A)(1) of such Act (42 U.S.C. 1857f-5(b)(2)(A)(1)) is amended by inserting "and with the requirements of section 202(a)(4)" after "conformity was issued".

(2) Section 206(b)(2)(A) of such Act is amended by inserting "and requirements" after "such regulations" in each place it appears.

TEST PROCEDURES FOR MEASURING EVAPORATIVE EMISSIONS

SEC. 207. Section 202(b)(1) of the Clean Air Act (42 U.S.C. 1857f-1(b)(1)) is amended by adding a new subparagraph (C) as follows:

"(C) Effective with respect to vehicles and engines manufactured during or after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after date of enactment of this subparagraph.".

RAILROAD LOCOMOTIVE EMISSION STANDARDS

SEC. 208. (a) Title II of the Clean Air Act is amended by adding at the end thereof the following new part:

"PART C—RAILROAD LOCOMOTIVE EMISSION STANDARDS

"ESTABLISHMENT OF STANDARDS

"SEC. 235. (a) Within ninety days after the date of enactment of this section, the Administrator shall commence a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine—

"(1) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

"(2) the technological feasibility of controlling such emissions.

"(b) Within one hundred and eighty days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of locomotives, locomotive engines, and secondary power sources on railroad rolling stock, which in his judgment cause or contribute to air pollution which may reasonably be anticipated to endanger the public health or welfare.

"(c)(1) The Administrator shall hold public hearings with respect to such proposed standards. Within ninety days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

"(2) Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

"(3) Any regulations under this section, or amendments thereto, shall apply unless disapproved by the Secretary of Transportation, after notice and opportunity for public hearing, on the basis of a finding that any such regulation would create a hazard to railroad safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

"COMPLIANCE

"SEC. 236. The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 235 by the Administrator. Such Secretary shall insure that all necessary inspections are accomplished, and may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

"STATE STANDARDS AND CONTROLS

"SEC. 237. No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any railroad locomotives, locomotive engines, or secondary power sources on railroad rolling stock if the Administrator has promulgated a standard applicable to such emissions, unless such standard is identical to a standard applicable to such locomotives, locomotive engines, or secondary power sources on railroad rolling stock, under this part.".

(b) Section 116 of the Clean Air Act is amended by striking out "and 233" and inserting in lieu thereof "233, and 237"

MOTOR VEHICLE PARTS CERTIFICATION AND STUDY BY FEDERAL TRADE COMMISSION

SEC. 209. (a) Section 207(b)(2) of the Clean Air Act (42 U.S.C. 1857f-5a(b)(2)) is amended by adding the following at the end thereof: "No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2).".

(b) Section 207(a) of such Act is amended by inserting "(1) after "(a)" and by adding the following new paragraph at the end thereof:

"(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 202. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b). The Administrator shall promulgate such regulations no later than two years following the date of the enactment of this paragraph.".

(c)(1) Section 207(b) of this Act is amended by striking out "its useful life (as determined under section 202(d))" in each place it appears and inserting in lieu thereof "a period of eighteen months or eighteen thousand miles (or the equivalent), whichever first occurs".

(2) Section 207 of such Act is amended by adding the following new subsection at the end thereof:

"(g) In lieu of the eighteen-month or eighteen thousand mile period referred to in subsection (b) there shall be substituted the useful life of the vehicle or engine (as determined under section 202(d)) if the Federal Trade Commission finds under section 209(d) of the Clean Air Act Amendments of 1976 that no significant anticompetitive effects would result from the application of such warranty for such useful life.".

(d) The Federal Trade Commission shall undertake a study to determine whether or not any anticompetitive effects would result from any warranty required to be provided pursuant to section 207(b) of the Clean Air Act if such warranty applied for the useful life (as determined under section 202(d) of such Act) of vehicles and engines to which such warranty applies in lieu of the eighteen month or eighteen thousand mile period specified in such section 207(b). Such study shall include public hearings. Such study shall include an analysis of any measures implemented by the Administrator to prevent or diminish such anticompetitive effects and shall include a finding with respect to whether or not significant anticompetitive effects would nevertheless result from such warranty if the warranty applied for such useful life. Such study shall be undertaken primarily by the Bureau of Competition in consultation with the Bureau of Consumer Affairs.

(e) Section 207(c)(3) of the Clean Air Act is amended by inserting after the first sentence thereof the following: "The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment using any automotive part which meets the per-

formance and engineering specifications of the manufacturer or which has been certified as provided in subsection (a)(2).".

VEHICLE INSPECTION AND MAINTENACE

SEC. 210. (a) Section 110(a)(2)(G) of the Clean Air Act (42 U.S.C. 1857c-5(a)(2)(G)) is amended by inserting the following before the semicolon at the end thereof: ", and it complies with applicable provisions of section 217 respecting the annual inspection and maintenance of motor vehicles registered in such State".

(b) Part A of title II of the Clean Air Act (42 U.S.C. 1857f-1 and following), as amended by sections 203, 216, and 206 of this Act, is further amended by inserting the following new section after section 216:

"INSPECTION AND MAINTENANCE

"SEC. 217. (a) Each applicable implementation plan which, as in effect on June 30, 1975, contained transportation control measures applicable to any air quality control region in a State shall provide for the annual inspection and testing of all light-duty vehicles to which this section applies which are registered in such State by any person whose residence or principal place of business (or both) is located in such air quality control region. Such inspection and testing shall be for purposes of determining compliance by such vehicles with the emission standards specified in subsection (b). Such plan shall, except as permitted under subsection (b)(4)(B) and subsection (c)(1), prohibit the registration and operation of vehicles subject to such inspection and testing in such State unless such vehicles comply with such standards.

"(b)(1) The standards applicable to light duty motor vehicles operating during the annual period beginning eighteen months after the date of the enactment of this section shall require that such vehicles manufactured during a model year shall not emit more than the levels of carbon monoxide (CO) and hydrocarbons (HC) specified in the following table:

"Vehicle model year—	CO level (percent of total mass of emissions)	HC level (parts per million)
1968 and 1969	8.0	800
1970 through 1974	6.0	600
After 1974	3.0	300

"(2) The standards applicable to light duty motor vehicles operating during the annual period beginning thirty months after the date of the enactment of this section shall require that such vehicles manufactured during a model year shall not emit more than the levels of carbon monoxide (CO) and hydrocarbons (HC) specified in the following table:

"Vehicle model year—	CO level (percent of total mass of emissions)	HC level (parts per million)
1968 and 1969	7.0	700
1970 through 1974	5.0	500
After 1974	2.0	200

"(3) The standards applicable to light duty motor vehicles operating during any annual period beginning forty-two months or more after the date of the enactment of this section shall require that such vehicles manufactured during a model year shall not emit more than the levels of carbon monoxide (CO) and hydrocarbons (HC) specified in the following table:

"Vehicle model year—	CO level (percent of total mass of emissions)	HC level (parts per million)
1968 and 1969	5.0	600
1970 through 1974	4.0	400
After 1974	2.0	200

"(4) The Administrator shall promulgate regulations—

"(A) providing for the exemption from the inspection and testing required under this section of such antique and other vehicles as the Administrator deems appropriate, and

"(B) authorizing the operation of vehicles which have not met the applicable standards for such temporary period as may be appropriate to repair or adjust the vehicle in order to meet such standards or to undertake the tuneup required for registration and operation of the vehicle pursuant to subsection (c)(1).

"(5) For the purposes of complying with the provisions of subsection (a), the plan shall require testing for emissions using testing procedures and equipment approved by the Administrator and shall permit the use of existing State motor vehicle inspection and testing facilities and procedures so long as they are consistent with such requirement. The Administrator shall approve testing procedures and equipment for purposes of this paragraph only if he determines that such procedures and equipment comply with such standards respecting calibration, instrumentation, and maintenance as he deems appropriate. Compliance with the levels specified in the tables contained in paragraph (1) shall be determined on the basis of engines operating at idle (as determined by the Administrator).

"(c)(1) Each applicable implementation plan required under subsection (a) to prohibit the registration and operation of noncomplying vehicles may permit the registration and operation of such vehicles if, following the inspection and testing by reason of which such vehicle was determined to be a noncomplying vehicle or within the three-month period immediately preceding the date of such inspection and testing, a major engine tuneup has been undertaken with respect to such vehicle and in the case of a vehicle having such a tuneup following such inspection and testing, such vehicle has (for purposes of providing statistical information only) been reinspected and retested under this section following such tuneup. Nothing in the preceding sentence shall be construed to prohibit the Administrator from approving any implementation plan which contains any requirement prohibiting the registration and operation of any noncomplying vehicles.

"(2) Not later than four years after the date of enactment of this section, the Administrator shall include in his report to the Congress under section 313 an analysis of any new inspection and testing methods or technology which have become available during such four-year period and which may be appropriate (taking cost into account) for purposes of this section.

"(d) The requirements or authority contained in this section shall not be deemed to affect or impair any requirement contained in any other provision of this Act.".

(c) Section 210 of such Act (42 U.S.C. 1857f-6b) is amended by adding the following at the end thereof: "Grants may be made under this section by way of reinbursement in any case in which amounts have been expended by the State before the date on which any such grant was made. The preceding sentence shall not apply to any amounts expended by a State before the date of the enactment of the Clean Air Act Amendments of 1976. Any grant under this section may be reduced or suspended by the Administrator upon his determination, following notice and opportunity for a public hearing, that a State vehicle inspection maintenance program is not equal to or more stringent than the procedures and standards specified in section 217.".

(d) Not later than three months after the date of enactment of this Act, the Administrator shall notify each State which will be required to revise the applicable implementation plan to include an inspection and maintenance program for purposes of compliance with the amendments made by this section and each such State shall, within 9 months after receiving such notice, submit to the Administrator a revision of such plan. Within 3 months after the date required for submission of such revision, the Administrator shall approve or disapprove the revision if he determines that it complies with the amendments made by this Act and was adopted after reasonable notice and hearing. The provisions which are required under section 217 to be included in such plan shall be implemented not later than 18 months after the date of enactment of this Act.

COST OF VAPOR RECOVERY SYSTEMS TO BE BORNE BY OWNER OF RETAIL OUTLET

SEC. 211. (a) Title III of the Clean Air Act, as amended by sections 306, 201, and 304 of this Act, is further amended by adding the following new section at the end thereof:

"COST OF EMISSION CONTROL FOR CERTAIN VAPOR RECOVERY TO BE BORNE BY OWNER OF RETAIL OUTLET

"SEC. 320. The regulations under this Act applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after the date of enactment of the Clean Air Act Amendments of 1976 may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment.".

(b) Section 113(b)(3) of such Act (42 U.S.C. 1857c-8(b)(3)), as amended by section 107, is further amended by inserting "or 320" before the semicolon.

(c) Title III of such Act, as amended by sections 306, 201, 304, 312, 313, and 108 of this Act and by subsection (a) of this section is further amended by adding the following new section at the end thereof:

"VAPOR RECOVERY FOR SMALL BUSINESS MARKETERS OF PETROLEUM PRODUCTS

"SEC. 324. (a) Except as provided in subsection (b) the regulations under this Act applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment under which such marketers shall have—

"(1) 33 percent of their outlets in compliance at the end of the first year during which such regulations apply to such marketers,

"(2) 66 percent at the end of such second year, and

"(3) 100 percent at the end of the third year.

"(b)(1) The regulations referred to in subsection (a) shall not apply to independent small business marketers of gasoline before the expiration of the period ending two years after the date of enactment of this section or the period ending six months after the date of submission of the report under paragraph (3), whichever is later.

"(2) The Federal Trade Commission shall study, and not later than one year after the date of enactment of this section report to the Administrator on, the effect the application to independent small business marketers of gasoline of the regulations referred to in

subsection (a) will have on the ability of such marketers to compete in gasoline marketing. In the course of such study, the Commission shall provide opportunity for a public hearing and for submission of written views, data, and argument and shall request the participation in such hearing of other interested departments and agencies (including the Federal Energy Administration).

"(3) Not later than 18 months after the date of enactment of this section, the Administrator shall submit a report to the House Interstate and Foreign Commerce Committee and to the Senate Public Works Committee, which analyzes (A) the effect referred to in subsection (b)(2); (B) the need for such regulations to be applied to independent small business marketers of gasoline to assist in attaining or maintaining national ambient air quality standards or in preventing significant deterioration of air quality; and (C) the availability of means for eliminating or minimizing any effects referred to in subsection (b)(2) which are detrimental. The analysis required under clause (C) shall include a discussion of the measures referred to in subsection 202(a)(5) (pertaining to fill pipe standards) and 202 (a)(6) (pertaining to onboard hydrocarbon technology). The Administrator's report under this paragraph shall include his conclusions as to whether, and to what extent, such regulations (or such other regulations relating to vapor recovery from fueling of motor vehicles at retail outlets of gasoline) should apply to independent small business marketers of gasoline.

"(4) The Administrator may, on the basis of the conclusions contained in the report under paragraph (3), promulgate regulations—

"(A) exempting independent small business marketers of gasoline, or any class thereof, from the duty to comply with the regulations referred to in subsection (a);

"(B) deferring or modifying the regulations referred to in subsection (a) in the case of independent small business marketers of gasoline, or any class thereof;

"(C) containing provisions to eliminate or minimize any effects referred to in subsection (b)(2) which are detrimental; or

"(D) taking any combination of the actions referred to in subparagraphs (A) through (C).

Regulations under this paragraph may be promulgated by the Administrator only upon a finding that such regulations are necessary in order to assure that application of the regulations referred to in subsection (a) to independent small business marketers of gasoline will not cause such independent marketers to be unable to compete in gasoline marketing.

"(5) The Administrator and the Federal Trade Commission shall keep confidential the commercial or financial information obtained under this section, except that such information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

"(c) For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 320 of this Act or under regulations of the Administrator, unless such person (1) is a refiner, or (2) controls, is controlled by, or is under common control with, a refiner, or (3) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to in (3) is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person). For the purpose of this section, the term 'refiner' shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, 'control' of a corporation means ownership of greater than 50 percent of its stock.".

TESTING BY SMALL MANUFACTURERS

SEC. 212. Section 206(a)(1) of the Clean Air Act (42 U.S.C. 1857f-(5)(a)(1)) is amended by adding at the end thereof the following: "In the case of any manufacturer of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the regulations prescribed by the Administrator concerning testing by the manufacturer for purposes of determining compliance with regulations under section 202 for the useful life of the vehicle or engine shall not require operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, but the Administrator shall apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life with the regulations prescribed under section 202 of this Act.".

CALIFORNIA WAIVER

SEC. 213. Section 209(b) of the Clean Air Act (42 U.S.C. 1857f-6a(b)) is amended to read as follows:

"(b)(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

"(A) the determination of the State is arbitrary and capricious,

"(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

"(C) such State standards and accompanying enforcement procedures are not consistent with section 202(a) of this part.

"(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standards shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

"(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this title.".

LOW-EMISSION VEHICLES

SEC. 214. (a) Section 212(d) of the Clean Air Act (42 U.S.C. 1857f-6e(d)) is amended—

(1) by striking out "a class or model" in paragraph (1)(C) and inserting in lieu thereof "a class, model, or other category (including a category based on limited use or determined on the basis of such other criteria as will effectuate the purpose of procuring low-emission vehicles)",

(2) by striking out "class or model" each place it appears in the second and third sentences of paragraph (1) and in paragraph (3) and inserting in lieu thereof in each such place "class, model or category", and

(3) by striking out "any class or classes" in paragraph (3)(F) and inserting in lieu thereof "any class, model or category".

(b) Section 212(e) of such Act is amended by striking out "class or model" in paragraphs (1) and (2) thereof and substituting "class, model, or category".

REMOVAL OR TAMPERING WITH CERTAIN DEVICES, ETC.

SEC. 215. (a) Section 203(a)(3) of the Clean Air Act (42 U.S.C. 1857f-2(a)(3)), relating to prohibited acts, is amended by striking out "or dealer" and inserting in lieu thereof ", dealer, or person engaged in the business of repairing motor vehicles".

(b) Section 203(a) of such Act is amended by adding the following at the end thereof: "Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term 'manufacturer parts' means parts produced by the manufacturer of the motor vehicle or motor vehicle engine.".

HIGH ALTITUDE PERFORMANCE ADJUSTMENTS

SEC. 216. (a) Section 203(a) of the Clean Air Act (42 U.S.C. 1857f-2(a)), as amended by section 215 of this Act, is further amended by adding the following at the end thereof: "No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited Act under such paragraph (3) if such action will not adversely affect the emission control performance of the vehicle or engine.".

(b) Title II of such Act as amended by section 203 of this Act is further amended by inserting the following new section after section 214:

"HIGH ALTITUDE PERFORMANCE ADJUSTMENTS

"SEC. 215. (a)(1) Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this title (including any alteration or adjustment of such element), shall be treated for purposes of section 203(a) as not adversely affecting the emission control performance of the vehicle or engine if such action is performed in accordance with altitude adjustment instructions provided by the manufacturer under subsection (b) and approved by the Administrator.

"(2) If the Administrator finds the adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not insure emission control performance at least equivalent to that which would result if no such adjustments or modifications were made, he shall disapprove such instructions. Such finding shall be based upon minimum engineering evaluations consistent with good engineering practice. In any case in which emissions of one or more pollutants are increased by reason of adjustments or modifications made to reduce emissions of one or more other pollutants, emission control performance may be found by the Administrator to be equivalent for purposes of this subsection if the aggregate effect of emission control performance resulting from such adjustments or modifications will be more protective of health and welfare than the effect of emission control performance if no such adjustments or modifications had been made.

"(b)(1)(A) Upon submission of any new motor vehicle or motor vehicle engine to the Administrator for purposes of obtaining a certificate of conformity under section 206 (a)(1), the manufacturer shall submit to the Administrator instructions providing for such vehicle and engine adjustments and modifications as may be necessary to insure emission control performance at different altitudes. If the Administrator does not disapprove such instructions on or before the

issuance of the certificate of conformity for the vehicle or engine, such instructions shall be treated as approved for purposes of this section.

"(B) In the case of any model year beginning after the date of enactment of this section, instructions respecting vehicles or engines manufactured during such model year which have been approved by the Administrator, shall be included in the instructions required under section 207(c)(3) and shall, not later than the date on which a class or category of motor vehicles or motor vehicle engines first becomes available for sale to the general public, be made available to any person upon request.

"(C) In the case of any model year beginning before the date of enactment of this section, instructions respecting each class or category of vehicles or engines to which this title applies providing for such vehicle and engine adjustments and modifications as may be necessary to insure emission control performance at different altitudes shall be submitted to the Administrator not later than 6 months after the date of the enactment of this section. If the Administrator does not disapprove such instructions on or before the date 8 months after such date of enactment, such instructions shall be treated as approved for purposes of this section.

"(D) If any instructions provided by a manufacturer for purposes of this section are disapproved by the Administrator, not later than 60 days after such disapproval, the manufacturer shall revise the instructions (in accordance with such requirements as the Administrator determines necessary for approval) and shall make the revised and approved instructions available to any person upon request.

"(2) Any violation by a manufacturer of paragraph (1) shall be treated as a violation by such manufacturer of section 203(a)(3) for purposes of the penalties contained in section 205.

"(c) No instructions which require the use of any manufacturer parts (within the meaning of section 203(a)) may be promulgated or approved by the Administrator under this section.".

PARTS STANDARDS; PREEMPTION OF STATE LAW

SEC. 217. Section 209 of the Clean Air Act (42 U.S.C. 1857f-6a) (relating to State standards) is amended by redesignating subsection (c) as (d) and by inserting after subsection (b) the following new subsection:

"(c) Whenever a design or performance standard with respect to any motor vehicle part or motor vehicle engine part is in effect under regulations of the Administrator under section 207(a)(2), no State or political subdivision thereof shall adopt or attempt to enforce any design or performance standard or any requirement of certification, inspection, or approval applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).".

FILL PIPE STANDARDS

SEC. 218. Section 202(a) of the Clean Air Act (42 U.S.C. 1857f-1(a)) as amended by sections 204 and 206 of this Act is further amended by adding the following new paragraph at the end thereof:

"(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall prescribe, by regulations, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which receives certification of performance capability. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum fill pipe or nozzle insertion angle, and such other factors as he deems pertinent.

"(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate lead time for design and production.

"(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

"(D) Any standards promulgated under subparagraph (A), or amendments thereto, may be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for vehicle safety.

"(E) For the purpose of this paragraph, the term 'fill pipe' shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.".

ONBOARD HYDROCARBON TECHNOLOGY

SEC. 219. Sec. 202(a) of the Clean Air Act (42 U.S.C. 1957f-1(a)), as amended by sections 204, 206, and 218 of this Act, is further amended by adding the following new paragraph at the end thereof:

"(6)(A) The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall prescribe, by regulations, standards which shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.

"(B) Any regulations promulgated under subparagraph (A), or amendments thereto, shall not apply if disapproved by the Secretary of Transportation, after notice and opportunity for public hearing, on the basis of a finding that any such regulations would create a hazard to vehicle safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.".

CARBON MONOXIDE STANDARDS FOR SCHOOLBUS PASSENGER AREAS

SEC. 220. (a) Title II of the Clean Air Act (relating to emission standards for moving sources) is amended by adding the following new part at the end thereof:

"PART D—CARBON MONOXIDE STANDARDS FOR SCHOOLBUS PASSENGER AREAS

"ESTABLISHMENT OF STANDARDS

"SEC. 241. (a) The Administrator, in conjunction with the Secretary of Transportation, shall study the problem of carbon monoxide intrusion into buses and sustained-use motor vehicles. Such study shall characterize and quantify interior levels of carbon monoxide in such buses and vehicles and determine its effects upon the passengers. The study shall review monitoring procedures available and study the cost effectiveness of strategies for attaining and monitoring the standards promulgated under this section. Within one year the Administrator shall report to the Congress respecting the results of such study.

"(b) Not later than one year after the enactment of this part, the Administrator shall issue proposed standards setting forth the levels of carbon monoxide in the passenger areas of schoolbuses which are requisite to protect, with an adequate margin of safety, the health of passengers and to permit safe operation of such buses.

"(c) Pursuant to the requirements of section 307(d), the Administrator shall, by regulation, promulgate, with such modifications as he deems appropriate, final standards applicable to the presence of carbon monoxide in the passenger areas of schoolbuses establishing the levels of carbon monoxide in such areas which are requisite to protect, with an adequate margin of safety, the health of passengers and to permit safe operation of such buses. Such standards shall be revised from time to time.

"COMPLIANCE

"SEC. 242. (a) Each State shall submit to the Secretary of Transportation an implementation plan which shall include such measures as may be required, under regulations promulgated by the Secretary, to prevent, in the case of any schoolbus, a violation of the standards established under section 241(c) to the extent that such violation is attributable to carbon monoxide from such schoolbus. Such measures shall be required to be implemented as expeditiously as practicable (but not later than three years after approval of the plan). Such measures shall include adequate monitoring and, not less frequently than twice during any 12-month period, inspection of such schoolbuses. Such measures shall apply to schoolbuses manufactured before the effective date of this part (buses in use) as well as to schoolbuses manufactured on or after such date.

"(b) The Secretary shall approve the plan submitted by the State under subsection (a) if such plan meets the requirements of subsection (a). Such plan shall be approved or disapproved in the same manner as plans approved or disapproved by the Administrator under section 110.

"(c) No schoolbus may be registered, or otherwise authorized to operate, by a State after the date 31 months after the date of enactment of this section unless such bus is in compliance with a plan approved under this section. The Secretary may commence a civil action for appropriate relief, including a permanent or temporary injunction whenever any person fails to comply with this subsection. Any action under this subsection may be brought in the appropriate district court of the United States, and such court shall have jurisdiction to restrain such violation and to require compliance.

"DEFINITIONS

"SEC. 243. For purposes of this part, the term—

"(1) 'person' has the meaning provided by section 302(e);

"(2) 'passenger' includes the driver of a schoolbus;

"(3) 'bus' means any passenger motor vehicle which is designed to carry more than 10 passengers in addition to the driver;

"(4) 'schoolbus' means a bus which the Secretary of Transportation determines is likely to be significantly used for the purpose of transporting primary, preprimary, or secondary school students to or from such schools or events related to such schools;

"(5) 'motor vehicle' means any self-propelled vehicle designed for transporting persons on a street or highway; and

"(6) 'sustained-use motor vehicle' means any diesel or gasoline fueled motor vehicle

(whether light or heavy duty) which, as determined by the Administrator (in conjunction with the Secretary), is normally used and occupied for a sustained, continuous, or extensive period of time, including, but not limited to, taxicabs, and police vehicles.

"STATE LAW

"SEC. 244. (a) Nothing in this part shall preclude or deny any State or political subdivision thereof the right to adopt or enforce any requirement applicable to the presence of carbon monoxide in the passenger areas of schoolbuses except that if any such requirement is in effect pursuant to this part no such State or political subdivision may adopt or enforce any such requirement which is less stringent than the requirement in effect pursuant to this part.

"(b) Each State shall adopt and submit a plan for the purpose of meeting the requirements of section 242 of the Clean Air Act not later than twenty-seven months after enactment of this section. Not later than four months after submission of such plan, the Secretary of Transportation shall approve such plan or disapprove such plan.".

TITLE III—MISCELLANEOUS AMENDMENTS

REDESIGNATION OF AIR QUALITY CONTROL REGIONS

SEC. 301. Section 107 of the Clean Air Act (42 U.S.C. 1857c-2) (relating to air quality control regions) is amended by adding at the end thereof the following new subsection:

"(d)(1) Except as otherwise provided in paragraph (2), the Governor of each State is authorized, with the approval of the Administrator, to redesignate from time to time the air quality control regions within such State.

"(2) In the case of an air quality control region in a State, or part of such a region, which the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in which such region, or part of a region, is located may redesignate from time to time the boundaries of so much of such air quality control region as is located within such State only with the approval of the Administrator and with the consent of all Governors of all States which the Administrator determines may be significantly affected.

"(3) No compliance date extension granted under section 119 (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 119(c)(2)(D) if the violation of such limitation is due solely to a redesignation of a region under this subsection.".

CONSULTATION

SEC. 302. (a) Title I of the Clean Air Act (42 U.S.C. 1857 and following) as amended by sections 101, 103, 105, 201, and 202 of this Act, is further amended by adding at the end thereof the following new section:

"CONSULTATION WITH LOCAL GOVERNMENTS, REGIONAL AGENCIES, AND COUNCILS OF GOVERNMENTS

"SEC. 125. (a) An applicable implementation plan under section 110 shall provide a satisfactory process for consultation with general purpose units of local government, regional agencies, and councils of governments prior to the adoption of any transportation controls or any measure referred to in the last clause of section 110(a)(2)(B) or in section 110(a)(2)(I) (pertaining to indirect sources) or 110(a)(2)(J) (pertaining to prevention of significant deterioration) adopted more than one year after the date of enactment of the Clean Air Act Amendments of 1976 as part of such plan. No such process shall be deemed satisfactory unless it meets the requirements of regulations promulgated by the Administrator to assure adequate consultation. Such regulations shall be promulgated after notice and opportunity for public hearing and not later than nine months after the date of the enactment of this section. The Administrator may disapprove any portion of a plan relating to any measure described in the first sentence of this subsection or to the consultation process required under this subsection if he determines that such plan does not meet the requirements of this section.

"(b) For purposes of section 307 or any other provision of law relating to judicial review, only a general purpose unit of local government, regional agency, council of government, or State adversely affected by action of the Administrator approving or promulgating any portion of a plan referred to in this section may petition for review of such action or may intervene in any such action on the basis of a violation of the requirements of this section.".

(b) Section 110(c)(1) of such Act (42 U.S.C. 1857c-5) is amended by adding the following new sentence at the end thereof: "Notwithstanding the preceding sentence, any portion of a plan relating to any measure described in the first sentence of section 125(a) or the consultation process required under section 125 shall not be required to be promulgated before the date eight months after such date required for submission.".

DELEGATION TO LOCAL GOVERNMENT UNDER FEDERAL PLAN

SEC. 303. Section 110(c) of the Clean Air Act (42 U.S.C. 1857c-5(c)), is amended by adding the following new paragraph at the end thereof:

"(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the responsibility to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from enforcing any applicable provision of a plan promulgated under this subsection.".

EMPLOYMENT EFFECTS

SEC. 304. The Clean Air Act (42 U.S.C. 1857 and following), as amended by section 201(a) of this Act, is further amended by adding the following new section at the end thereof:

"EMPLOYMENT EFFECTS

"SEC. 319. (a) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any requirements under this Act, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such requirements.

"(b) Any employee, or any representative of such employee, who is discharged or laid-off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this Act, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice. At such hearings, the Administrator shall require the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall notify (in writing) the party requesting such hearing of such a determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

"(c) In connection with any investigation or public hearing conducted under subsection (b) of this section, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(d) Nothing in this section shall be construed to require or authorize the Administrator, the States or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this Act.".

ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

SEC. 305. (a) Section 307 of the Clean Air Act (42 U.S.C. 1857h-5) is amended by adding the following new subsection at the end thereof:

"(d)(1) This subsection applies to—

"(A) the promulgation or revision of any national ambient air quality standard under section 109,

"(B) the approving or disapproving of any State implementation plan (or any revision thereof) under section 110 or 111(d),

"(C) the promulgation or revision of an implementation plan by the Administrator under section 110(c),

"(D) the promulgation or revision of any standard of performance under section 111 or emission standard under section 112,

"(E) the promulgation or revision of any regulation controlling or prohibiting any fuel or fuel additive under section 211(c),

"(F) the promulgation or revision of any aircraft emission standard under section 231,

"(G) promulgation or revision of regulations pertaining to compliance date extensions of coal conversion under section 119

(but not including orders granting or denying any compliance date extensions),

"(H) promulgation or revision of regulations pertaining to compliance date extensions for stationary sources under section 121 (but not including orders granting or denying any compliance date extensions),

"(I) promulgation or revision of regulations authorizing compliance date extensions for transportation control measures under section 123 (but not including orders granting or denying such extensions),

"(J) promulgation or revision of regulations requiring indirect source review programs under section 124,

"(K) promulgation or revision of regulations under subtitle B of title I (relating to stratosphere and ozone protection),

"(L) promulgation or revision of regulations under subtitle C of title I (relating to prevention of significant deterioration of air quality),

"(M) promulgation or revision of regulations establishing emission standards under section 292 and test procedures for new motor vehicles or engines under section 206, the granting or denying of a suspension under section 202, the revision of a standard under section 202(a)(3)(B), the making of a determination under section 202(b)(6), and the promulgation of any regulation under 202(a)(5) or 202(a)(6),

"(N) the approval or disapproval of any application for a State program grant and any deobligation of grant funds under section 105,

"(O) promulgation or revision of regulations establishing railroad emission standards under section 235,

"(P) promulgation or revision of regulations establishing a schedule of rates of excess emission fees under section 122(b),

"(Q) promulgation or revision of any regulations promulgated under section 207,

"(R) action of the Administrator under section 127;

"(S) action of the Administrator under section 122(b)(2) (unless such action is taken on the basis of the record of the hearing at which the extension under section 121 is granted), and

"(T) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 of the United States Code shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5 of the United States Code.

"(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a 'rule'). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

"(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, United States Code, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the 'comment period'). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

"(A) the factual data on which the proposed rule is based;

"(B) the methodology used in obtaining the data, in analyzing the data, and in reasoning from the data to the proposed rule; and

"(C) the major steps of reasoning leading to the proposed rule (including an articulation of the major legal interpretations, policy considerations, and evaluations of competing risks included in the chain of reasoning).

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by advisory committees and other bodies (including the Scientific Review Committee established under section 109(d) and, the National Academy of Sciences), and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

"(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times, specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays expenses, including personnel costs to do the copying.

"(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

"(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

"(5)(A) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) during any such oral presentation, the Administrator shall include an opportunity for cross-examination as provided in subparagraph (B).

"(B)(i) During any such oral presentation, the Administrator shall include an opportunity for cross-examination on any matter shown to be a disputed issue of material fact to such extent and in such manner as the Administrator considers necessary and appropriate in view of the nature of the issues involved, the number of participants and the nature of their interests, and any need for expedition, including that for meeting any statutory deadline for promulgation of the rule involved.

"(ii) If only a single interested person seeks the opportunity for cross-examination or if the Administrator determines that all persons in a class who seek to avail themselves of such an opportunity share an identity of interest, the Administrator shall, upon the making of such a showing, afford such single interested person or representative of such class (as designated by the participants of such class) an opportunity to conduct cross-examination with respect to any such issue to the same extent that cross-examination is permitted under section 556 of title 5, United States Code, taking into account the need for expedition as provided in (i) above.

"(iii) If all persons and classes of persons seeking to avail themselves of an opportunity to engage in cross-examination cannot agree upon one or more classes which, in the discretion of the Administrator, reasonably afford representation of various interests and classes of persons potentially affected by the rule, the Administrator may deny cross-examination.

"(C) Any determination respecting the procedure provided for in subparagraph (A) or (B) may be held grounds for invalidating the Administrator's action only if such determination is arbitrary or capricious.

"(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

"(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

"(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

"(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

"(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit. Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

"(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural de-

terminations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

"(9) In the case of review of any action of the Administrator to which this subsection applies, such action shall be affirmed by the court unless the court finds that it is not supported by substantial evidence in the rulemaking record (as defined in paragraph (7)(A)) taken as a whole. In addition, the court may reverse any such action found to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege, or immunity;

"(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

"(D) without observance of procedure required by law.

"(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

"(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after the date of enactment of the Clean Air Act Amendments of 1976.".

(b) Section 105 of such Act (42 U.S.C. 1857c) is amended by adding the following new subsection at the end thereof:

"(e) No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in one of the affected States if more than one State is affected).".

(c)(1) The first sentence of section 307(b)(1) of such Act (42 U.S.C. 1857h-5(b)(1)) is amended by striking out "111" and inserting in lieu thereof "111(b), and finding of the Administrator under section 111(i)(7)(A), any regulation promulgated under section 111(d)(1), 121, 122, 123, 124(c), 125, 126(a), 152(f)(3), 154, 160, 207, or 302(i)"; by inserting "or required to be prescribed under section 202(a)(3)(A) with respect to vehicles or engines manufactured during or after model year 1983" after "202(b)(1)"; by inserting "or under section 202(a)(3)(B)" after "202(b)(5)"; and inserting "or under section 235" after "231".

(2) The second sentence of section 307(b)(1) of such Act is amended (A) by inserting after "(C)" the following: ", or his action under section 121 (other than the promulgation of regulations)," and (B) by inserting after "thereunder," the following: "his action in imposing a fee under section 122, his action under section 127(b), his action in approving any plan or making any designation or redesignation under section 160,".

(3) The last sentence of section 307(b)(1) of such Act is amended to read as follows: "Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that such date if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. No determination of the Administrator under section 122 with respect to the imposition or reduction of a fee shall be reversed by the court unless such determination is unsupported by substantial evidence on the record.".

(4) Section 307(b)(1) of such Act is further amended by inserting the following after the second sentence thereof: "Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.".

(d)(1) Clause (iii) of section 114(a) of such Act (42 U.S.C. 1857c-9(a)(iii)), relating to inspection, monitoring, and entry, is amended by striking out "or 303" and inserting in lieu thereof the following: ", 111(f), 121 (including determining whether to grant, deny, approve, or disapprove a compliance date extension under section 121), 122, 124, 126, 127, 160, or 303, or subtitle B of title I".

(2) Section 114(a)(1) of such Act is amended by striking out "the owner or operator of any emission source" and inserting in lieu thereof "any person subject to any requirement of this Act (other than a manufacturer subject to the provisions of section 208)".

EMPLOYEE PROTECTION

SEC. 306. Title III of the Clean Air Act (42 U.S.C. 1857g and following), relating to general provisions, is amended by adding at the end thereof the following new section:

"EMPLOYEE PROTECTION

"SEC. 317. (a) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

"(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or a proceeding for the administration or enforcement of any requirement imposed under this Act or under any applicable implementation plan,

"(2) testified or is about to testify in any such proceeding, or

"(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

"(b)(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

"(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

"(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order (i) the person who committed such violation to take affirmative action to abate the violation, (ii) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (iii) compensatory damages, and (iv) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

"(c)(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

"(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

"(d) Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary shall file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages. Civil actions filed under this paragraph shall be heard and decided expeditiously.

"(e) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

"(f) Subsection (a) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this Act.".

NOTICE TO STATE IN CASE OF CERTAIN INSPECTIONS, ETC.

SEC. 307. Section 114(a)(2) of the Clean Air Act (42 U.S.C. 1857c-9(a)(2)) is amended by adding at the end thereof the following: "In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of a compliance date extension under section 119, before carrying out an entry, inspection, or monitoring under this paragraph with respect to such standard, limitation, or other requirement, the Administrator (or his representative) shall provide the State air pol-

lution control agency with reasonable prior notice of such action, including a statement of the reasons for such action. The Administrator shall, upon a showing by the State agency that such an action will be detrimental to the administration of the State's program of enforcement, take such showing into consideration in determining whether to take such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation or other requirement which is not part of an applicable implementation plan.".

EMERGENCY POWERS

SEC. 308. (a) Section 303 of the Clean Air Act (42 U.S.C. 1857h-1) is amended to read as follows:

"EMERGENCY POWERS

"SEC. 303. (a) Notwithstanding any other provision of this Act, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may in order to protect the health of such persons, commence a civil action for appropriate relief, including a restraining order or permanent or temporary injunction. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are or may be affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken is based and to ascertain the action which such authorities are or will be taking.

"(b) Any person who willfully violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.".

(b) Section 313 of the Clean Air Act (42 U.S.C. 1857j-2) is amended by striking out "and" at the end of clause (9) and adding after clause (10): "and (11)(A) the status of plan provisions developed by States as required under section 110(a)(2)(F)(v), and an accounting of States failing to develop suitable plans; (B) the number of annual incidents of air pollution reaching or exceeding levels determined to present an imminent and substantial endangerment to health (within the meaning of section 303) by location, date, pollution source, and the duration of the emergency; (C) measures taken pursuant to section 110(a)(2)(F)(v), and an evaluation of their effectiveness in reducing pollution; and (D) an accounting of those instances in which an air pollution alert, warning, or emergency is declared as required under regulations of the Administrator and in which no action is taken by either the Administrator, State, or local officials, together with an explanation for the failure to take action.".

INTERSTATE POLLUTION ABATEMENT

SEC. 309. (a) Section 110(a)(2)(E) of the Clean Air Act (42 U.S.C. 1857c-5) is amended to read as follows:

"(E) it contains provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard after the attainment date for such standard or interfere with measures required to be included in the applicable implementation plan for any other State to prevent significant deterioration of air quality, and (ii) insuring compliance with the requirements of section 126;".

(b) Title I of such Act, as amended by sections 101, 103, 105, 201, 202, and 302 of this Act, is further amended by adding at the end thereof the following new section:

"INTERSTATE POLLUTION ABATEMENT

"SEC. 126. (a) Not later than nine months after date of enactment of this section, the Administrator shall promulgate regulations establishing a procedure for abating interstate air pollution in accordance with the requirements of this section.

"(b) Regulations promulgated under subsection (a) shall require each applicable implementation plan—

"(1) to require each major proposed new (or modified source which may significantly contribute to air pollution in any air quality control region outside the State in which such source intends to locate (or make such modification) to obtain a permit to construct from the State of intended location at least ninety days prior to the date of commencement of construction,

"(2) to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

"(3) to review and identify all major existing stationary sources (within the meaning of section 121(a)(3)) which may have the impact described in paragraph (1) and to provide notice to all nearby States of the identity of such sources not later than eighteen months after date of enactment of this section.

"(c) Regulations under subsection (a) shall authorize any State or political subdivision to petition the Administrator for a finding that any major source would emit any air pollutant in violation of the prohibition of section 110(a)(2)(E)(i). Within sixty days after receipt of any petition under this subsection, the Administrator shall provide opportunity for a public hearing and shall grant or deny the petition.

"(d) Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of the applicable implementation plan in such State (1) for any major proposed new (or modified) source with respect to which a petition has been granted under subsection (c) to operate more than sixty days after such petition has been granted, or (2) for any major existing source to operate more than six months after such petition has been granted with respect to it, except that the Administrator may permit the continued operation of such source beyond the expiration of such six-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirement contained in section 110(a)(2)(E)(i) as expeditiously as practicable.".

INTERAGENCY COOPERATION ON PREVENTION OF ENVIRONMENTAL CANCER AND HEART AND LUNG DISEASE

SEC. 310. Title I of the Clean Air Act as amended by sections 107 and 108 is further amended by adding the following new subtitle at the end thereof:

"Subtitle D—Prevention of Environmental Cancer and Heart and Lung Disease

"PREVENTION OF ENVIRONMENTAL CANCER AND HEART AND LUNG DISEASE

"SEC. 170. (a) Not later than three months after date of enactment of this section, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the 'Task Force'). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, and the National Institute on Environmental Health Sciences, and shall be chaired by the Administrator (or his delegate).

"(b) The Task Force shall—

"(1) develop and implement a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer nad heart and lung disease;

"(2) make recommendations for comprehensive strategies to reduce or eliminate the risks of cancer (or such diseases) associated with environmental pollution;

"(3) engage in such other research and recommend such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases;

"(4) coordinate research and control efforts by, and stimulate cooperation between, the Environmental Protection Agency, the Department of Health, Education, and Welfare, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

"(5) report to Congress, not later than January 31 of each year, on the problems and progress in carrying out this section.

"(c) In developing and implementing its research program and making its recommendations, the Task Force shall consider the impact of personal health habits, including tobacco smoking, on the relationship between environmental pollution and human cancer and heart and lung disease.".

CIVIL LITIGATION

SEC. 311. Section 305 of the Clean Air Act (42 U.S.C. 1857h-3) is amended to read as follows:

"CIVIL LITIGATION

"SEC. 305. (a) Except as otherwise provided in subsection (b), in any civil action under this Act (including any civil action brought by any person with respect to action taken by the Administrator under this Act), the Administrator shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in his own name by any attorney of the Environmental Protection Agency designated by him for such purpose, unless the Administrator authorizes the Attorney General to do so. The Administrator shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening under any other authority of law on behalf of the United States in such action and any appeal of such action.

"(b)(1) Notwithstanding subsection (a) the Attorney General shall have exclusive authority to determine whether or not an appeal shall be made from the decision of any court in an action in which the Administrator represented himself pursuant to subsection (a).

"(2) The authority of the Administrator under subsection (a) shall not apply in the case of actions before the Supreme Court.

"(3) In any case where the Attorney General represents the Administrator before the Supreme Court in any civil action in which the Administrator represented himself pursuant to subsection (a), the Attorney General may not agree to any settlement, compromise, or dismisal of such action, or confess error in the Supreme Court with respect to such action, unless the Administrator concurs.

"(4) For purposes of this subsection (with respect to representation before the Supreme Court), the term 'Attorney General' includes the Solicitor General.

"(c) The provisions of this section shall apply notwithstanding any other provision of law.".

FINE PARTICULATE STUDY

SEC. 312. (a) Title III of the Clean Air Act, as amended by sections 306, 201, 304, and 211(a) of this Act, is further amended by adding the following new section at the end thereof:

"FINE PARTICULATE STUDY

"SEC. 321. Not later than eighteen months after the date of the enactment of the Clean Air Act Amendments of 1976, the Administrator, in cooperation with the National Academy of Sciences, shall study and report to Congress on (1) the relationship between the size, weight, and chemical composition of suspended particulate matter and the nature and degree of the hazards to public health or welfare presented by such particulate matter (especially with respect to fine particulate matter) and (2) the availability of technology for controlling such particulate matter.".

AIR QUALITY MONITORING BY ENVIRONMENTAL PROTECTION AGENCY

SEC. 313. Title III of the Clean Air Act, as amended by sections 306, 201, 304, 211(a), and 312 of this Act, is further amended by adding the following new section at the end thereof:

"AIR QUALITY MONITORING

"SEC. 322. Not later than one year after the date of enactment of the Clear Air Act Amendments of 1976 and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

"(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

"(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

"(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

"(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 110 shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.".

CERTAIN MINOR AND TECHNICAL AND CONFORMING AMENDMENTS

SEC. 314. (a) Section 203(a)(2) of the Clean Air Act (42 U.S.C. 1857f-2(a)(2)) is amended by inserting the following before the semicolon: "or for any reason to fail or refuse to permit entry, testing, or inspection authorized under section 206(c)".

(b) The second sentence of section 205 of such Act (42 U.S.C. 1857f-4) is amended by striking out "(2)" and inserting in lieu thereof "(3)".

(c) Section 302(d) of such Act (42 U.S.C. 1857h(d)) is amended by inserting before the period at the end thereof the following: "and includes the Commonwealth of the Northern Mariana Islands".

(d) Section 203(b)(3) (42 U.S.C. 1857f-2(b)(3)) is amended by striking out "subsection (a)" the second time it appears and inserting in lieu thereof "section 202" and by striking out "country of export" in each place it appears and inserting in lieu thereof "country which is to receive such vehicle or engine".

RESEARCH NOT AUTHORIZED

SEC. 315. (a) No appropriation may be made to the Environmental Protection Agency for environmental research, development, or demonstration, for any period beginning after September 30, 1977, unless previously authorized by legislation thereunder enacted by the Congress.

(b) The Administrator of the Environmental Protection Agency shall transmit to the Congress a comprehensive five-year plan for environmental research, development, and demonstration. This plan shall be appropriately revised annually, and such revisions shall be transmitted to the Congress each year no later than two weeks after the President submits his annual budget to the Congress in such year.

(c) The Administrator of the Environmental research, development, and demonstration programs of the Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

SEC. 316. Title III of the Clean Air Act is amended by inserting the following new section after section 313:

"ECONOMIC CONTROLS STUDY

"SEC. 313A. (a) The Council on Environmental Quality (hereinafter in this section referred to as 'the Council') shall undertake a study and assessment of economic measures for the control of air pollution which could—

"(1) strengthen the effectiveness of existing methods of controlling air pollution,

"(2) provide incentives to abate air pollution to a greater degree than is required by existing provisions of this Act (and regulations thereunder), and

"(3) serve as the primary incentive for controlling air pollution problems not addressed by any provision of this Act (or any regulation thereunder).

"(b) The study of measures referred to in paragraph (1) of subsection (a) shall concentrate on (1) identification of air pollution problems for which existing methods of control are not effective because of economic incentives to delay compliance and (2) formulation of economic measures which could be taken with respect to each such air pollution problem which would provide an incentive to comply without interfering with such existing methods of control.

"(c) The study of measures referred to in paragraph (2) of subsection (a) shall concentrate on (1) identification of air pollution problems for which existing methods of control may not be sufficiently extensive to achieve all desired environmental goals and (2) formulation of economic measures for each such air pollution problem which would provide additional incentives to reduce air pollution without—

"(A) interfering with the effectiveness of existing methods of control, or

"(B) creating problems similar to those which prevent alternative regulatory methods from being used to reach such environmental goals.

"(d) The study of the measures referred to in paragraph (3) of subsection (a) shall concentrate on (1) identification of air pollution problems for which no existing methods of control exist, (2) formulation of economic measures to reduce such pollution, and (3) comparison of the environmental and economic impacts of the economic measures with those of any alternative regulatory methods which can be identified.

"(e) In conducting the study under this section, a preliminary screening should be made of the problems referred to in subsections (b)(1), (c)(1), and (d)(1) and economic measures should be formulated under subsections (b)(2), (c)(2), and (d)(2) in the most promising cases, giving special attention to structural and administrative problems. In formulating any such measure which provides for a charge, the appropriate level of the charge should be determined, if possible, and the environmental and economic impacts should be identified.

"(f) Not later than two years after the date of the enactment of this section, the Council shall conclude the study and assessment under this section and submit a report containing the results thereof to the President and to the Congress. Interim reports on specific pollution problems and solutions recommended shall be made available to the President and the Congress by the Council whenever available.".

LOSS OF PAY PROHIBITED IN CERTAIN CASES

SEC. 317. Section 110(a) of the Clean Air Act (42 U.S.C. 1857c-5) as amended by sections 103 and 201 of this Act is further amended by adding the following new paragraph at the end thereof:

"(7) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of section 121 (relating to compliance date extensions), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.".

RULE REVIEW

SEC. 318. (a) Any rule or regulation prescribed by the Administrator pursuant to the Clean Air Act may by resolution of either House of Congress be disapproved, in whole or in part, if such resolution of disapproval is adopted not later than the end of the first period of 60 calendar days when Congress is in session (whether or not continuous) which period begins on the date such rule or regulation is finally adopted by the Administrator. The Administrator shall transmit such rule or regulation to each House of Congress immediately upon its final adoption. Upon adoption of such a resolution of disapproval by either House of Congress within said 60-day period, such rule or regulation, or part thereof, as the case may be, shall cease to be in effect.

(b) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such rule.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 10498) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 3219, CLEAN AIR ACT AMENDMENTS

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill S. 3219, with the House amendments thereto, insist on the amendments of the House and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia? The Chair hears none, and appoints the following conferees: Messrs. STAGGERS, ROGERS, SATTERFIELD, PREYER, SYMINGTON, SCHEUER, WAXMAN, FLORIO, CARNEY, MAGUIRE, DEVINE, CARTER, BROYHILL, HEINZ, and MADIGAN.

STATEMENT BY MAJORITY LEADER THOMAS P. O'NEILL, JR., ON THE REPUBLICAN CAMPAIGN

(Mr. O'NEILL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. O'NEILL. Mr. Speaker, President Ford finally left the Rose Garden yesterday to deliver a speech opening his campaign for the Presidency.

He asked to be judged on his performance in office, and outlined a list of goals for the Nation.

His accomplishments, he said, included improving the economy and achieving peace.

I suggest that he include the rewriting of history among them.

When he took office, the unemployment rate was 5.5 percent. Today it is 7.9 percent. There are nearly 3 million more people out of work today than there were 2 years ago. The Nation hardly can stand much more of that kind of improvement.

He said he achieved peace. Has he forgotten that he sought to continue the war in Southeast Asia, a war Congress refused to continue? Has he forgotten he sought to involve us in a war in Angola, an effort Congress refused to approve?

He said he has a goal of 2.5 million new jobs every year. That goal only takes care of the normal growth of the labor force. Has he consigned the 7.5 million Americans now out of work to the jobless ranks forever?

He promised every American the opportunity to purchase a home when he has refused to honor the commitments of existing housing law that would provide for the construction of 2 million homes a year.

He promised programs for quality education when he has opposed every piece of legislation before this Congress to continue or expand aid for schools.

He pledged affordable health care when his budget sought to reduce medical care programs and he has opposed national health insurance.

It often is said of Gerald Ford that, despite what one thinks of his policies, he is a man of integrity and sincerity.

After reading his speech, I wonder if we should not say that the President gets confused very easily.

MINORITY LEADER'S ANSWER TO MAJORITY LEADER'S STATEMENT VIS-A-VIS PRESIDENTIAL CAMPAIGN

(Mr. RHODES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I had not really thought that I would reply to the distinguished majority leader, the gentleman from Massachusetts (Mr. O'NEILL), until he made his remark about the present President of the United States being in favor of continuing the Vietnam war.

Of course, President Ford was never in favor of continuing the Vietnam war. He tried his very best to wind it down. He did wind it down, and he got Americans out of it.

Mr. Speaker, I think that the distinguished majority leader should also go back in memory to the point when the war began. He should remember that it did not happen under a Republican administration; it happened under a Democratic administration.

In fact, Mr. Speaker, Republican Presidents in this century several times have had to wind down and end wars that were started in Democratic administrations.

If the gentleman from Massachusetts (Mr. O'NEILL) wants to play the game of war and to take the case to the American people as to who starts wars and who ends them, I will be very happy to play that game with him.

Also, Mr. Speaker, I think it might be interesting, in considering the current Presidential candidates, to compare the ambivalence of the candidate of the majority leader's party, Governor Carter, as against the steadfastness of the President of the United States.

I do not know whether Governor Carter is a conservative today or a liberal. I know that yesterday he said he was a conservative, and a couple of weeks ago he said he was a liberal. I think the American people are just terribly confused about the whole thing.

Mr. Speaker, I say to my good friend, the majority leader, that if the state of mind of the American people is the same at the state of mind of the Members of the House with whom I have talked concerning Governor Carter, they will go to the polls and vote overwhelmingly for President Ford because they do know where he stands. He stands right where he said he was going to stand, and that is exactly where he will be.

CALL OF THE HOUSE

Mr. ROUSSELOT. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. O'NEILL. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 737]

Abdnor	Esch	Metcalfe
Andrews, N.C.	Ford, Tenn.	O'Hara
Archer	Giaimo	Passman
Armstrong	Green	Patterson, Calif.
Boggs	Hansen	Peyser
Boiling	Harsha	Pressler
Breaux	Hébert	Rangel
Brown, Mich.	Heckler, Mass.	Rees
Burke, Calif.	Heinz	Riegle
Burton, John	Helstoski	Risenhoover
Butler	Hinshaw	Rosenthal
Byron	Horton	Russo
Carter	Howard	Ryan
Chappell	Howe	Santini
Chisholm	Jacobs	Sarbanes
Clausen, Don H.	Jarman	Scheuer
Clay	Johnson, Pa.	Shuster
Collins, Ill.	Jones, Tenn.	Spellman
Conlan	Karth	Steiger, Ariz.
Conyers	Kelly	Steiger, Wis.
Corman	Kemp	Stephens
Coughlin	Keys	Stuckey
Crane	Landrum	Thornton
Derwinski	Leggett	Tsongas
Dingell	Long, Md.	Udall
Drinan	Lott	Vander Jagt
Eckhardt	McCollister	Wilson, Tex.
Edwards, Calif.	McDade	
Erlenborn	Madigan	
	Matsunaga	

Mr. Speaker, on this rollcall 344 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

REQUEST TO CONCUR IN SENATE AMENDMENT ON H.R. 14846, AUTHORIZING MILITARY CONSTRUCTION

Mr. ICHORD. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 14846) to authorize certain construction at military installations, and for other purposes, with the Senate amendment thereto, and concur in the Senate amendment.

The SPEAKER. The Chair must tell the gentleman we do not have the papers from the Senate so the matter is not eligible for consideration at this time. The request will have to be made later.

Mr. ICHORD. Mr. Speaker, I will delay my request.

ELECTRIC VEHICLE RESEARCH DEVELOPMENT AND DEMONSTRATION ACT—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER. The unfinished business is: Will the House, on reconsideration, pass the bill (H.R. 8800) to authorize in the Energy Research and Development Administration a Federal program of research, development, and demonstration designed to promote electric vehicle technologies and to demonstrate the commercial feasibility of electric vehicles, the objections of the President to the contrary notwithstanding?

The Chair recognizes the gentleman from Texas (Mr. TEAGUE) for 1 hour.

GENERAL LEAVE

Mr. TEAGUE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 8800.

The SPEAKER. Is there objection to

the request of the gentleman from Texas?

There was no objection.

Mr. TEAGUE. Mr. Speaker, H.R. 8800, the Electric Vehicle Research Development and Demonstration Act is a small but vital part of our national energy strategy. This legislation passed the House by a margin of 308 to 60 and the vote in the Senate was 72 to 16. The conference report was also overwhelmingly approved by both Houses of Congress.

Because H.R. 8800 is a good, nonpartisan, and noncontroversial bill, I am frankly puzzled at the President's veto. The Committee on Science and Technology has worked closely with the administration in the development of this legislation, and the Republican members of the committee have been among its strongest supporters. The only explanation of the veto that makes any sense is that the President received some bad advice.

Mr. Speaker, the bill vetoed by the President establishes an electric vehicle research, development, and demonstration project in the Energy Research and Development Administration—ERDA. This program will concentrate on electric vehicle technology, including batteries, drive systems, and control systems.

In addition to this accelerated research and development program, a carefully planned demonstration of electric vehicle technology will be initiated under the terms of the legislation. After testing and evaluation of currently available vehicles is completed, performance standards will be established. These performance standards will be used as the basis for an initial demonstration of 2,500 electric or hybrid vehicles. This first phase of the demonstration will be carried out during the period of 21 to 39 months after enactment of this legislation. Four years after enactment, the ERDA will establish revised performance standards and procure an additional 5,000 advanced demonstration vehicles.

Mr. Speaker, this is a practical, commonsense approach to the development, testing, and demonstration of a vital new energy technology. This legislation specifically addresses the problems of those small business enterprises which have performed so much of the electric vehicle research in the past. Its provisions include a loan guarantee program that will help assure broad participation by small but innovative electric vehicle manufacturers.

Electric vehicles can save money for the consumers in this country—not only those who buy and use them as second cars or delivery vehicles for a large number of limited applications, but also those who use electricity for nonvehicle applications would benefit from increased load factors of the utilities. Electric vehicles, with the assistance of this legislation, can help up solve the environmental problems of air and noise pollution. This bill is also vital to help assure that American workers will still build automobiles even after our supply of cheap oil is gone.

In his veto message the President cited three major deficiencies in this legislation. First, he stated that technological breakthroughs in battery research will be necessary before the electric vehicle can become a viable option. This is just not so—the President was misinformed. The best technological advice that the Committee on Science and Technology has been able to find indicates that the first generation advanced batteries can be in production by early to mid-1979. These nickel-zinc batteries are two to three times lighter than the current lead-acid batteries, and will make a significant difference in the performance and economic attractiveness of these vehicles. But, this is not all. Second generation batteries such as lithium-sulfur are projected by ERDA to be in commercial production by the early 1980's. The important point in mentioning these dates for first and second generation of advanced batteries is that they correspond with the first and second phases of the demonstration program which I have just outlined. In summary, the best technical advice has been incorporated in this bill and only a moderate amount of engineering development is necessary not the technological breakthroughs that the President's message claims.

The second deficiency cited by the President is that ERDA already has authority to carry out this action through the Energy Reorganization Act of 1974 and the Federal Nonnuclear Energy Research and Development Act of 1974. I certainly agree that ERDA has general authority for research in this area. It is not clear whether the comprehensive demonstration called for in this bill needs additional legislation or not. I should call to the attention of the Members of this body, that it seems clear that such a program will not, in fact, be carried out without the enactment of legislation such as this. It is also clear that the important incentives needed to provide vitality to the manufacturers of electric vehicles, such as the loan guarantee program, do not exist under current public law.

The third point made by the President in his veto message is that private industry has substantial experience in this area of technology and it would be foolish to throw vast amounts of Government money into this program. Here again I believe the President has received poor advice. It is the private electric vehicle manufacturers and the utility industry that are among the strongest supporters of this legislation. The amount of money—$160 million for the 6-year program—should be put in perspective. If we had 10 million electric vehicles on the road in the year 2000 replacing conventional automobiles using 2 gallons of gasoline per day we would save one-half million barrels of imported oil per day. This makes a difference of $2.2 billion annually in our balance of payments. This saving makes the cost of this program—$160 million through 1982, look paltry by comparison. Unlike some of the legislation which may come before this House, we are talking about an investment in the technology of tomorrow, not a wasteful expenditure in unproductive programs.

Mr. Speaker, the electric vehicle bill represents the kind of legislative initiative this country needs. It can help solve the long-term energy and environmental problems of this Nation. I earnestly solicit the support of each Member of this Chamber in overriding the President's veto.

Mr. McCORMACK. Mr. Speaker, I want to urge support today in this vote to override the veto of H.R. 8800, the electric vehicle research, development and demonstration bill of 1976. I want to emphasize at the start that I do not criticize the President for this veto and I do not know anyone who does.

I agree with the chairman, the gentleman from Texas (Mr. TEAGUE) that from our perspective this veto was simply a matter of bad advice which the President received from agencies within the administration.

Mr. Speaker, I have before me a large number of communications from various organizations and groups around the country, electric industries, public and private power companies. I have requests for support for this bill from the American Public Power Association, National Association of Electric Companies, the IBEW and a large number of other groups.

I agree with our chairman that this veto has confused and puzzled us, because we expected this bill, which received such overwhelming bipartisan support in both the House and Senate, would automatically be signed. Therefore, I want to speak for a moment to reiterate what this bill contains. I think the best way to understand this electric vehicle research, development, and demonstration bill, is to compare it to the solar energy heating and cooling demonstration bill, because it was modeled after that concept. The concept is to take a technology which is in its infancy and which clearly can be improved; to set up an intensive research and development program over a necessary period of time, 5 years for this particular electric vehicle program; to include the resulting technology in a demonstration program, so that the general public will become acquainted with the technology, in this case with electric vehicles; and to stimulate small industry to become involved.

We are talking about not only an aggressive program of research and development, but also a program of demonstration. Under this bill we have set out a specific program for demonstration, and I will take only a minute to describe it. However, I want what we are proposing to be known and to be understood. This is not just some haphazard idea, but a specific program.

During the 12 months following enactment of this legislation, the Energy Research and Demonstration Administration will conduct a period of testing and evaluation of existing vehicles and technology. By the 15th month after the legislation is enacted, it will then promulgate performance standards for electric vehicles and then by the 21st month after the bill is passed they will let con-

tracts for the purchase by the Government of 2,500 electric vehicles to be used by Federal agencies and State governments and to be used by private citizens throughout the country for field demonstration tests and familiarization tests throughout the country. It will be for the benefit of the Federal Government and then they will be sold. During that time we will have a research and development program moving forward, particularly with respect to batteries, regenerative breaking and solid state electronic controls. Then by the 48th month we will have revised performance standards followed by new contracts for the purchase of 5,000 vehicles within 54 months of enactment to be delivered by the 72d month, again for the use of Federal, local, and State governments and for use by private individuals for a period of time.

Mr. Speaker, the concept of this bill is, first of all, to provide the information this country needs to take this infant technology and to build it up to a point where it can be a significant part of our transportation fleet and where it can make a significant contribution to conserving energy. The concept is also to stimulate small business.

This bill provides a loan guarantee program not only for research and development, but for small entrepreneurs who will manufacture and sell electric vehicles, not only to the Federal Government, but to private citizens throughout the country.

So we have a program here to take a technology, which is not yet completely ready for competitive commercialization and bring it to the point where it is.

Now, what is the end result of all this? Well, as Chairman TEAGUE stated earlier if we had 10 million electric cars on our streets today, saving 2 gallons of gas a day for commuter runs, the result would be the saving of a half a million barrels of oil a day. Moreover, about 90 percent of all the driving we do in this country is in fact for commuter runs to and from the office, to and from the school, to and from the store, to and from the trade centers.

At the present import prices, this would be a saving of $2.2 billion per year, just for 10 million electronic vehicles. We believe we can manufacture 10 million electric vehicles by the year 1990. The Energy Research and Development Administration and the Federal Energy Administration both project 10 to 20 million electric vehicles on our streets by the year 2000, and this is our goal.

But, we are not going to get there unless we establish this program so that we have a program to develop this new technology, to make it useful, to make it competitive, to conserve energy, to use less petroleum, to provide load leveling on our electric systems, to reduce pollution control and noise control.

I was appalled when I looked out from the Hill 2 days ago—I believe the day the President vetoed the bill—looked out at the Washington Monument, at the brown pall of smoke covering the city of Washington, D.C. What we are trying to do is to provide vehicles that do not contaminate the atmosphere, do not pollute. Electric vehicles are an answer to that problem.

We are attempting to stimulate small business—not big business. Our purpose is not to get the Federal Government into the design or production of electric vehicles themselves, but rather to stimulate small business. Finally, our purpose is not only to save energy, but to save money for the people of our country, because even today we can buy a minimal electric vehicle which will travel at 40 miles per hour for about 40 cents a day—about a penny a mile even where electricity is expensive. We can do much better than that, but we cannot do it unless we get started.

As the President has said, the Energy Research and Development Administration has the authority to carry out research, but not the authority or direction to carry out this kind of program. It has no plans to carry out a program such as that envisioned in H.R. 8800. So, today we have the opportunity to take a major step toward putting a major portion of our energy program in place; to save energy, to reduce pollution, to reduce our imports of oil and to save money for the people of this country.

Mr. Speaker, I believe the President took a regrettable action in vetoing the Electric Vehicle Research, Development, and Demonstration Act of 1976, H.R. 8800. His stated reasons for the veto were both weak and factually inaccurate with regard to the need for and the purpose of the bill.

As the original sponsor of H.R. 8800, I believe the bill is a major step forward in establishing a meaningful, coherent energy policy for this Nation. It is part of an integrated set of congressional initiatives during the 94th Congress aimed at augmenting energy supply and enhancing energy conservation through increased efficiency of energy use and through substitution of other energy sources for petroleum and natural gas. I believe the Congress must override this Presidential veto to keep faith with the American people that we are aggressively pursuing new initiatives for our energy future.

I should like to address further some of the underlying reasons why we need this specific research, development, and demonstration program. As most of the Members are well aware, transportation now accounts for about 50 percent of our petroleum use, and about 40 percent of our petroleum is imported. It also seems likely that we will simply run out of petroleum by the end of this century.

The national energy plan prepared by ERDA makes it clear that we are headed toward an economy which will be more heavily dependent on electrical energy generated from principally coal and nuclear fission, and later in this century, from geothermal and solar energy. Commercial nuclear fusion plants may be a reality early in the next century.

H.R. 8800, the Electric Vehicle Research, Development and Demonstration Act of 1975 is not only consistent with this trend toward an electric economy, but it will actually help to foster this trend. With electric vehicles we can replace imported petroleum with electricity. At the same time we can reduce the flow of petrodollars and develop the technology and economic infrastructure for a new transportation system in this country, which retains the important characteristic of individual freedom of movement.

The gasoline engine would probably have remained unchallenged far into the future if economic, social, and technical factors had remained unchanged. However, the mounting pressures to conserve petroleum and to reduce pollution from vehicle emissions are forcing a trend toward smaller vehicles for short urban commutes. Alternatives to standard automotive propulsion systems must now be completely reevaluated; and of all the alternatives, electric vehicles look most promising.

Mr. Speaker, when considering what can and cannot be done, that will have a significant impact in relieving the problems of the energy crisis, some programs have a much greater value than others because they will have a significant impact in the near future. The Science and Technology Committee has analyzed the energy crisis and tried to provide solutions. We have picked pressure points where a small change in a technology that is socially, economically and environmentally attractive can make a big difference either in increasing our energy resource base or reducing energy consumption.

In addition, we have also sought to find ways to reduce demands for critically short materials, such as natural gas today or petroleum and gasoline in the near future specifically as compared to just reducing energy consumption generally. Switching to electric cars is such a program, particularly for second cars for urban commuting, and it has the advantage that Americans replace 10 percent of their cars each year, and that 40 percent of our cars are second cars.

The initial objective of this legislation is to develop second cars for our citizens and specialized delivery vans for businesses and Government agencies. This constraint, very frankly, is a technical one. The driving range of current electric vehicles is about 60 miles so that they are amenable for immediate use in the 50 percent of those automobile trips which are less than 5 miles.

An EPA report, entitled "Impact of Future Use of Electric Cars in the Los Angeles Region" also has significant calculations of potential oil savings. It states that short-range electric cars could replace 1 million, or 17 percent, of the cars in the Los Angeles basin by 1980.

By 1990, nearly half of the Los Angeles area cars could be electric. Replacements of a similar percentage of our 100 million gasoline-powered vehicles throughout the Nation would have extremely salutory effects, both on our petroleum supplies and urban polution. This is one of three consumer-oriented things we can do to reduce oil and natural gas consumption without serious alteration of lifestyle with the others being to improve energy efficiency in gasoline-powered cars and in the home.

With widespread usage of electric ve-

hicles electric utilities would conserve energy, because the electrical energy demands would be more uniform due to a predominance of recharging of batteries during late night and early morning hours. New more efficient powerplants could replace inefficient old powerplants presently operated to meet peak power requirements in the late afternoon and early evening.

The electric vehicle itself offers some prospect for energy conservation in heavily urban traffic. No energy is used while the vehicle is stopped, and the energy lost in the form of heat during braking is largely recoverable in an electric vehicle equipped with a regenerative braking system to store the recovered energy in the batteries, or perhaps in a flywheel.

While conserving liquid fuels, electric vehicles can also make a significant impact on air and noise pollution. The complicated problem of controlling millions of moving internal combustion engines—present sources of pollution—in a single city can be transformed into the more tractable problem of controlling and monitoring emissions from a few electric generating plants.

A Department of Commerce study in 1967 pointed out that the automobile was the largest single contributor by weight to our national air pollution problem. The Clean Air Act, Public Law 83–206, provided for research on motor vehicle pollutants. As a result, a program on advanced automotive power systems was initiated in the EPA. This program was transferred to ERDA by the Energy Reorganization Act of 1974.

Mr. Speaker, H.R. 8800, the Electric Vehicle Research, Development, and Demonstration Act of 1976, establishes a 6-year, $160 million program for research, development, and demonstration for electric vehicles under the Energy Research and Development Administration. The primary goal of this project will be to demonstrate the feasibility of electric vehicles, including the evaluation and demonstration of more than 7,500 vehicles over the next 6 years.

A primary thrust of this bill is for research and development programs to improve the existing electric vehicles technology. Batteries are a primary area in which the experts agree that major progress can be made in a short period of time. A former Presidential science adviser, Dr. Edward David, of Gould, Inc., testified before my subcommittee that a new, lighter weight nickel-zinc battery could be in production at economically competitive prices within 2 to 3 years from now if a vigorous development program were initiated. ERDA recently announced that commercially feasible, highly superior replacements for the lead-acid battery can be developed within the time period of the 6-year program established by this bill.

However, we are confronted by a sort of chicken-and-egg proposition. Before substantial private funding will be invested to achieve major progress in batteries or other technical areas, there must be a sufficient market for the product. This is a major reason for the Federal participation in electric vehicle research, development, and demonstration. Through the R. & D. programs the solutions to the remaining technical problems which are currently preventing wider acceptance of electric vehicles can be found.

In addition to demonstration and maintenance programs, planning grants and a loan guarantee program will be provided to allow small firms with problems in raising capital to bid competitively for the ERDA contracts and to establish themselves in the electric vehicle industry.

With the demonstration program we will remove the social and economic barriers by stimulating the interest of the American people in electric vehicles. The bill will undoubtedly also encourage the investment of private capital for further R. & D. on electric vehicle technology and for the production of electric vehicles as well.

An article in the October 1975 issue of Consumer Reports graphically shows the need for the three-stage demonstration program included in H.R. 8800. Two electric vehicles which were tested were found unsafe for driving on city streets, because a 30 m.p.h. collision would result in serious injury to the occupants. The ERDA is directed under the three-stage demonstration program to develop by examining the electric vehicles purchased in the first stage performance criteria, including safety criteria, to be used in contracting during the second and third stages.

There will also be considerable prospect for technology transfer from the electric vehicle program to other aspects of our lives. For instances, better batteries in terms of energy storage capacity will be directly applicable to storing electricity generated from solar energy sources such as wind generators and solar cells.

Mr. Speaker, it is clear that this Nation needs a concerted effort to develop and employ electric vehicles on a massive scale. This bill was unanimously approved by the Subcommittee on Energy Research, Development and Demonstration and by the full Committee on Science and Technology.

On September 5, 1975, H.R. 8800 was approved by the House by the overwhelming margin of 308 to 60, which is enormously strong support for any bill authorizing a new $160 million program. This bill passed the Senate on June 14, 1976, by a 72-to-16 vote.

I urge the Members to override the Presidential veto of this very important congressional initiative to conserve energy and reduce our vulnerability to changes in supply and price of foreign petroleum.

Mr. TEAGUE. Mr. Speaker, I yield such time as he may require to the ranking minority member, the gentleman from California (Mr. GOLDWATER), who spent many long hours on this bill.

Mr. GOLDWATER. Mr. Speaker, the conference report on the second concurrent resolution on the budget, fiscal year 1977 confirms my worst fears about the unwillingness of this Democrat-controlled Congress to be fiscally responsible and candid with the American people.

This budget resolution authorizes a $50.6 billion deficit. It is some $3.1 billion greater than the amount President Ford strongly urged the Congress to hold to. There is no doubt that this high deficit level confirms that the Democrats in Congress do not know how to be fiscally responsible.

Spending dollars we do not have and spending large amounts of money on "soft" projects and jobs that produce no real substantial economic impact—produces inflation. A $50 billion deficit is inflationary and let us make no mistake about it: This gross deficit budget encourages and perpetuates the inflation that is robbing senior citizens, stifling the job market, and artificially increasing the cost of all goods and services. It is a Democrat proposal and they should bear the full responsibility for its consequences.

Second, this resolution, by setting an excessive budget outlay level and by setting a high revenue floor precludes the President's proposal for more substantial reductions in personal and business income tax cuts. The only conclusion that can be drawn is that the proponents of this budget bill have placed the burden on the financially strapped American taxpayer and have opted for heavily funding—burdensome and disruptive Federal programs. I urge my colleagues to reject it. This proposal is not in the best interest of efficient government. It makes a mockery of the claims by the Democrats that they are fiscally responsible and it condemns the taxpayer to at least another year of deteriorating economic conditions.

Mr. Speaker, I rise to encourage my colleagues to override the veto of the President of the Electric Vehicle Research, Development, and Demonstration Act of 1976. I was greatly surprised that the President chose to veto this act.

Regretfully, I would have to concur with my colleagues that he may have been misled on this particular piece of legislation.

In his veto message he states:

> It is well documented that technological breakthroughs in battery research are necessary before the electric vehicle can become a viable option. It is simply premature and wasteful for the federal government to engage in a massive demonstration program . . . before the required improvements in batteries for such vehicles are developed.

He goes on to state:

> ERDA already has adequate authority under the Energy Reorganization Act of 1974 and the Federal Non-nuclear Energy Research and Development Act of 1974 to conduct an appropriate electric vehicle development program. Under my fiscal year 1977 budget, ERDA will focus on the research areas that inhibit the development of practical electric vehicles, for widespread use by the motoring public. Included is an emphasis on advanced battery technology.

Let me begin by noting that this legislation passed the House September 5, 1975, by a vote of 308 to 60, and on August 31, 1976, the conference report passed by a voice vote. There was not one dissenting comment made during the

consideration. There was not even one discouraging word registered.

Furthermore, if indeed the administration had serious objections to the adoption of the conference report, the White House did not communicate that message to me before, during, or after the consideration and adoption of the conference report.

The Science and Technology Committee of the House, after extensive investigation and hearings, accurately determined that it is in the best interests of the Nation and any electric vehicle research and development program to do two major things: First, specifically direct ERDA to conduct an electric vehicle research and development program, and to have that direction accompanied by a clearcut program description. H.R. 8800 clearly did that. The evidence received by the committee indicated that this approach was necessary to help ERDA. And the Nation's obvious need for the rapid development of a viable propulsion system alternative to the internal combustion engine demands it. Second, both Houses of Congress determined that it is fiscally and programmatically more sound to simultaneously pursue research and development in both research and development.

The reason is simple. Given the Nation's demonstrated need for transportation alternatives to the internal combustion engine and the need for the rapid development of these alternatives, the pursuit of both R. & D. efforts will mean that as the battery improvements become a viable reality, there will be available vehicles to utilize it. This minimizes utilization delays and maximizes the opportunities for widespread use by the motoring public.

Regarding the President's concern that there will be a wasteful demonstration program, and I presume he means the demonstration program will be undertaken regardless of the state of battery and vehicle technology, I can only say that his advisers have failed to accurately convey the true character of the demonstration program. It is a two-phased program. The Government demonstration program is carefully geared to the anticipated advances in technology that will be produced by the private sector. Both the Science Committee and ERDA can modify or redirect the nature and scope of each aspect of the demonstration program at any point. The Nation is almost totally assured of getting the "biggest bang" for its dollar.

This is not a wasteful, extravagant, or ill-considered program. What is involved here is a difference of opinion over program policy. The Congress is overwhelmingly supported by the evidence that its approach is sound and will be effective.

Mr. Speaker, there are two other points that must be made, and one about which I am greatly concerned is that this not become an internal Government program, but in fact, maximize and utilize the private sector to the greatest extent possible. I am especially concerned that it concentrate much of its resources on, and call upon, small entrepreneurs, small businessmen, all of whom come to us from time to time with innovative ideas.

It is clearly my concern and desire that this approach encompass the small business entrepreneurs, these virtual geniuses who live out in the hinterlands, who have a great contribution to make. In fact, this bill does include small businessmen across the land.

Second, the $160 million authorized in this bill really breaks no budget. As a matter of fact, the President did not raise this as an issue when he vetoed this bill, and it should be remembered that these funds will be spent over a 5-year period.

Mr. Speaker, the objections of the President notwithstanding, I urge my colleagues to override the President's veto.

Mr. MOSHER. Mr. Chairman, will the gentleman yield?

Mr. GOLDWATER. I yield to my colleague, the gentleman from Ohio (Mr. MOSHER).

Mr. MOSHER. Mr. Speaker, I join with the gentleman from California (Mr. GOLDWATER) and with Chairman TEAGUE and most members of the Science and Technology Committee, in supporting the override of the President's veto of H.R. 8800: Electric and Hybrid Vehicle Research Development and Demonstration Act of 1976.

I especially salute the wise and effective leadership of Mr. GOLDWATER in shaping this much needed legislation.

This bill would establish a 5 year, $160 million program to promote the development of improved batteries and demonstrate the viability of electric vehicles by operating test models throughout the country. The specifics of the conference bill are remarkably similar to the bill which passed the House by 308 to 60 on September 5, 1975. The Senate bill passed 72 to 16.

I hate to disagree with my President. I appreciate his concerns in disapproving the bill, but I believe that its current framework actually is structured to mitigate his objections. I suspect the President was not adequately informed concerning the actual thrust of this legislation; and I share part of the blame for that.

H.R. 8800 is designed to complement the work being done in the private sector, not compete with it. The bill includes an integrated game plan for developing improved battery systems and for demonstrating the everyday practicality of electric vehicles.

I concur with the President that it would be unwise to rush into a demonstration program which only used vehicles containing existing technology. H.R. 8800 provides for the purchase of a limited number of vehicles from existing manufacturers in order that we may survey the cross section of what is currently avaliable. This will serve as a baseline for planning further action.

Concurrently, work will be underway to improve battery performance. The final phase of the program will be the demonstration of electric vehicles which embody the improved technology batteries.

Far from being an unwarranted intrusion into the private sector, I believe the Federal program will foster the maturity of a fledging new industry. The electric vehicle can make a significant contribution to our energy conservation goals. H.R. 8800 contains the Federal commitment and focus necessary to make its potential contributions a reality.

Mr. Speaker, I support the override of the President's disapproval of H.R. 8800.

Mr. McCORMACK. Mr. Speaker, will the gentleman yield?

Mr. GOLDWATER. I yield to the gentleman from Washington (Mr. McCORMACK).

Mr. McCORMACK. I thank the gentleman for yielding.

Mr. Speaker, I want to take this opportunity to correct an omission in my previous statement, and that is that I want to pay high tribute to both the gentleman in the well, the gentleman from California (Mr. GOLDWATER), the ranking minority member on the subcommittee, and to the gentleman from Ohio (Mr. MOSHER), the ranking minority member on the full committee, for their wonderful, bipartisan teamwork and support throughout this entire program of developing an energy policy for this country.

Mr. Speaker, this bill is one such example, and the teamwork we have been shown here today has been typical of what has been shown for the last 4 years. I cannot praise them high enough.

Mr. GOLDWATER. I thank the gentleman for his comments.

Mr. Speaker, one of the reasons that makes it very difficult for me to encourage the Members to sustain the veto is the fact that I believe the administration has overlooked the very cooperative nature of the efforts on both sides of the aisle in the creation of this legislation.

I cannot stand here and complain that I did not have an opportunity for input. I truly did, and so did the other members of the subcommittee. It was an effort that took time, but there was a lot of give and take. I truly believe that this legislation represents a compromise from many points of view.

Therefore, it is a program that, I believe, takes care of the criticism that it is extravagant and unnecessary. It is, in fact, a meaningful program, and one that was well thought out. I truly believe it is a program that is needed, and certainly if it had not been for our cooperative and nonpartisan spirit, I would not be standing in the well urging my colleagues to override the President's veto.

Mr. TEAGUE. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. WYDLER).

Mr. WYDLER. Mr. Speaker, I rise in support of the President's veto, and I ask the Members to think seriously about the vote they are about to cast.

This bill that we passed calls for the expenditure of $160 million. It provides, as the veto message indicates, for the purchase of up to 7,500 demonstrational electric vehicles.

Nobody knows if these vehicles are going to work, nobody knows how well they are going to work, and nobody knows what we are going to do with

them if they do not work. I think every Member should think a little clearly about embarking on such a tremendous project, a project of this size and scope, with our budgetary situation in the shape it is at the present time.

I did not vote on this particular bill when it passed the House. It passed more than a year ago. It is just coming up now for our final consideration. If I had voted, I might have voted for the bill at that time; I am not sure. I do not know what I would have done. It certainly was an appealing idea to spend some money and try to help protect the environment by having electric vehicles instead of gasoline-powered vehicles running around.

However, I say to each of the Members who might have voted for the bill a year ago that there are a lot of new facts in existence now that were not in existence then, facts that we just cannot ignore. The main one is that we have this report that I hold in my hand. This is a report of the Federal Task Force on Motor Vehicle Goals Beyond 1980. This report was first issued on September 2, 1976. The Federal task force is made up of several Federal agencies, the Department of Transportation, the Environmental Protection Agency, the Energy Research and Development Administration, the Federal Energy Administration, and the National Science Foundation. The report on page 17 states very clearly the facts in regard to electric vehicles, and I read to the Members as follows from this report:

> The prospects for a highly efficient electric car, in the next 10 years at least, appear to be slim. Substantial technological advancement in batteries would be required before the electric car can offer a commercially viable alternative to gasoline or diesel-fueled automobiles. Current and near-term electric automobile deficiencies in range, payload, performance, cost, and overall energy efficiency would have to be overcome. Electric vehicles are feasible for special purposes (such as small postal delivery vans) and offer flexibility in fuel use, but the total national effect on petroleum consumption within the next 15 years will be minimal.

Mr. Speaker, that is the report of the task force of the Federal Government. I say that we should not fly in the face of this report and its conclusions and require the Government to embark on a major program expending $160 million to buy thousands of vehicles which may never work.

Mr. Speaker, I ask the Members to sustain the President's very sound veto of this bill.

Mr. TEAGUE. Mr. Speaker, for the information of the Members, we should vote on this veto message in about 5 minutes. I have two more speakers.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, very thoughtful members of the Committee on Science and Technology do not always agree on everything, but they are almost unanimously in accord on this measure on both sides of the aisle. There was no real dissent in the discussion of this measure.

Mr. Speaker, the programs will not as the gentleman from New York (Mr. WYDLER) claims, produce vehicles that will not work. The vehicles do work. We have a Member of Congress right here, my good friend, the gentleman from North Carolina (Mr. ROSE), who drives one to and from the Capitol every day.

I myself have demonstrated two of these vehicles, starting 8 years ago. At every place to which I went, we got crowds of people around; and all they were asking me was, "Where can we buy one?"

I had to tell them, "You cannot buy one now." They were not available.

These vehicles are made by small manufacturers, for the most part, who have not been able to acquire the capital in order to be able to mass produce for the market. This bill would provide them with the needed capital.

Mr. Speaker, I think there is no question that there would be a tremendous market for these vehicles.

The cost of this program is not exactly as my friend, the gentleman from New York (Mr. WYDLER), has represented. He says it is $160 million. In point of fact, it is $160 million over 5 years, and $30 million this year; and most of that money will come back to the Government because these vehicles are going to be made available for lease and then sale to municipalities and enterprises that want to use them.

Therefore, Mr. Speaker, the cost of this program is going to be very minimal; and the results are going to be very significant because we are creating the ground work for small businesses to be able to manufacture, on a mass-production basis, vehicles that will save substantial amounts of oil and that will prevent very substantial amounts of pollution.

Mr. Speaker, I think this is a sound piece of energy legislation, as sound as any we could possibly devise. It will provide for very meaningful conservation, and it will provide for very meaningful control of our air pollution problem. I think it deserves to go forward.

I congratulate our chairman the gentleman from Texas (Mr. TEAGUE), the gentleman from Washington (Mr. MCCORMACK), the subcommittee chairman, and the minority leaders, the gentleman from Ohio (Mr. MOSHER) and the gentleman from California (Mr. GOLDWATER), for their leadership in bringing this legislation before us.

I hope the House will resoundingly override this very unsound veto.

Mr. TEAGUE. Mr. Speaker, I yield 1 minute to the gentleman from Maine (Mr. EMERY), probably the most knowledgeable Member in the House of Representatives on electricity.

Mr. EMERY. Mr. Speaker, I thank the chairman very much for his kind and thoughtful remarks.

Mr. Speaker, this legislation is extremely important for a number of reasons.

First of all, we have to find ways in which to reduce our rapidly increasing dependence on oil. The fact remains that while we have debated various alternatives with respect to energy use and energy production, our dependence on foreign oil has reached an all-time high, 50 percent of all oil consumed in this country.

At the same time, Mr. Speaker, most of the oil consumed in this country, nearly half, is consumed in some kind of vehicle. We are very, very dependent upon petroleum for transportation, not only for our private consumption, but for business and industrial purposes as well.

Mr. Speaker, it makes a great deal of sense to put this very modest amount of money into the research, development, and demonstration of electric vehicles. I think it is a very timely bill. Furthermore, compared to many of the other attempts that we have had in this Congress with respect to energy research and development, this bill can provide us with the greatest potential for the least amount of money.

Mr. Speaker, I ask the Members to support the legislation.

Mr. TEAGUE. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. MICHEL).

Mr. MICHEL. Mr. Speaker, I rise in support of the President's veto of H.R. 8800 for several good and sufficient reasons.

The two agencies most directly affected by this bill, ERDA and DOT, both have testified in opposition to it. The major point against the program is simply that existing electric vehicle battery technology has not advanced to the point where it is realistic to have the massive, mandatory, near-term demonstration program provided by the bill. Since the storage battery problem is really the key to the successful development of electric and hybrid vehicles, it is simply unreasonable for the Government to engage in a large-scale demonstration program before the necessary advances are made in battery technology.

It is also clear that since the area of particular need is for the advancement of battery technology, Government research and development should be concerned primarily with advancing battery research and not with the construction of electric and hybrid vehicles as such. In this regard, ERDA already has sufficient authority under the Energy Reorganization Act of 1974 and the Federal Nonnuclear Energy Research and Development Act of 1974 to conduct an appropriate electric and hybrid vehicle research and development program which attaches priority to the advancement of electric vehicle battery technology. Accordingly, the bill would unnecessarily duplicate ERDA's existing authority.

It is clear that the intent of H.R. 8800 to demonstrate several thousands of electric vehicles in the next few years would display the known inadequacies of the present battery technology. Such a premature demonstration of electric vehicles carrying the endorsement of the Federal Government would only reinforce the attitude of the general public that electric cars are toys for hobbyists and not for them. It could "turn off" the general public and prevent the acceptance of the more fully developed electric vehicles.

Finally, Mr. Speaker, I am also concerned about the role of the Government with respect to this program. This bill would make the Government responsible

for bringing about the development of production prototypes of electric and hybrid vehicles. Developing completely new motor vehicles such as these to the point of commercial production, as this bill would require, has traditionally been a matter for private industry on the theory that the Government should not intrude into the private sector any more than necessary. In my view, the appropriate Federal role in this case should be confined to research and development of battery technology—the real heart of the developmental problem—and should not extend into commercial areas private industry is fully capable of pursuing.

Accordingly, Mr. Speaker, I am very much in favor of sustaining the President's veto of this bill and urge my colleagues to vote likewise.

Mr. TEAGUE. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. BROWN).

Mr. BROWN of California. Mr. Speaker, I strongly urge my colleagues today to vote to override the President's ill-advised veto of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976.

I have been, as have other Members, concerned with trying to analyze the possible reasons for the President's veto of this initiative on the part of the Congress.

As other speakers have said, this has been a cooperative bipartisan effort covering a considerable period of time and aimed at developing an essential component of our overall national energy strategy.

It is meritorious in every way. We have been, perhaps mistakenly, led to believe that the administration itself looked with some sympathy on this bill. In trying to determine why the President might have vetoed the bill, one point has occurred to me that may or may not have validity. It is the point that possibly he vetoed it because the initiative did not come from the executive branch. This would be unfortunate if true. The executive branch does initiate most of the legislation that comes before this House, but it should not seek to preempt entirely the House's opportunity and responsibility to initiate good, solid legislation such as this. I hope that it is not the case that such motivation entered into the President's action.

I know that there exists now within the executive branch a multimillion-dollar electric vehicle experimental program. It is not in the Energy Research and Development Administration. It does not have the strong component of research which it should have. It is a program operated by the Post Office Department.

The SPEAKER. The time of the gentleman has expired.

Mr. TEAGUE. I yield 1 additional minute to the gentleman from California.

Mr. BROWN of California. Mr. Speaker, the point that I am trying to make here is that we have this electric vehicle program in the Post Office Department without the necessary framework which is contained in this bill. Hundreds of these vehicles are being used because they are more efficient for post office use than gasoline powered vehicles. The main effort or experiment there is not to improve the vehicles so much but to determine what the maintenance costs and other operating parameters of these vehicles are. The total cost has run into several million dollars for this experimental program.

I commend the executive branch for taking this initiative without a specific framework of legislative authorization. However, I regret that the broader and more necessary program embodied in this bill has not been welcomed with equal enthusiasm by the executive branch.

Therefore, Mr. Speaker, I feel we should override the veto in this case in order to resolve the remaining research problems and proceed with this very desirable program.

Mr. Speaker, one of the pervasive social and industrial problems we face in this country is what I would call "technological inertia." What I mean is this: In some areas we have so specialized and institutionalized our technology that we have established overwhelming barriers to change. Long after the conditions which spawned the technology have passed away, we are often still locked into an out-moded pattern—technologically inflexible dinosaurs facing extinction in a changing world.

Our transportation system is a prime example. Large, powerful gasoline powered automobiles became dominant in an era of cheap and abundant oil, an era of naivete about the health effects of polluted air, and an era of blindness concerning the potential congestion of our inner cities. Our marketing practices and other aspects of our economic system led to a highly specialized and concentrated ground vehicle industry. Today there is an unassailable dominance of a very few corporations in that industry, all producing an almost identical product. There is no doubt that for most urban transportation needs that product is ludicrously inappropriate.

How do we change? How do we bring the needed technological diversity into the personal vehicle industry? The Congress answer, with bipartisan support and advice from wide segments of the industrial and financial communities, was to set up a program to demonstrate the viability of a technological alternative to the internal combustion engine. The electric vehicle represents a technology that is ready for the market place. Though it faces an overwhelming competition with the internal combustion monolith for capital and public attention, many small manufacturers are ready to tool up and show what they can do. The incentives they need are minimal, and providing those minimal incentives to get them over the barriers facing a new automobile producer is what this bill is all about.

If there ever was a technology ready to go, it is the electric vehicle technology. If there ever was a market and industry difficult to change and diversify, in which incentives for innovative approaches are needed, it is the internal combustion automobile industry. If there ever was a technological innovation with societal value, in the sense of preserving scarce resources and preventing damaging environmental effects, it is the electric automobile.

The President's veto message is very weak. He argues that ERDA already has the authority for the program. We know that. The important point is that ERDA has failed to act on the technological opportunity represented by the electric vehicle. ERDA needs a program plan, like the one we have provided, to get it moving. The President argues also that we should rely purely on private industry to develop the electric vehicle; however, there is only one segment of the vehicle industry which has the capital—the existing concentrated auto companies. They are the dinosaurs; they have shown every reluctance to adjust to new conditions. The President can not expect us to seriously believe that a major innovation of this kind will come from corporations which have done all they can to maintain the status quo.

I agree with the President that private industry can and should develop the electric vehicle, but for those outside the tiny circle of large automakers there is little hope of raising capital without an incentive. The best incentive is a reasonable assurance of growing market. This bill will help open up that market and bring us some of the diversity we need in choosing ground transportation.

Let us not miss this opportunity to be technologically flexible, adaptable. I strongly urge that we override the President's attempt at a "technological freeze" in our personal ground transportation system.

Mr. TEAGUE. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. ANDERSON).

Mr. ANDERSON of Illinois. Mr. Speaker, it is certainly apparent at this point in the debate that those of us who rise to urge the support of the President's veto are not espousing a very popular position. Nevertheless I believe the President is right. I think as the gentleman from New York (Mr. WYDLER) pointed out from the draft report of the Federal task force on electric vehicles—and, after all, this was a task force composed of such prestigious organizations within the Government as the National Science Foundation, the Environmental Protection Agency, and the Department of Transportation—that draft report stated that the prospects for a highly efficient electric car in the next 10 years are slim.

Well, what in heaven's name are we doing then by spending $160 million to procure 7,500 vehicles? We ought to, instead, as the veto message points out be working on technological breakthroughs that are going to be necessary with regard to the battery that is used to power those cars.

In other words, Mr. Speaker, in our desire to produce another form of horseless carriage, once again we are putting the cart before the horse.

Also, I have listened to the argument of the gentleman from California (Mr. BROWN) that because these vehicles are being used by the Post Office Department, that proves their efficiency. This is astounding to say the least. I have heard from this floor many times in recent months that there is probably no more inefficient department of the Government

than the Post Office Department, or the U.S. Postal Corporation. So I am not impressed with any claims of efficiency stemming from their use of electric vehicles.

I would suggest that we could spend some money to good advantage to do the research on the battery as the President's veto message points out. But let us not give every bureaucrat here in Washington who wants to run around in an electric runabout a chance to have one of these cars during the next year. Let us sustain the veto.

Mr. TEAGUE. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be determined by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 307, nays 101, not voting 23, as follows:

[Roll No. 738]

YEAS—307

Abdnor
Abzug
Adams
Addabbo
Albert
Alexander
Allen
Ambro
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Ashley
Aspin
AuCoin
Badillo
Bafalis
Baldus
Baucus
Beard, R.I.
Beard, Tenn.
Bedell
Bell
Bennett
Bergland
Biaggi
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breckinridge
Brodhead
Brooks
Brown, Calif.
Brown, Ohio
Burke, Calif.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Byron
Carney
Carr
Clausen, Don H.
Clay
Cleveland
Cohen
Collins, Ill.
Conlan
Conte
Conyers
Corman
Cornell
Cotter
D'Amours
Daniel, R. W.
Daniels, N.J.
Danielson
Davis
de la Garza
Delaney
Dellums
Dent
Derrick
Diggs
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Oreg.
Duncan, Tenn.
du Pont
Early
Eckhardt
Edgar
Edwards, Calif.
Eilberg
Emery
English
Eshleman
Evans, Colo.
Evins, Tenn.
Fary
Fascell
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Forsythe
Fountain
Fraser
Frenzel
Frey
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Grassley
Green
Gude
Guyer
Hagedorn
Haley
Hall, Ill.
Hamilton
Hanley
Hannaford
Harkin
Harrington
Harris
Harsha
Hawkins
Hayes, Ind.
Hechler, W. Va.
Hefner
Heinz
Hicks
Holland
Holtzman
Horton
Howard
Hughes
Hungate
Ichord
Jacobs
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan
Karth
Kasten
Kastenmeier
Kazen
Ketchum
Keys
Koch
Krebs
Krueger
Lagomarsino
Lehman
Lent
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lujan
McCloskey
McCormack
McDade
McEwen
McFall
McHugh
McKay
Madden
Maguire
Mahon
Mann
Martin
Mazzoli
Meeds
Melcher
Meyner
Mezvinsky
Mikva
Milford
Miller, Calif.
Mills
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Pa.
Natcher
Neal
Nedzi
Nix
Nolan
Nowak
Oberstar
Obey
O'Hara
O'Neill
Ottinger
Patterson, Calif.
Pattison, N.Y.
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Pressler
Preyer
Price
Pritchard
Quillen
Randall
Rangel
Rees
Reuss
Rhodes
Richmond
Riegle
Rinaldo
Rodino
Roe
Roncalio
Rooney
Rose
Rosenthal
Rostenkowski
Roush
Rousselot
Roybal
Runnels
Russo
Ryan
St Germain
Santini
Sarasin
Sarbanes
Scheuer
Schroeder
Schulze
Seiberling
Sharp
Shipley
Simon
Sisk
Slack
Smith, Iowa
Solarz
Spellman
Spence
Staggers
Stark
Steed
Steelman
Stokes
Stratton
Studds
Sullivan
Symington
Talcott
Taylor, N.C.
Teague
Thompson
Thone
Thornton
Tsongas
Udall
Ullman
Van Deerlin
Vander Veen
Vanik
Walsh
Wampler
Waxman
Weaver
Whalen
White
Whitehurst
Whitten
Wilson, C. H.
Wilson, Tex.
Winn
Wirth
Wright
Yates
Yatron
Young, Ga.
Young, Tex.
Zablocki
Zeferetti

NAYS—101

Anderson, Ill.
Archer
Armstrong
Ashbrook
Bauman
Bevill
Biester
Breaux
Brinkley
Broomfield
Brown, Mich.
Broyhill
Buchanan
Burgener
Burke, Fla.
Butler
Cederberg
Clancy
Clawson, Del
Cochran
Collins, Tex.
Conable
Coughlin
Crane
Daniel, Dan
Derwinski
Devine
Dickinson
Edwards, Ala.
Erlenborn
Evans, Ind.
Fenwick
Findley
Fish
Gradison
Hall, Tex.
Hammer-schmidt
Heckler, Mass.
Henderson
Hightower
Hillis
Holt
Hubbard
Hutchinson
Hyde
Jarman
Jeffords
Kindness
LaFalce
Landrum
Latta
Levitas
Lott
Lundine
McClory
McDonald
McKinney
Madigan
Mathis
Michel
Miller, Ohio
Montgomery
Moore
Myers, Ind.
Nichols
O'Brien
Passman
Patten, N.J.
Paul
Quie
Railsback
Regula
Roberts
Robinson
Rogers
Ruppe
Satterfield
Schneebeli
Sebelius
Shriver
Shuster
Sikes
Skubitz
Smith, Nebr.
Snyder
Stanton, J. William
Steiger, Wis.
Symms
Taylor, Mo.
Traxler
Treen
Vander Jagt
Vigorito
Waggonner
Wiggins
Wilson, Bob
Wolff
Wydler
Wylie
Young, Alaska
Young, Fla.

NOT VOTING—23

Carter
Chappell
Chisholm
Esch
Ford, Tenn.
Hansen
Hébert
Helstoski
Hinshaw
Howe
Johnson, Pa.
Jones, Tenn.
Kelly
Kemp
Leggett
McCollister
Matsunaga
Metcalfe
Risenhoover
Stanton, James V.
Steiger, Ariz.
Stephens
Stuckey

The Clerk announced the following pairs:

On this vote:

Mr. Jones of Tennessee and Mrs. Chisholm for, with Mr. Hébert against.

Mr. Chappell and Mr. Helstoski for, with Mr. Hansen against.

Mr. Matsunaga and Mr. Risenhoover for, with Mr. Kemp against.

Mr. Leggett and Mr. Howe for, with Mr. Kelly against.

Mr. Metcalfe and Mr. Ford of Tennessee for, with Mr. Steiger of Arizona against.

Mr. Stephens and Mr. James V. Stanton for, with Mr. McCollister against.

Messrs. MADIGAN and SIKES changed their vote from "yea" to "nay".

So, two-thirds having voted in favor thereof, the bill was passed, the objections of the President to the contrary notwithstanding.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. McFALL). The Clerk will notify the Senate of the action of the House.

CONFERENCE REPORT ON H.R. 10612, TAX REFORM ACT OF 1976

Mr. ULLMAN. Mr. Speaker, I call up the conference report on the bill (H.R. 10612) to reform the tax laws of the United States, and ask unanimous consent that the statement of the Managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see Proceedings of the House of September 13, 1976.)

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the statement.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Oregon.

Mr. ULLMAN. Mr. Speaker, let me relate to the Members of this body exactly what the parliamentary situation is so that there will be no misunderstanding.

What is before the House at this time is the basic conference report, not the gift and estate tax provision.

Our first vote will be to accept the conference report, and the first hour of discussion, it seems to me, should be on that conference report. It is an extremely long and complex piece of legislation which I hope the Members will study because it has far-reaching consequences. After we vote on the conference report, then we will bring back to the House in technical disagreement the provision relating to gift and estate taxes, and at that time I will move to recede and concur with an amendment. That will encompass another hour of debate which will be devoted exclusively to the gift and estate tax provision.

At the conclusion of that time, we will have the previous question on that issue and, hopefully, we will have approved the previous question and have an up or down vote on the matter in technical disagreement. I will discuss that matter further during the second hour, but I hope that this first hour we can devote to the rest of this conference report.

I am bringing before the House the conference report on the Tax Reform Act of 1976. This is a major effort to simplify the tax law and make it more equitable. It extends the 1975 tax cuts through calendar year 1977, and makes some of those tax cuts permanent. Also, it improves the administration of the tax laws, especially to strengthen taxpayers' rights.

In terms of budget receipts in fiscal year 1977, the tax reform sections of this bill raise $1.6 billion. The extension of the tax cuts will reduce budget receipts by $17.3 billion in fiscal year 1977. Therefore, the net tax cut in the upcoming fiscal year will be $15.7 billion. This is consistent with the second budget resolution.

There were many people who thought that Congress would not achieve such a significant amount of tax reform. The tax reform sections of the Senate bill involved a revenue loss of $300 million in fiscal year 1977, compared to a gain of $1.6 billion in the House bill. That we have been able to achieve a revenue gain equal to the original figure in the House bill indicates how well the conferees have upheld the House position.

This bill embodies more tax reform than is indicated by the net revenue figures, because the bill includes some very popular, tax-reducing reforms. Looking only at the tax-increasing provisions, the bill raises $3 billion in fiscal year 1977, $3.5 billion in fiscal year 1978 and $4.8 billion in fiscal year 1981. The major share of these tax increases falls on high-income people who are not now paying their fair share of the tax burden.

These tax increases are partly used to finance tax-reducing reforms—largely estate and gift tax reductions, a liberalization of the child care and retirement income credits and incentives for employee stock ownership and capital accumulation. These tax-reducing reforms total $1.4 billion in 1977, $2.5 billion in 1978 and $3.8 billion in 1981.

Thus, the net revenue gain from the tax reform provisions is $1.6 billion in 1977, $1 billion in 1978 and $1 billion in 1981.

This was a long, arduous conference. The House bill was almost 700 pages, while the Senate amendments were 1,000 pages long. There were 250 important differences between the two bills, each of which had to be reconciled in conference. The conferees met from early morning until late at night. I want to commend the House conferees—Congressmen BURKE, ROSTENKOWSKI, LANDRUM, VANIK, SCHNEEBELI, and CONABLE—for their hard work and effective performance on this bill.

Let me summarize the major provisions of the conference report.

The bill mounts a concerted attack on tax shelters in each of the areas where they are now used. These include real estate, oil and gas, farming, equipment leasing, movies, and sports franchises. The House bill would have eliminated the use of any deduction from these tax shelters against unrelated income, in effect eliminating the tax shelter aspect of the investment. The Senate, however, rejected this concept—the limitation on artificial losses, or LAL—and instead applied a variety of rules to limit shelters. The Senate rules were adequate in some areas, but in key areas, like real estate and oil and gas, they were clearly not strong enough to stop tax shelters.

The House conferees adopted a pragmatic approach. Our aim has been to eliminate the provisions in existing law that enable high-income people to avoid paying income tax. We did not feel tied down to the specific approach used in the House bill as long as the basic objective of ending tax shelters was achieved.

Therefore, in areas where the Senate provisions were largely adequate to eliminate tax shelters, such as farming, movies, equipment leasing, and sports franchises, we agreed to the Senate rules, usually with some strengthening amendments. In the areas of real estate and oil and gas, where the Senate provisions were too weak, we have been able to obtain significant concessions from the Senate. We have come up with a bill that will eliminate the real abuses of tax shelters in these areas and greatly reduce the ability of high-income people to avoid paying income tax. The shelter provisions will raise over $500 million when fully phased in.

Both bills contained a significant tightening of the minimum tax on tax preferences. The Senate bill extended these changes to corporations. Here, the conference adopted many of the strongest features of each bill. For individuals, the conference bill raises the minimum tax rate from 10 to 15 percent and lowers the exemption to $10,000. It reduces the deduction for regular taxes to half, makes that deduction an alternative to the exemption, and eliminates the carryover of regular taxes. Finally, it adds new preferences to the base. These changes will raise over $1 billion in 1977, quadrupling the revenue from that tax. For corporations, the conference agreed to most of the Senate provisions increasing the minimum tax.

The House agreed to a Senate amendment that tightened the "preference offset" to the maximum tax on earned income. This will deny the benefit of the 50-percent maximum rate on earned income to the extent that people use tax preferences.

Except in extraordinary cases, the tax shelter and minimum tax provisions should make it unlikely that high-income people will pay no Federal income tax. This is a major achievement.

The bill makes substantial simplifications in some of the most complicated, widely used provisions of the tax law. It liberalizes and simplifies the retirement income credit, and it converts the child care deduction into a 20-percent credit. The bill simplifies the child care provision and broadens eligibility for it. The sick-pay exclusion, perhaps the most complicated provision of the law for the average taxpayer, is repealed, except for those who are permanently and totally disabled. Also, the bill converts the alimony deduction into a deduction that may be taken by those who use the standard deduction. Tax tables are simplified and made available to more taxpayers.

Perhaps the greatest simplification from the standpoint of the average taxpayer is the increase in the standard deduction that is made permanent in the bill. This will make it worthwhile for those who file 9 million tax returns to switch from itemizing their deductions to using the standard deduction.

The bill restricts several tax abuses associated with business expense deductions of individuals. These include deductions for business use of the home and rental of vacation homes, which too often are artificially inflated by taxpayers, and deductions for foreign conventions. The bill also eliminates the tax preference for stock options, which is no longer needed because the maximum rate on earned income is now 50 percent.

Some of the most significant tax reforms deal with the taxation of foreign income. These include getting rid of the per country limitation which permits foreign losses to be offset against U.S. income, the subsequent recapture of tax benefits arising from foreign operations which are used against U.S. income when income is earned abroad, the repeal of Western Hemisphere and China Trade Act Corporations, and limiting the rate of taxes eligible for credit in the case of oil companies to a 48-percent rate. Here we had to strike a delicate balance between eliminating unjustified incentives for foreign operations instead of domestic operations and also encouraging the free flow of trade and capital across national borders. Abuses of the foreign tax credit, especially by multinational oil companies, are curtailed, and the bill eliminates a variety of incentives for investment in particular regions of the world. The bill also raises a sizable amount of revenue by cutting back the DISC tax incentive for exports. These changes will raise $600 million.

A very difficult issue for the conference was a Senate amendment denying various tax benefits to companies participating in the Arab boycott of Israel. I am strongly opposed to the boycotts, but this is such a delicate problem involving complex issues of foreign policy that had to be dealt with very carefully. Therefore, we have tried to draft a boycott provision that is much more workable than the original Senate amendment.

The bill makes important changes in the taxation of capital gains and losses. These largely follow provisions that were in the House bill. The holding period defining long-term capital gains is increased to 1 year, except for agricultural commodity futures contracts, and the amount of ordinary income against which capital losses may be deducted from $1,000 to $3,000. This will increase taxes on successful speculators while reducing taxes on those with losses. Also, the use of swap funds to avoid capital gains tax is eliminated; and rules regarding taxation of stock options are changed to prevent conversion of ordinary income into capital gains. Both of these last two changes have been passed by the House. Finally, the capital gains tax is reduced for senior citizens who sell their home.

The tax increases I have just described, along with some other, smaller tax reforms, raise $100 million in 1977 and $500 million by 1981. A substantial part of this revenue is used to finance tax reduction—many of which have been sought for a long time by Members of the House.

The principal tax-reducing reform involves estate and gift taxes. As you know, I have been committed to passing this year a sizable estate and gift tax cut for small and medium-sized estates. I preferred to do it in a separate bill, but the

parliamentary situation and the fact that only a few more weeks remain in this Congress mean that it is unlikely that such a separate bill can be enacted this year. Therefore, we have worked out a series of estate tax cuts and reforms in the conference. We are bringing this package back to the House in technical disagreement to give the House a chance to vote on estate and gift tax reform.

The major elements in the estate and gift tax package are an increase in the estate tax threshold—the level at which estates become taxable—from the current $60,000 to $175,000. This estate tax cut is phased in over a 5-year period. In order not to benefit unduly the larger estates, this tax cut takes the form of a credit in place of the $60,000 exemption; and existing rates, which range from 3 to 77 percent, are replaced with a rate scheduling ranging from 18 to 70 percent.

Other estate and gift tax reductions in the bill include an increase in the marital deduction to permit larger tax-free transfers between husbands and wives and a provision allowing farms and small businesses to be valued at use-value rather than fair market value.

The conferees felt very strongly that the long-run budget picture is sufficiently tight that these estate and gift tax cuts, which amount to $1.5 billion per year when fully phased in, must be financed by estate and gift tax reforms. Currently, the estate and gift tax laws are far too inequitable. Many large transfers avoid a large amount of estate or gift tax, while others are subject to tax at very high rates.

The conference report achieves a substantial measure of estate and gift tax reform. In large part, these reforms follow the bill reported by the Ways and Means Committee. The report unifies the estate and gift taxes and imposes a special tax on generation-skipping trusts. These changes sharply limit two common ways of avoiding transfer taxes.

A third major tax reform requires heirs to carry over the basis of decedents, rather than use as their basis the fair market value at time of death. This important change is made entirely prospective and will only apply to appreciation after the end of this year. Carryover of basis will greatly reduce what is now the major source of tax avoidance by high income people—the step-up in basis at death.

I urge the House to support the conference committee on the carryover issue. While carryover of basis deserves to be supported on its own merits, it also should be supported as part of a total package that has been carefully worked out. If carryover is defeated, it places the whole estate and gift tax package in jeopardy; and I can no longer guarantee that the estate and gift tax reduction can be enacted this year.

Finally, let me say that, sooner or later, Congress is going to have to face up to the issue that over $15 billion of incomes goes entirely untaxed each year because of the step-up in basis at death. This is a major tax loophole. Most of this income accrues to very wealthy people. The carryover provision in this bill is quite lenient—providing a "fresh start," a $60,000 minimum basis and an additional exclusion for $10,000 worth of personal and household effects. It is unlikely that future legislation on this subject would be as lenient.

I will outline briefly the more significant estate and gift tax reforms contained in this bill.

First. Unification of estate and gift taxes.—The bill provides a single unified rate schedule for estate and gift taxes. The rates are progressive on the basis of cumulative lifetime and deathtime transfers. Under this unified structure, the total tax on cumulative lifetime and deathtime transfers will result in treating taxpayers who have transferred a portion of their property during lifetime somewhat better than taxpayers who retain their property for transfer at death.

Second. Unified credit in lieu of present exemption.—The bill provides a unified credit against estate and gift taxes, phased in over 5 years. The credit provides a substantially higher tax-free level than the specific exemptions of $60,000 for estates and $30,000 for gifts under present law. The amount of the credit is $30,000 for estates of decedents dying in 1977 and increases $5,000 each year until 1981 when the credit is $50,000. In 1981, when fully phased in, the credit is equivalent to an exemption of $175,625.

Third. Marital deduction.—The bill increases the estate tax marital deduction for small and moderate-sized estates by allowing a marital deduction for property passed to a surviving spouse up to the greater of $250,000 or one-half of the decedent's adjusted gross estate. In addition, the bill increases the gift tax marital deduction in the case of lifetime gifts to a spouse.

Fourth. Separate valuation rule for farms and small business.—The bill provides that the executor may elect to value real property included in the decedent's estate which is devoted to farming or other closely held businesses on the basis of such property's value as a farm or closely held business, rather than the property's fair market value determined by taking into account its "highest and best use." However, this special valuation cannot reduce the value of the decedent's gross estate by more than $500,000.

Fifth. Liberalization of rules for delaying estate tax payments.—The bill liberalizes the present requirements that must be met in order to obtain an extension of time for the payment of estate tax and extends the period over which payment of estate tax attributable to a closely held business can be made from 10 to 15 years. Under this new provision, the executor can elect to defer payment of the entire estate tax for a period of 5 years and, thereafter, pay the tax in installments over the next 10 years. In addition, the interest rate on the estate tax attributable to the first $1 million of farm or other closely held business property is to be decreased from its current rate of 7 percent to a permanent rate of 4 percent.

Sixth. Carryover basis.—The amendment provides a "carryover basis" for property acquired from a decedent dying after December 31, 1976. Under this provision, the cost or other basis of property in the hands of the executor and heirs of the decedent is to remain the same as the basis of the property in the hands of the decedent immediately before his death. However, all taxpayers are given a "fresh start" and thereby permitted to step-up their basis in appreciated property to its fair market value on December 31, 1976.

The amendment also allows the basis of an asset to be increased by the amount of the estate tax attributable to the appreciation in the asset. In addition, the bill provides a minimum aggregate basis of $60,000, and an additional $10,000 exclusion for personal and household effects.

Seventh. Imposition of tax on generation-skipping transfers.—The bill imposes a tax in the case of generation-skipping transfers under a trust or (similar arrangement) upon the distribution of an intervening interest in the trust. The tax is to be substantially equivalent to the transfer tax which would have been imposed if the property actually had been transferred outright to each successive generation. A limited exception allows one generation to be skipped in the case where the generation-skipping transfer is to a grandchild of the grantor but the maximum amount that can be transferred under this exception without the imposition of a generation-skipping tax is to be $250,000.

In addition to the above-listed major reforms, the bill provides a number of administrative and miscellaneous provisions designed to correct problems that exist under the present estate and gift tax law.

Another set of tax reductions in the bill deal with capital accumulation. The United States does not now have an adequate rate of business investment. What is worse, we have no public policy of stimulating investments. We are clearly going to have to make major policy changes to encourage capital accumulation. The Ways and Means Committee has had a task force working on this problem since February, and this group will recommend major changes in the taxation of income from capital.

This bill contains only a more modest set of tax reductions designed to stimulate investment. The 10-percent investment credit and tax cuts for small business are extended. Also, the deductibility of net operating losses is liberalized, which will encourage riskier enterprise. There are tax incentives for employee stock ownership and investment in airlines and railroads and in pollution control facilities.

The Senate amendment included a substantial number of tax reductions designed to encourage energy conservation and production. The House conferees insisted that the conference delete these Senate amendments because we thought they should be considered in the context of the more comprehensive energy tax bill passed last year by the House. The Senate Finance Committee has reported this House bill, amending it to include the energy-related title of the Senate version of the tax reform bill and adding a ½-cent increase in the gasoline

tax to finance the tax incentives. I urge the Senate to move forward with legislation on this pressing issue.

The Tax Reform Act of 1976 also extends the 1975 tax cuts. The changes in the standard deduction are made permanent at the level enacted for the first half of 1976 in the Revenue Adjustment Act of 1975. The general tax credit of either $35 per person or 2 percent of the first $9,000 of taxable income and the earned income credit are extended through 1977. Also, the corporate tax rate cuts for small businesses are extended through 1977. The 10-percent investment credit is extended through 1980.

On a calendar year basis, these individual and corporate tax reductions total $21 billion. In view of the unacceptably high rate of unemployment—and the extremely rapid rise in unemployment in the last 3 months—extending this fiscal stimulus is essential. Indeed, the high unemployment rate and relatively sluggish economic growth in the past few months make it imperative that the new administration, together with Congress work up and implement a plan for rapid economic recovery.

The conference report also includes a series of very important administrative changes. These protect taxpayers' rights with respect to tax return disclosure, private letter rulings, jeopardy and termination assessments, mathematical errors and other areas. The withholding system is tightened in several respects, particularly for gambling winnings. There are also administrative changes dealing with charitable organizations and private foundations.

With respect to these administrative provisions I want to commend the chairman of the Subcommittee on Oversight of the Committee on Ways and Means, the gentleman from Ohio (Mr. VANIK), who has held a great many hearings and who participated very actively both in the committee and in the conference in bringing these major administrative reforms to us.

These provisions I have summarized are just the most important parts of this bill. This bill as a whole represents a major step toward tax reform and deserves to be enacted. It is the product of 3½ years of work by the tax-writing committees—work which has been largely a bipartisan effort.

Tax reform, however, is an ongoing process. There will have to be more major tax legislation in the next Congress. The bill directs the staff to conduct a study of tax simplification, particularly for the individual income tax. As I have said, the Ways and Means Committee is studying how to encourage capital accumulation, and we will have to act on that problem as well. A task force is also studying the taxation of married and single persons. Passing the Tax Reform Act of 1976 will enable us to move ahead in these other directions.

I hope, therefore, that the House will agree to this conference report.

Mr. ADAMS. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I yield to my friend, the chairman of the Committee on the Budget, the gentleman from Washington (Mr. ADAMS).

Mr. ADAMS. Mr. Speaker, I thank the chairman of the committee for yielding.

I want to compliment the committee chairman and the conferees on what they have done. The bill does meet the budget. I am in full support of the conference report, and I think it was an excellent job that was well done in a difficult area.

Mr. ULLMAN. Mr. Speaker, I thank my friend, the gentleman from Washington.

Mr. Speaker, at some time during this consideration I would be glad to yield for any questions, but at this time I will reserve the balance of my time.

Mr. SCHNEEBELI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 10612. I believe that on balance this report well merits the support of the House. Like any bill of this size and complexity, it contains many pluses and minuses. I do not think that in the brief time which we have for debate on the conference report, I should attempt any comprehensive review of the conference agreement, but would rather focus on only some of the provisions.

The reason I do that, Mr. Speaker, is that this conference report is 645 pages long, and to get into any details would certainly require more time than the half-hour that we are allowed on this side.

Mr. Speaker, the conferees agreed to extend most of the individual income tax reductions passed into law at the end of 1975. The general tax credit which grants a taxpayer a credit of $35 per personal exemption deduction or two percent of the first $9,000 of taxable income, whichever is greater, and the earned income credit are extended through the end of 1977. The changes in the standard deduction made in late 1975 are now made permanent.

I have no particular argument with this extension of the individual tax cuts. Certainly the American people are already far overburdened by Federal, State, and local taxation, without this body acting to increase their taxes even further. I do regret, however, that these cuts are not accompanied by any reductions in Federal spending. This is a fight led by the President and from our side over the past year. I am hopeful that the Congress will eventually approach this problem responsibly and associate further tax reductions with much-needed reductions in Federal spending.

The conference report also includes provisions extending through 1980 the increase in the investment tax credit to 10 percent, the reductions in the corporate tax rates and the increase in the corporate surtax exemption which were enacted in late 1975. The changes in the corporate tax rates and the surtax exemption are especially important to small business, to which they mainly apply. The investment tax credit action is, in my opinion, vital in order to spur much-needed capital investment in our economy and to provide new jobs for Americans.

In other major provisions, the bill significantly restricts the use of tax shelters and substantially increases the minimum tax on both and individuals and corporations, which I think we will come to regret, particularly as the minimum tax inhibits investment in capital assets. The bill also provides for amended tax treatment of domestic international sales corporations, applying an incremental base rule for the computation of benefits under the DISC provisions of the Internal Revenue Code.

In addition, the conference report contains a multitude of minor provisions, which range all the way from encouraging the preservation of historic structures, allowing spouses to establish joint individual retirement accounts, and encouraging pollution control to investment in architectural changes to aid handicapped persons, all of which I support.

Unfortunately, the bill also contains what some like to term minor provisions, but which may have far-reaching effects over the long run. In particular, I am opposed to section 2601 of the conference report, which relates to group legal services plans. The conferees agreed to exclude from an employee's income amounts which an employer contributes to a qualified group legal services plan on behalf of employees and also to exclude from income the value of any personal legal services received by an employee or any amounts reimbursed to an employee under such a plan for such legal services.

Although the conference report makes this provision effective for the 5-year period 1977–1981. I am convinced that once this gets into the law, it will be virtually impossible to remove. Although I know that most of the legislation which the Congress passes, particularly extremely complex legislation such as this bill, constitutes a full employment program for lawyers, in my opinion, section 2601 is a lawyers' relief act without precedent. Given an opportunity to do so, I would certainly move to strike it from the bill.

Nonetheless, on balance, I feel that this conference report is a good one, and would urge the support of my colleagues for it.

In closing, I would also like to refer just briefly to the estate and gift tax provisions agreed upon by the conferees, which will be considered separately by the House upon conclusion of consideration of the conference report, inasmuch as the estate tax provisions were reported back by the conferees in technical disagreement. I believe the estate tax provisions to be basically good ones, particularly those which increase the credit against the new unified estate and gift tax to a level equal to an exemption of approximately $175,000 over a 5-year period, as compared to the present $60,000 exemption, increase the marital deduction to the greater of $250,000 or one-half of the deceased's adjusted gross estate, and the several provisions which provide relief for owners of farms and small businesses. My principal objection to the estate and gift package relates to

the carryover basis provisions agreed to by the conferees.

Although the carryover basis provision agreed to by the conferees is an improvement over the provision in the Ways and Means Committee bill, inasmuch as the present provision permits a stepup in basis for income tax purposes to the value of the asset at the end of 1976, nontheless I believe that it should be dropped from the bill. It will create a lock-in of capital assets, since those who receive property with a low carryover basis will be encouraged to hold property longer than economically desirable merely because of the large capital gain which will be realized upon sale. Also, this provision may result in substantially higher taxes for a number of farms and small businesses in those cases where executors are forced to sell assets in order to meet estate tax liabilities, thereby creating substantial capital gains tax liabilities.

It is a needless complication in the law and I hope that my colleagues will support our effort to strike this provision from the estate and gift tax package, which we will make on an attempt to defeat the previous question at the conclusion of debate. Except for this provision, however, the estate and gift tax provisions agreed upon by the conferees are a substantial improvement in the law.

Mr. ICHORD. Mr. Speaker, will the gentleman yield?

Mr. SCHNEEBELI. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Speaker, one of the most outrageous loopholes, in my opinion, in the inheritance tax law is the skipped generation trusts.

What does the bill now provide for with respect to the skipped generation trusts?

Mr. SCHNEEBELI. Skipped generation trust provisions were agreed upon by the conferees. They are included not in the conference report, but in the separate package of estate and gift tax provisions reported back in technical disagreement. The House will vote on that package separately. The only difference between the generation-skipping provisions agreed upon by the conferees and the provisions in the House bill is that in the House bill the limit on certain tax free generation skipping transfers to grandchildren was $1 million per child of the donor. The conference provision limits such transfers to $250,000 per child of the donor.

Mr. ICHORD. That is in there?

Mr. SCHNEEBELI. Yes, that is in there.

Mr. ICHORD. I thank the gentleman.

Mr. SCHNEEBELI. Mr. Speaker, I do have a question to ask the gentleman from Oregon (Mr. ULLMAN), the chairman of the committee, with respect to section 1321.

I want to get a clarification of the term "customer connection fee" for purposes of the contribution in aid of construction provision of the tax bill. Under the conference agreement, are any fees or amounts paid by a customer to a water or sewer public utility in order to have a main extended by the utility to a place immediately adjacent to the customer's property considered as not a customer connection fee?

Mr. ULLMAN. Will the gentleman yield?

Mr. SCHNEEBELI. Of course I yield to the gentleman from Oregon.

Mr. ULLMAN. Mr. Speaker, the answer is yes. However, any fees or amounts paid by a customer in order to install or connect the utility's main to the customer's property are considered a cost to the customer.

Mr. SCHNEEBELI. Mr. Speaker, I thank the gentleman from Oregon for that explanation. Again, Mr. Speaker, I very solidly and roundly congratulate the chairman of the House conferees, the gentleman from Oregon (Mr. ULLMAN). He did a great job. I think we have a sound and very reasonable report and I recommend it to the Members.

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield, I want to also publicly commend the gentleman from Pennsylvania (Mr. SCHNEEBELI) and the gentleman from New York (Mr. CONABLE), who were the two minority conferees, for their cooperation and coordination. I found it to be a real fine experience. Only with that cooperation could we have achieved this kind of responsible report.

Mr. SCHNEEBELI. Mr. Speaker, again I thank the gentleman from Oregon. I believe that when one considers the very complexity of the discussions that were involved, we crossed swords very seldom.

Mr. Speaker, I reserve the balance of my time.

May I inquire, Mr. Speaker, how much time I have consumed?

The SPEAKER. The Chair will state that the gentleman from Pennsylvania has consumed 7 minutes.

Mr. ULLMAN. Mr. Speaker, I yield 5 minutes to a member of the conference and a distinguished member of our committee, the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Speaker, the conference report that we have before us today is the product of almost 4 full years of congressional deliberations on the subject of tax reform. For those of us on the Committee on Ways and Means, it is particularly significant since this report represents more hours than we frankly wish to remember of taking testimony and marking up legislation (during the past two Congresses). Hearings on the subject of tax reform began on March 5, 1973. And only last Thursday evening, after a very long, but quite productive conference, this report was actually signed.

But I take the floor today, seeking neither sympathy or praise for the individual members of the Ways and Means Committee, but rather to seek support for what I fairly believe is legislation that all in this Chamber can and should support. In doing so, I am happy to point out that after our extensive conference all 18 conferees—11 from the Senate and 7 from the House—chose to endorse this conference report. We did this not so much because we all believe the bill is perfect * * * for it is not; but rather, we were unanimous in our belief that it represents a sound, well thought out compromise that both the House and Senate could, with enthusiasm, support.

When the Senate finally passed its version of this tax bill during the month of August and called for a conference with the House, there were those, including some in this Chamber, who articulated the view that it would be worthless to take the bill into conference. There were those who felt it was better to abandon almost 4 years of legislative work rather than attempt to reconcile our House-passed bill with an admittedly far different Senate version. I even recall receiving a letter from one "public interest" legislative lobbying group that skeptically spoke of the need for "a legislative miracle in this preelection period for the conference on H.R. 10612 to sustain even those minimal reforms passed by the House." They also declared that whatever the result of the conference with the Senate, it was "bound to undermine the new congressional budget procedure on which so much hope has been placed."

To my friends from Common Cause who were so quick to abandon us on the eve of our conference, I do admit that the conference report we have before us is not a legislative miracle, but it is a good piece of legislation. And, as to "undermining the budget process," it is true that although we did not recapture the full $1.93 billion in tax revenues deleted by Senate amendments, we were able to recover $1.9 billion of it.

Credit for this result and for the overall soundness of this final bill must be given to my very good friend from Oregon, the distinguished chairman of the Committee on Ways and Means, AL ULLMAN. He has brought through conference legislation that has been promised the American people for many years, but several times in the previous Congress, weaker versions of tax reform never even made it to the House floor. This legislation embodies not only a permanent reduction in tax liabilities for most Americans, it also substantially simplifies the Code and tightens many of the more serious loopholes in the present tax system.

In addition, Chairman ULLMAN has brought back to the House a delicately negotiated compromise on estate and gift tax reform with which all in this Chamber can feel comfortable. Here the gentleman from Oregon has again delivered what he has promised to the full House and delivered where others have failed to do so. It is this compromise that reforms the estate and gift tax provisions of the Code and brings the needed relief to the millions of Americans whom inflation alone has made subject to the estate tax. This compromise package is the first extensive revision of estate and gift taxation in more than 30 years. My colleagues, the estate and gift tax package designed by our chairman is the last, best chance for reform in this area in the near future. When offered as a separate amendment, it deserves the vote of

all who seek to see estate and gift reform in the closing days of this Congress.

The chairman of the committee has already outlined to the membership the major points embodied in this conference report and the report itself has been available to the Members for several days.

Let me, in brief, underscore what I believe are the key points to be remembered in voting on this conference report.

First, and foremost, is the issue of revenue. This is a barometer not only of our commitment to tightening the tax code, but also the true gage of our support for the budget system in the Congress. In my opinion, the conference compromise meets that test. The original House bill raised slightly more than $1.63 billion in revenue for the upcoming fiscal year. The Senate bill would have lost almost $300 million in the same period of time. The conference report in front of us will raise $1.6 billion in the next 12 months. Certainly the revenue impact of the House position has been preserved, preserved to the point where here the word "compromise" might not even be appropriate.

Second—simplification. The more than 20 titles of this bill presently before the House not only represent reform but they represent simplification. It should be remembered by all who might be apprehensive about the sheer size of this bill, that much of it is designed to simply delete unnecessary code provisions and reduce to more direct English those sections that must remain. Unfortunately, it requires an extensive number of words in this bill to remove the excessive number of words in the code itself.

Third, this bill does meet the test of tax reform. The chairman has already highlighted for the membership the key points in the area of reform.

In short, this is a good bill. On virtually all key points it is quite close to the House bill. When adopted, it will stand as one of the high water marks of this Congress. I urge my colleagues to give it their complete support.

I want to congratulate both my chairman and the gentlemen on this conference committee with whom I serve, particularly the gentleman from Pennsylvania (Mr. SCHNEEBELI), the gentleman from New York (Mr. CONABLE), the gentleman from Massachusetts (Mr. BURKE), the gentleman from Georgia (Mr. LANDRUM), and the gentleman from Ohio (Mr. VANIK). It was a well worthwhile experience.

Mr. SCHNEEBELI. Mr. Speaker, I yield 7 minutes to the gentleman from New York (Mr. CONABLE).

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Massachusetts.

Mr. CONTE. I thank the gentleman for yielding.

Mr. Speaker, as an early cosponsor of legislation to reform the estate and gift tax law, I take great pleasure today in speaking in favor of this provision of the Tax Reform Act, H.R. 10612. This estate and gift tax reform section marks the first significant change to the Federal estate and gift tax code in almost a generation, and I join with other sponsors of this legislation in saying it is long overdue.

Since the law was last amended in 1948, inflation has shrunk the buying power of the dollar by two-thirds. But no proportional changes have been made in the bite on modest-sized estates by the Federal inheritance tax laws.

As the Federal representative of a district with numerous farms and small family-owned businesses, I am dismayed by the severe impact of the Federal Estate Tax Code upon these estates at the time of probate. All too often, family farms and closely held business firms must be sold to pay the Federal inheritance taxes. To destroy the small family farm and the closely held family firm through our tax policy is expressly contrary to our national interest.

Passage of this provision before the House today is mandated if farmers and small businessmen are to be able to pass along their enterprises intact, as well as family heirlooms and antiques, to their immediate heirs without overly harsh penalties.

In my western Massachusetts district, the most visible effect of this legislation would be on dairy farmers. About 400 dairymen operate commercial farms in my district, and all of them are small, family enterprises.

During the frequent meetings I have with my dairy farmers, one of their foremost concerns they express is reform of the Federal Estate Tax Code. Uniformly, they have urged quick passage of the bill introduced by our distinguished colleague from Texas, Representative OMAR BURLESON, which would have raised the estate tax deduction from $60,000 to $200,000.

I am pleased to see that the bill before the House would have virtually the same impact.

Dairy farming is not a highly profitable operation in New England. In the past 3 years, dairymen suffered gravely due to inflation, escalating feed and fuel costs, inefficient transportation, massive competition from cheap, subsidized dairy products imported from Europe, and decreasing market revenues. Many dairy farmers were forced to terminate their operations, few sons or relatives remained with their family's farm, and no new dairy operations were started from scratch. Older dairymen complained to me that they saw little chance of passing along their farms to their sons or daughters because of the Federal inheritance tax laws, and because of this they predicted a continuing shrinkage of the dairy industry in New England.

The value of the average farm in Massachusetts today is close to $225,000, but that is a "paper value" that could only be realized by selling out.

There are strong local needs for preserving these farms. In the Bay State, only 16 percent of the food consumed is locally produced. The remainder must be imported from other States. Food reserves are low and transportation costs are high, which accounts for why consumers pay 9 percent more for food products in Boston than in other regions of the Nation.

The number of Massachusetts farms and the amount of acreage in production is dwindling. But forecasts for 1980 show that demand for locally produced dairy products will rebound sharply. So it is important to remedy our tax laws today so that the farms we will need tomorrow will still be available.

This provision now before the House, reforming the estate and gift tax laws, goes a long way toward preserving the family farm and the small family business.

Most importantly, this provision increases the size of the estate on which Federal inheritance taxes would be levied. To maximize the possible tax relief for medium-sized estates, this estate tax section also changes the exemption into a more valuable tax credit, which is subtracted from the final tax bill due.

In addition, there is a sharp increase in the marital deduction in this bill. For small and modest-sized estates, property worth up to $250,000 could be passed tax-free to the spouse of the deceased.

Two other provisions in this bill are of very special interest to family farmers and small family businessmen.

First, this legislation would allow the executor of an estate, if he chooses, to value the real property in the estate devoted to farming or the closely held family firm on the basis of the property's value as a farm or closely held business. In other words, the property's fair market value would not have to be determined by taking into account its "highest and best use." This provision would protect family farms from being bankrupted by escalating assessments due to land speculation and developers.

Second, the bill also provides longer periods of time for closely held businesses to pay any Federal estate taxes due. In some cases, the period could stretch up to 15 years, with no payments required for the first 5 years. This provision would allow greater continuity in operations while sufficient cash could be generated to pay the tax bill.

Mr. Speaker, reform of the estate and gift tax laws is an important step toward reducing the heavy burden of Federal inheritance taxes on medium-sized estates and preserving the family farm and closely held business. I strongly urge passage of this estate tax reform section and the conference report to H.R. 10612, the tax reform bill.

Mr. CONABLE. Mr. Speaker, I rise in general support of the conference report on H.R. 10612, an enormously complex bill, the major provisions of which have already been described by those who have preceded me in the well.

I should like to express my gratitude also to the chairman of the Committee on Ways and Means, the gentleman from Oregon, Mr. ULLMAN, for the patience he exhibited in advancing the House version of this complex bill. There is no question about it, despite some of the comments that have been made, there were struck very few blows for simplicity in this legislation.

As a matter of fact, the tax code is already as wide as human experience.

The historical complexities that have been engrafted into it make it very difficut to deal with, certainly impossible to deal with simply, if we are to retain any degree of equity.

I also would like to thank the chairman for having handled this matter in such a way that we can deal, first of all, with the conference report as a whole, and express our acceptance or our rejection of it. I intend to vote to accept the conference report because I feel in balance it is good.

I am going to describe to the Members some of the reservations I have about it before I leave the well this time. The chairman has also brought back in disagreement the estate and gift tax provisions, which will permit me to move against the previous question for the purpose of changing one provision, and one provision only—that relating to the restated cost basis carryover.

That he has made it possible, I appreciate, because I think there are some serious philosophic disagreements about the carrying over of a decedent's cost basis from one generation to another hereafter, despite the fact that it has been compromised to strip out all appreciation up to the end of this current year.

I would like to comment briefly on some of the major provisions of the bill and make comments which are mostly negative. I do not want anyone to misunderstand me, however. I think on balance the bill is good. I think my colleagues, however, should understand what they are doing to the tax law with regard to particular provisions. In some respects I think we are off on the wrong foot.

Tax shelter provisions first. Title II of the conference report on the Tax Reform Act contains the so-called tax shelter provisions. As much as anything, this was the central idea of the bill. To be frank, I am disappointed in much of the action the conferees took in this area. I supported the limitation on artificial accounting losses concept, the so-called LAL which was included in the House-passed version of the bill. I believe the limitation on artificial losses concept approaches most of the tax shelter abuse problem directly and I think that is the way we should do it.

The conferees, however, rejected the LAL approach, as did the Senate. It is true that the conference agreement contains a number of desirable capitalization and amortization requirements with regard to certain expenses which arise in a number of these economic activities, in particular, real estate and syndicated farming. For example, the conferees have agreed upon what I believe to be reasonable capitalization and amortization rules in the real estate area with respect to construction period interest and taxes. Equally, I believe that a number of the capitalization requirements in the farm syndicate area are reasonable ones.

Basically, however, the conferees have relied heavily upon the so-called "at risk" restrictions on deductibility of expenses with regard to a number of these tax shelters, limiting deductions to the amount which the investor in question is "at risk" in the activity. In a number of cases I do not believe that this is necessarily a desirable approach.

Also, the tax shelter provisions agreed upon by the conferees raise substantially less revenue over the next 5 years than do the House-passed provisions, although considerably more than the Senate-passed tax shelter restrictions.

Next, the minimum tax provisions. Generally, title III of the conference report deals with changes in the minimum tax. The second source of my objections to what the conferees have done in the tax shelter area is that in rejecting the LAL approach, we have ended up relying very heavily on increasing the minimum tax superstructure in our law. It is my belief we would do much better to deal with any abuses directly.

The conference agreement increases the minimum tax rate on individuals and corporations from 10 to 15 percent. It reduces the exemptions substantially for purposes of computing the minimum tax. It adds important new items of tax preference.

I am opposed to this reliance on the minimum tax because I have seen what it has done to effective tax rates on capital gains, by including the portion of net long-term gains excluded for purposes of computing the regular income tax in the minimum tax base. This "preference" is included under minimum tax now. At present we raise substantial revenues from the minimum tax on the part of capital gains excluded from the regular income tax and thereby inhibit much needed capital formation.

I think many of our colleagues believe we should be reducing the tax rate on long-term capital gains. In fact we are increasing it by increasing the minimum tax. With respect to individuals, up to the present time 85 percent of the revenue from the minimum tax has come from taxation of the previously untaxed portions of long-term capital gains.

In increasing revenues from the minimum tax by over a billion dollars in fiscal year 1977, which increase will gradually rise to about $1.5 billion by fiscal year 1981, I believe we are going down the wrong road.

The so-called tax preferences were enacted to further what we thought at the time to be desirable social and economic goals. Subjecting income deliberately not heavily hit by the regular income tax to a substantial minimum tax seems to me a contradictory policy.

With regard to the extensions of individual income tax reductions, title IV of the conference agreement contains all the individual income tax reductions contained in the Revenue Adjustment Act of 1975 through the end of 1977, and makes the increase in the standard deductions permanent. I have no particular argument with this extension of the individual tax cuts. However, I continue to be concerned about the fact that the Congress refuses to address the question of adequate spending cuts to accompany such tax cuts, contrary to what the President has requested repeatedly and to the position taken by most Members on the minority side.

The SPEAKER pro tempore (Mr. BENNETT). The time of the gentleman from New York (Mr. CONABLE) has expired.

Mr. SCHNEEBELI. Mr. Speaker, I yield 3 additional minutes to the gentleman.

Mr. CONABLE. Mr. Speaker, this fight has been waged in this Chamber repeatedly over the last year and I see no point in discussing it at length at this time. Ultimately, however, whatever the realities of the present political season, we must face the responsibiilty of matching these attractive tax reductions with the more difficult spending reductions.

We come now to capital formation and small business provisions. Titles VIII and IX of the conference report contain the capital formation and small business provisions of the bill. The conferees extended the present 10 percent investment tax credit to the end of 1980. I am not a particular advocate of the investment tax credit approach, preferring realistic depreciation schedules and allowances. What concerns me most about the conferees' actions in this area, however, are the provisions which will permit a total investment credit as high as 11½ percent if the employer establishes a qualified employee stock ownership plan.

This potential additional 1½-percent credit may cost the Treasury as much as hundreds of millions of dollars per year. I believe it to be an essentially gimmicky approach which the Congress would be well-advised to restrain. I am particularly concerned about the damage which growth of these ESOP plans might do to the well-established and more traditional profit-sharing and pensions plans, upon which so many American workers rely.

With regard to Domestic International Sales Corporations—DISC's—the conferees attempted to compromise competing needs and philosophies in this area. I have supported the DISC concept strongly in the past. I believe the conference compromise is a workable one which will retain the major portion of DISC benefits and the incentive for the creation of American jobs which results from those benefits, while at the same time reducing the revenue loss.

Essentially, the conference agreement provides for continued DISC benefits to the extent that current gross export receipts exceed two-thirds of a DISC's gross receipts in a 4-year base period. Until 1980, this base period will be the 4 taxable years from 1972 through 1975. In 1980 the base will begin moving forward 1 year each year thereafter. I think that this is a reasonable compromise.

I would also like to comment at this time with regard to the estate and gift tax provisions recommended by the conferees. Although these provisions are not included in the conference report, since they were reported back in technical disagreement, they will be considered as a group on the conclusion of the House's consideration of the conference report. I intend to ask for a no vote when the motion to recede and concur comes.

The estate and gift package includes a number of desired changes in the law. Some of the major changes are the unification of the estate and gift taxes, a unified credit against those taxes which will rise over a 5-year period to a level equal to an exemption of approximately $175,000, and an increase in the marital deduction for estate tax purposes to the greater of $250,000, or one-half of the decedent's adjusted gross estate.

In addition, the conferees agreed to alternate real property valuation provisions with regard to certain real property devoted to farming or other closely held businesses, extended the time for payment of estate tax liabilities in the case of farms or other closely held businesses and restricted "generation skipping" transfers which can be made free of estate taxation. Overall, I think that these provisions constitute a desirable change in the law.

The SPEAKER pro tempore (Mr. BENNETT). The time of the gentleman from New York has again expired.

Mr. SCHNEEBELI. Mr. Speaker, I yield the gentleman 1 additional minute.

Mr. CONABLE. Now, in my opinion, the House's action on the rule on H.R. 14844 forced this improvement by the conferees. I find the recommended carryover basis provision most unfortunate. It will produce complex and time-consuming litigation between taxpayers and the Government. It will inhibit the free transfer of property because of the "lock-in" effect and, as a result, encourage people to hold property far beyond the time when prudence would otherwise dictate its disposition.

In addition, potentially, this provision will have some of its harshest effects on farms and small businesses, many of which are held in the same families for generations, and which are often illiquid. This illiquidity often forces executors to dispose of various capital assets in the estate in order to satisfy estate tax liabilities. If the recommended carryover provision is adopted, such dispositions may trigger new large capital gains liabilities as well.

I will go into this issue in more detail in connection with our consideration of the estate tax and gift package. I raise the matter now to inform my colleagues as early as possible with regard to my opposition to this provision.

I will offer a substitute estate and gift tax package which will be identical to that reported by the conferees except for the deletion of the carryover provisions.

Mr. ULLMAN. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. VANIK) a member of the committee and member of the conference.

Mr. STARK. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from California.

Mr. STARK. Mr. Speaker, I would like to thank my esteemed colleague from Ohio for yielding to me, and take this opportunity to thank the chairman of the Committee on Ways and Means, the ranking minority member and the conferees for producing what I think is an outstanding bill.

Mr. Speaker, as the House takes final action on this Tax Reform Conference Report, I would like to call the Members' attention to a section of this act which will have far-reaching effects on the right of privacy of most citizens. This provision, section 1205, which I authored will in effect give all taxpayers the right to be notified before the IRS examines their financial records. This will apply to records that are not in the actual possession of the taxpayer—those held by a creditor, an accountant, or a credit card issuer to cite some examples. When issuing an administrative summons on the third party record holder for the taxpayer's records, the taxpayer will automatically be notified of the summons, and will have the right to request that the record keeper not comply with it. Should the IRS seek court action to enforce it, the taxpayer will for the first time have the right to appear in court, along with the record holder, to raise his own defense against enforcement.

This new procedure will for the first time preclude the IRS from conducting widespread fishing expeditions in all our financial records. This sort of safeguard is absolutely essential. I would like to call to the attention of my colleagues the fact that this notice requirement is intended to apply in all cases of attempted access by the IRS to records covered by the section. Once this procedure is law, there will be no more informal access to records by any IRS agent or employee.

The language of this provision will go a long way toward guaranteeing the right of privacy that so many of us expect, and do not realize is often taken away by these agents. I commend my colleagues, especially in the Ways and Means Committee, for having supported this essential section, and know that an end to informal access by the IRS to all our records will be tremendously important both to those who have cared about this problem, and to those who have been unaware of it. With this language in the law, they will never have to discover that the right of privacy they thought they had in fact did not apply in these kinds of situations.

I would like to thank the California Bankers Association, the northern California ACLU and the many others who worked on this provision.

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. VANIK. I yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, I rise in support of this conference report, although I do so with reluctance. I believe it is a much better product than the bill reported by our Ways and Means Committee and passed by the House. The worthwhile provisions of this massive piece of legislation slightly outnumber its drawbacks, justifying my vote in its favor.

I must say, however, that the bill is misnamed, and has been misrepresented in the press. Let us not fool ourselves that this is a substantial reform of the Tax Code. Reform means to amend or to improve by change. I doubt that many Members believe the addition of several hundred pages of complex tax provisions will improve the already byzantine Internal Revenue Code. During the 15 months that this bill has been under consideration, its proponents constantly said that their goals were simplicity and equity. The sad truth is that any equity contained in this bill is more than offset by its failure to simplify anything. The one sure thing about this bill is that it is a boon to the Nation's tax lawyers and accountants.

I commend the conferees for making several excellent deletions in the House bill, particularly in eliminating the destructive concept of LAL. I continue to believe that LAL would have played havoc with the capital market in businesses particularly sensitive to capital formation. I do question the wisdom of increasing the number of preference items under the minimum tax and suggest we may be forced to modify these provisions in the future.

The bill contains some helpful items that will encourage business expansion and create new jobs. The extension of the corporate surtax exemption and the investment tax credit are the two most prominent examples. I believe that a real reform of the Tax Code would involve inclusion of similar provisions, such as elimination of the double taxation on dividends, improvement of the asset depreciation range, reduction of the corporate income tax, and exclusion of the first $1,000 of capital gains. These are included in the Jobs Creation Act, a most important bill introduced by Congressman KEMP which I have cosponsored. Through the encouragement of corporate growth and creation of permanent jobs in the private sector, this bill would result in a greater GNP and greatly increased Treasury revenues. The first steps in this direction are contained in this conference report, and deserve encouragement.

I am pleased that this conference report also contains a revision of the archaic 1942 estate and gift tax laws. However, the provisions do not go as far as they should. Merely to offset for inflation, the existing exemption level of $60,000 should be increased to $200,000. Still, the credit of $47,000 equal to a $175,000 exemption is an improvement over the House bill, and is worthy of support. I continue to object strongly to the carryover basis provision, however, and will vote to remove that section of the bill.

In voting for this conference report I am fully aware of the amount of work that remains to be done in tax reform. I have proposed an indexing of the tax code to offset the tax increases due to inflation, and believe we should give serious consideration to eliminating most

deductions and exemptions and replacing them with one flat tax rate to be paid by all. In the future I intend to work for these measures, so that someday we may have a Tax Reform Act worthy of the name.

Mr. VANIK. Mr. Speaker, I support the conference report as it comes to the House. It represents a landmark achievement for Chairman AL ULLMAN and the House conferees. The report is evidence of the preservation of the House position on major issues.

The conference, in its nature, limited the conferees to adjustment of the differences between the Houses. The conference report is not perfect, but it is the best that the House could do in reconciling differences with the other body.

It must also be noted that this conference, unlike any previous conference on a tax bill, did its work in the open. The sessions were well attended. There were even a few citizens without special interests who managed to take the time out to visit the conference and watch the proceedings. Positions were openly stated and votes were publicly taken. The conference demonstrated that an open conference can work and resolve the very complicated problems and issues involved in tax legislation.

In a statement in yesterday's CONGRESSIONAL RECORD, I outlined my differences and dissent on certain positions, and support for others. I have reservations about provisions relating to the estate tax which I will discuss when we get to those provisions, but the conference report which is submitted today deserves the support of the House.

Mr. SCHNEEBELI. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. STEIGER).

Mr. STEIGER of Wisconsin. Mr. Speaker, I rise in support of the conference report. Others have stated it well, that this is a conference report done in the open. The conference worked well; the conferees did an extraordinarily good job under difficult circumstances.

But, it is not without its problems. I might, for the benefit of my colleagues, simply point to two of those from my standpoint. One is the fact that there is a retroactive application of the new minimum tax changes and the at-risk provisions, which means that for taxpayers in this country who, in good faith, made decisions in 1976 based on the existing code, suddenly will find those decisions subject to new taxes without any real knowledge or any real opportunity to have done anything about it. That is a problem, and I think all of us will hear from constituents who will have that kind of experience facing them when this bill is approved and, I hope, signed into law.

The second, and one that disturbs me much more than any other, was the decision of the conference, because of budget pressure, to delete the House-passed benefit of section 1502, on the limited individual retirement account—LIRA. This will live to fight another day, and I would not want the conferees, the joint committee staff, the House Ways and Means Committee or others to think that I have given up that fight to establish a degree of equity in terms of those who are presently discriminated against because they belong to a qualified pension or profit-sharing plan, but that plan is inadequate, and they are precluded from establishing an IRA. I think they ought to have that right, and I hope that will come forth in 1977.

There is another problem, and I would like to have the attention of the chairman of the Committee on Ways and Means to raise an issue that is dealt with in title XII of the bill, on the administrative provisions. Under the present law, the National Institute of Occupational Safety and Health receives from IRS, in its efforts to trace employees or former employees of companies in an effort to track down those who may have been exposed to toxic substances or to carcinogens.

The SPEAKER pro tempore. The time of the gentleman from Wisconsin has expired.

Mr. SCHNEEBELI. Mr. Speaker, I yield one additional minute to the gentleman from Wisconsin (Mr. STEIGER).

Mr. STEIGER of Wisconsin. Mr. Speaker, under the provisions of section 12, the conferees have deleted NIOSH from the list of Federal agencies which will have access to tax records not for tax purposes but for names, tracing names. I wonder if the chairman is aware of the problem and if it is possible for us to find a way to solve it, either by legislation soon, or administratively.

Mr. ULLMAN. Mr. Speaker, will the gentleman yield?

Mr. STEIGER of Wisconsin. I yield to the distinguished gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Yes, the Chairman is very conscious of the problem. It was not drawn to the attention of the conferees in sufficient time to take care of it there. It cannot be taken care of, as the gentleman knows, in this conference report. But I am in full accord with the gentleman, it is a problem that we need to take care of, and at the earliest moment it will be our purpose to look into that problem and try to resolve it.

Mr. STEIGER of Wisconsin. I thank the Chairman very much.

It is partially my fault and it is partially the fault of a lot of other people. I should have caught it, and none of us did. I regret we did not catch it in time to help the conference resolve the problem.

Mr. ULLMAN. If the gentleman will yield further, I thank the gentleman for his interest in this whole field. He has given us real leadership, and we certainly will be following his leadership in trying to find an answer to this problem.

Mr. STEIGER of Wisconsin. I thank the gentleman very much for his comments.

There are, Mr. Speaker, other provisions which are of interest to me. Section 1707 of the conference version contains provisions similar to H.R. 14683 which I joined in introducing with other members of the Ways and Means committee. This section is of great value since it will allow a mutual fund to pass through tax exempt interest to its shareholders. This creates a new mandate for municipal funds.

Section 1207 is also of interest to me since it embodies legislation . I first introduced. I am pleased that the conferees adopted the Senate version concerning State income tax withholding for military personnel. This mandatory approach is preferable since it aids those in the military who do not know they have a State tax liability but suddenly find themselves with substantial lump sum payments due when the State finds them.

Mr. ULLMAN. Mr. Speaker, I yield myself such time as I may consume, and I yield to a member of the committee, the gentleman from Louisiana (Mr. WAGGONNER).

Mr. WAGGONNER. Mr. Speaker, I thank my distinguished chairman for yielding.

I would like to utilize a moment or two to clarify by colloquy a couple of issues.

First, Mr. Speaker, with regard to section 1032 of the bill, it is my understanding that the conference agreed to accept the House version, with the qualification that the effective date for possession losses would be delayed only 3 years instead of the 5 years shown in the House version; is that a correct statements?

Mr. ULLMAN. If the gentleman will yield, the gentleman is correct. The answer is yes. The House version had a 5-year delay in effective date for loss recapture, but the conferees compromised this and agreed to a 3-year delay. In addition, there is apparently some misunderstanding over this, and we will make every effort to clarify it as soon as possible.

Mr. WAGGONNER. Mr. Speaker, to deal with the issue surrounding the question of boycotts, I would like to inquire as to the effective date of the antiboycott provisions under the conference agreement.

The Senate bill initially provided an effective date of 30 days after enactment. However, during the conference, I am advised, the House conferees insisted upon taxpayers being given a period of time in which to reorganize or restructure their existing operations or commitments to avoid future participation in or cooperation with international boycotts, operations or commitments which were not penalized prior to the adoption of these new provisions. As finally approved, this conference agreement does give taxpayers until December 31, 1977, to accomplish this result if their operations are carried on pursuant to a binding contract in existence on September 2, 1976.

However, Mr. Speaker, there are a number of international operations that are not carried on pursuant to the terms of binding commercial contracts but rather are mandated under the laws, edicts, or regulations of foreign host governments—with an even more binding effect on the operations involved.

In view of this, Mr. Speaker, could you advise whether it was the intent of the House conferees to construe the term "binding contract" as it appears in the conference agreement to include operations or agreements that as of September 2, 1976, were being carried out pursuant to the requirements of foreign host government laws, edicts, or regulations?

Mr. ULLMAN. The gentleman is correct. As the gentleman indicated, the reason for the exceptions to the 30-day-after-enactment effective date was to give taxpayers time to rearrange or restructure their pre-September 2 operations or commitments, as long as they make no agreements to participate in a boycott after that date. If no such agreement is made, the provisions will not apply until after December 31, 1977.

Mr. WAGGONNER. I thank the gentleman for that answer. I believe the gentleman from New York (Mr. CONABLE) would like to speak on this particular issue.

Mr. CONABLE. Mr. Speaker, will the distinguished chairman of the committee yield to me for a question?

Mr. ULLMAN. Yes, I yield to the gentleman from New York.

Mr. CONABLE. Mr. Speaker, the provisions denying foreign tax credits and certain other foreign tax benefits to U.S. taxpayers which participate in an international boycott are to be based on a determination by the Secretary of the Treasury or by Internal Revenue agents. In determining whether the taxpayer has in fact agreed to participate, it is my understanding that the burden of proof is to be on the Government. Is that not correct?

Mr. ULLMAN. Yes, the gentleman is correct. As the proposal was agreed to by the conferees, the initial determination by the Secretary of the Treasury or by an Internal Revenue agent is to be made only if the preponderance of the evidence available indicates that the taxpayer has agreed to participate in the boycott. This burden of proof is thus slightly different than that applied in ordinary tax cases. However, once it has been established that the taxpayer has agreed to participate with respect to any operations, he is to be treated to have participated with respect to all his operations in boycotting countries unless the taxpayer can clearly demonstrate that he has not in fact participated. In the making of the initial determination by the Department of Treasury, the mere failure to do business with any company or in any country for good business reasons does not imply an agreement.

Mr. CONABLE. Mr. Speaker, I thank the gentleman for his answer.

Mr. BURLESON of Texas. Mr. Speaker, will the gentleman yield to me?

Mr. ULLMAN. I yield to the gentleman from Texas.

Mr. BURLESON of Texas. Mr. Speaker, we are about to finalize the most important legislation to come before this session of Congress. The report accompanying this bill is 646 pages and there are wide differences of opinion as to the meaning and effect of many provisions. It is highly technical and complex. When this bill is labeled as "reform" it certainly does not include simplification of the tax code.

Mr. Speaker, the conference report before us is a product of days and days of drafting and redrafting. Months of study and debate went into the formulation of this bill and yet there remains many, many sections subject to interpretation. When this measure is finally enacted into law, it will create business for tax lawyers and accountants.

Seldom do we get legislation here on this floor which pleases everyone. This is a situation which totally pleases no one. It becomes a matter of balancing what one perceives to be desirable with that found to be objectionable. In other words, it is not all bad but it certainly is not all good.

Time will permit only the mention of two areas in this measure to which I object and think to be absolutely unacceptable. The first is another attack on intangible drilling costs. This can have no other effect than to restrict exploration. It only applies to individuals. In other words, the independent oil operators who do the exploring. It does not apply to the "big oil" companies because it is not applicable to corporations. This provision is self-defeating and is absolutely unconscionable.

The other undesirable feature appears in the estate and gift tax provision. An "appreciation tax" is now imposed instead of the section 6 in the committee bill when it was separate from this omnibus tax bill but which got fouled up in procedures here on the floor last week. It is still a capital gains tax regardless of what it is called. It is new in the tax code and in 4 or 5 years will hit the small and medium size estates, the very people we are trying to help in this legislation.

For these reasons, Mr. Speaker, I am going to vote against this conference report and hope that there is opportunity of eliminating the capital gains feature of the estate and gift tax. As we all know, under the procedures here today, there is no way to even get the chance of eliminating this section applicable to the intangible drilling costs.

Hopefully there may be a way found to reverse the action here today by the Senate. Chairman ULLMAN has indicated that he would be willing for the House to have opportunity for a direct vote on this issue when that is possible. We know it is not in order under the rules governing this conference report. I hope we can have such an opportunity before the serious damage is done which is certain to occur under this provision.

Mr. ULLMAN. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. PIKE).

Mr. PIKE. Mr. Speaker, I thank the gentleman for yielding this time to me. I might suggest that the committee chairman sit down for just a moment because I want to say some kind words about him.

I have been in the Congress for 16 years now, and most of that time was spent on a committee on which there was no balance. It did not matter too much what one thought in the Committee on Armed Services because the military was going to get what it wanted anyway.

On Ways and Means the chairman of the committee has had a very difficult role because the committee has been and is philosophically balanced and we get tough, close votes on issues most of the time. The committee chairman deserves a great deal of credit for keeping the committee hard at work toward the goal of arriving at compromise provisions. The gentleman has done a superlative job in this regard.

I did not think 30 days ago that we were going to have a tax reform bill or an estate tax bill this year. I believe this has in a sense been a legislative miracle, and a great deal of this is due to the fact that this sense of fairness, this sense of compromise, and this willingness to plug ahead to get the job done has gotten the job done.

Mr. Speaker, this is not a perfect bill. It is, however, a bill that gives us a better tax code, a fairer tax code, and a more just tax code, and I am happy to support the conference report.

Mr. ULLMAN. Mr. Speaker, I thank the gentleman for his kind remarks. Let me add that the gentleman from New York (Mr. PIKE) is a great member of the Committee on Ways and Means.

Mr. PICKLE. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from Texas (Mr. PICKLE), a member of the committee.

Mr. PICKLE. Mr. Speaker, I thank the chairman of the committee for yielding.

Mr. Speaker, I would like to inquire about a provision dealing with condominium associations with respect to certain income that is received by the association. Under the provision in the conference report, section 1301, would money which is set aside for a reserve fund for painting and repairs to the exterior of the building and other such maintenance work be excluded from taxation? In this case, the money would be paid by the co-owners in their maintenance fees.

In addition, I would also like to inquire whether under this provision in the bill money that came from the tenants paying a parking fee would not be taxable income to the condominium as long as the money came from only the co-owners, and the money was placed only in the maintenance budget?

Mr. ULLMAN. The answer would be "Yes" to both of those questions.

Mr. PICKLE. Mr. Speaker, there are many things in this 646-page conference report that I would rather were not there. For example I believe that the provisions in the bill pertaining to the intangible drilling deduction will have just the opposite result from the result intended. I believe that the provisions in the bill will result in the independent oil and gas producers being squeezed out of business. The big oil companies can still afford to drill for oil because they have the necessary income to offset their losses. However, the independents, who have historically done the greatest percentage of the drilling for wildcat and exploratory wells, will not be able to attract the necessary capital to do the job. Overall this will undoubtedly have the unintended effect of slowing down our search for energy reserves at a time when we most need to encourage it. We

must try to correct this inequity and I hope we can advance it in a separate bill soon.

I also have grave doubts about the carryover provisions adopted by the conference committee. I believe that these provisions will have serious implications, not immediately, but a few years down the road. This provision that requires that for a decedent dying after December 31, 1976, the basis of all assets will be stepped up to their fair market value on December 31, 1976, is in reality an income tax provision, and has no place in an estate tax reform bill. Further, the administrative problems and complexity of this provision will keep the lawyers and accountants busy for years.

This provision will start hurting not immediately, but assuming we still have our present rate of inflation, it will hurt in a few years. People who die 5 years from now will feel the effects of this tax when their estates are probated, and their families will find that they are having to pay a high tax on property that they thought was just the family farm. All the heirs will be faced with the difficult task of determining what was the actual value of the land or farm on December 31, 1976.

However, in spite of these reservations, and other reservations about other parts of the bill, I am voting in favor of the bill because I believe this is the last chance we have for meaningful estate tax and income tax reform this session. The overall reform of the estate tax laws are long overdue. The committee has worked long and hard to resolve our differences, and this is the best compromise that we could agree on. It is not a perfect bill, but it is a workable bill that will accomplish the overall aims of raising the exemption for estate tax, and will also provide for assessing farms and small businesses on the basis of use.

The bill also has a strong effect in making the tax laws more fair, especially by strengthening the minimum tax. At the same time, the bill recognizes our capital needs by increasing the investment tax credit, and lowering the tax on small corporation. All in all, I will be supportive.

Mr. ULLMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. JONES).

Mr. JONES of Oklahoma. Mr. Speaker, I, too, want to extend my compliments to the chairman for his tenacity in bringing this bill to the point where it is today.

Mr. Speaker, I would like to ask a question of the distinguished Member from Oregon (Mr. ULLMAN) concerning section 1035(c) of the bill. Section 1035 (c) relates to the foreign tax credit and production sharing contracts.

Earlier this year, the IRS issued a ruling which holds that the contractor under a production sharing contract in Indonesia is not entitled to a foreign tax credit. However, the ruling was made applicable only to future years because the IRS was of the view that, prior to the issuance of the ruling, the companies involved had reason to believe that they were entitled to a foreign tax credit. In order to give the oil companies operating under existing production sharing contracts a reasonable period of time to renegotiate these contracts with the foreign governments so as to conform to the new IRS position, section 1035(c) of the bill allows the foreign tax credit for 1 more year for payments made under production sharing contracts entered into before April 8, 1976.

In some cases, after April 8, 1976, the Indonesian Government has asked the contractors to immediately make available funds in excess of existing contract obligations.

Where the basic arrangement that makes the contract a production sharing contract and subject to the ruling is unchanged, but the Indonesian Government's share was increased, will the contract be treated as a contract entered into before April 8, 1976, under the terms of section 1035(c) of the bill?

Mr. ULLMAN. The intent of the legislation is to make the foreign tax credit available for 1 more year for existing contracts to which revenue ruling 76–215 applies. As long as the fundamental terms of the arrangement, which makes it a production sharing contract and subject to the IRS ruling, were entered into before April 8, 1976, and are not changed, the amendment is applicable.

Mr. JONES of Oklahoma. Mr. Speaker, I thank the gentleman.

Mr. ULLMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana (Mr. FITHIAN).

Mr. FITHIAN. Mr. Speaker, I rise in support of the bill as the best piece of legislation we could get, and I commend the chairman for this effort.

Mr. Speaker, I rise in support of Mr. ULLMAN's motion and I would urge my colleagues to join me in voting today for reform in our tax laws. This can be a great day for all of us who are concerned about preserving the family farm and family-owned businesses in America.

By voting for the Tax Reform Act with its provisions designed to modernize estate and gift tax laws, we will be providing much-needed tax relief to those who have faced financial chaos upon the death of the head of household. We will be correcting an inequity in the current tax treatment of spouses. We will be helping to keep family farms in business as the most productive force in the agricultural sector. We will, in a sense, be voting for the American family.

I share the sentiments of my colleague Mr. CONABLE, for I agree that inclusion of the carryover basis on property provision will negate some of the tax relief we are seeking for family farm estates and will make estates less liquid as assets. But I cannot in good conscience support the Conable substitute, for to do so may well contribute to the death of any real tax reform in this Congress. Any attempts to alter the sensitive balance achieved by House and Senate conferees in the agreements they have struck may well kill this legislation entirely. Politics is, after all, the art of the possible—and it is simply not possible for us to have both the essential tax reforms included in other areas of this bill and the Conable substitute. I urge my colleagues to give consideration to what we may risk by supporting the Conable substitute.

Today marks the culmination of a real citizen effort on behalf of tax reform. Millions of men and women from across our land who have felt that present inheritance tax laws are inadequate in today's economy have called upon us to approve this legislation.

Perhaps no single issue we have considered this year is as important in the minds of the people I represent in Indiana as this tax reform bill. In almost 200 town meetings which I have conducted throughout the Second District, I have heard again and again from people who have been forced in the past to cope with inequities in the present tax law. In conversations on the streets of such communities as Valparaiso and Warsaw and Rensselaer, working men and women have asked me to never yield in my efforts to secure passage of this legislation.

Indeed, this is the result of a citizen lobbying effort unlike any other I have seen since taking office. After I introduced H.R. 4368, the Family Farm Inheritance Act, I circulated petitions throughout my district, calling for estate tax reform legislation in this Congress. More than 5,500 citizens quickly signed those petitions, and I presented them to the Ways and Means Committee during my testimony in support of this legislation. In my subsequent conversations with Mr. ULLMAN, I have tried to impress upon him the real need for this legislation in the minds of the people I represent. Their voices have been heard.

In a sense, then, passage of this bill is proof that representative democracy does work. It shows that if enough people feel strongly about an issue and make the effort of working with their elected representative to achieve their goal, they can be successful.

Mr. Speaker, my voice this afternoon in support of this bill is being echoed by thousands of the citizens I represent. Let us carry this fight for fairer taxes one more step. I urge my colleagues to approve the Ullman motion, and to subsequently approve the Tax Reform Act.

Mr. ULLMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Louisiana (Mr. BREAUX).

Mr. BREAUX. Mr. Speaker, I would like to ask the chairman a question, and I would like to explain that I am not a member of the Committee on Ways and Means.

In any case, I would like to commend the staff and the committee for going through what I am sure has been an agonizing ordeal and for the product that has finally been produced.

Mr. Speaker, I do have some concerns about one particular section. Although I am not a tax expert, I would like to ask the chairman whether he could explain the conference report with relation to treatment of intangible drilling costs of corporations that are engaged in oil and gas production versus the same tax treatment of intangible drilling costs that are afforded individuals operating as individuals rather than as corporations.

My understanding—and again, I am not an expert on this—is that presently in the conference report independent operators who deduct their intangible drilling costs must pay a tax preference in

order to do so, as opposed to corporations which are allowed to take those deductions without having to pay any tax preference.

Is that understanding correct?

Mr. ULLMAN. Mr. Speaker, I would say to my friend, the gentleman from Louisiana (Mr. BREAUX), that in this bill we were looking for shelter operations, and there are not shelter operations in corporations. That is the first answer.

Second, corporations and individuals are treated traditionally in different ways. When we ended the depletion allowance, we ended it for the big corporations to the tune of billions of dollars; and we kept it for the small, usually unincorporated entities. Therefore, I do not think we can properly argue that both need to be treated in the same way, because they are not, under the tax law.

However, Mr. Speaker, we would be very happy to look into that problem at some future time so as to try to accommodate the gentleman from Louisiana with respect to that situation.

Mr. BREAUX. Mr. Speaker, I thank the gentleman.

Mr. SCHNEEBELI. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. DUNCAN of Tennessee. Mr. Speaker, will the gentleman yield?

Mr. FRENZEL. Mr. Speaker, I yield to the gentleman from Tennessee (Mr. DUNCAN) a member of the committee.

Mr. DUNCAN of Tennessee. Mr. Speaker, section 1201 (a) of the bill creates new rules governing the public inspection of written determinations made by the Internal Revenue Service and related background files. It is being enacted, in part, as a response to the need to avoid "secret lawmaking" by the Internal Revenue Service. Under section 1201(b), rulings, technical advice memoranda, and background file information which were or are the subject of a judicial proceeding under the Freedom of Information Act are not made subject to these new rules on disclosure. For example, Mr. Speaker, cases such as Fruehauf Corp. against Internal Revenue Service, Supreme Court Docket 75-679, if decided in favor of the taxpayer, are not in any way adversely affected by the changes contained in section 1201(a) of the bill by reason of section 1201(b). Thus, if the Supreme Court or other Federal courts, in a pending Freedom of Information case, affirms a taxpayer's rights to disclosure of private letter rulings, technical advice memoranda, background files, indexes and card files, or other related communications and correspondence, section 1201(b) will in no way impede or deter the court ordered disclosure as to all information sought in the pending cases.

Similarly, if a pending freedom of information case is decided against the taxpayer, the taxpayer must look to the new law for its disclosure rights.

Mr. FRENZEL. Mr. Speaker, I want to echo the sentiments of many of the other Members of the House who have spoken recommending the acceptance of this conference report. It is a remarkably good bill when one considers the terrible complexity of the problem and the difficulty of the process through which we achieved this final product. I believe the conferees are certainly deserving of great credit for having brought us what I can only describe as a surprisingly good bill.

H.R. 10612 is a good piece of legislation. It is a wide ranging bill which makes changes widely regarded as reform. It closes what have been described as loopholes. It makes equity adjustments. It extends individual tax cuts. Most importantly, except for the individual cuts, the conferees resisted the lure of giveaways and actually produced a bill that will substantially increase tax revenues by $1.6 billion.

By increasing the standard deduction and by changing the child care and alimony provisions, this bill will greatly simplify tax filing for millions of Americans.

The estate tax reform is, by itself, almost reason enough to support the bill. It is long overdue. It has a serious flaw, but I hope that the January 1, 1977, basis date will be removed.

H.R. 10612 also contains administrative reforms which are calculated to give the taxpayers a fairer break in their dealings with the IRS.

I do not want to leave the impression, however, Mr. Speaker, that the bill is a series of unvarnished blessings. The bill is filled with flaws. There are items in it such as have been described by other Members of this House which are bad tax policy. I suspect the increase in the capital gains tax through the increase in the minimum tax is one of the worst.

The feature of the International Trade Commission is another unnecessary and bad piece of law that does not belong in here.

But, on balance, I am pleased to recommend to this House that this conference report be agreed to, and I am pleased to commend the conferees for having done an extraordinary job.

I do intend to support the amendment to be offered by the gentleman from New York (Mr. CONABLE) to the estate and gift tax. In order to do that, we will have to follow his leadership and vote down the previous question in order not to have a brandnew tax be imposed upon widows and children in this country who may in all other respects be totally exempt from the estate tax but, because of the unwise carryover in this bill be forced to pay a cruel and unreasonable tax.

For this reason I believe we will have to support the Conable amendment. It will do wonders to the bill.

Then I hope the entire bill is then passed.

Mr. SCHNEEBELI. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. KETCHUM), a valuable member of the committee.

Mr. KETCHUM. Mr. Speaker, I rise with considerable reluctance to support this conference report. I do commend not just the chairman of the committee, the gentleman from Oregon (Mr. ULLMAN), but the other 36 members of the committee who spent many, many long hours working on this bill and producing a product that was not in many respects nearly as good as the product that we now have.

I certainly hope, though, that none of the Members of this body will go home and try to tell their constituents that they have voted for a tax reform bill because this is not. What the Members will be voting for, if they intend to vote for the conference report, they will be voting for a tax revision bill. That is about the sum and substance of it.

It is not a good bill. It is not a bad bill. There is just a little more good in it than there is bad.

So I will, reluctantly, support the conference report and support the gentleman from New York (Mr. CONABLE) in his efforts to make some revision in the estate and gift tax.

Mr. Speaker, along with my colleagues on the Ways and Means Committee, I began work on this legislation more than 15 months ago. The final product before us today falls far short of the hopes I held in June 1975, but on balance it is a substantial improvement over the bill passed by the House last December. I doubt that it could seriously be considered much of a "reform" measure—"revision" would be far more apt as a description. Within the 1,500 pages of H.R. 10612 are several praiseworthy provisions, often standing beside some true clunkers. I intend to vote for this conference report, but with the full knowledge that it is far from perfect and deserves revision in the future.

The most important improvement in this conference report is its omission of the imposition of LAL on real estate, farm operations, oil and gas operations and equipment leasing. Since no one knows what effects LAL would have had upon capital investments in these areas, the conferees made a wise decision to omit the House provisions. However, I do question the wisdom of imposing the "at risk" limitations on farming and oil and gas ventures, a limitation not placed upon real estate operations. I believe that the conferees properly realized that "at risk" meant decreased investment in real estate, a depressed industry. The same logic would extend to oil drilling and farm operations which are capital intensive ventures badly in need of additional capital. On balance, however, "at risk" is preferable to LAL.

I have reservations also about requiring corporations involved in farming to go to accrual accounting. This must not serve as a precedent to place the same requirement upon the family farm.

Including new preference items within the minimum tax is again better than LAL; however, it may pose real and burdensome tax increases on some industries. What particularly bothers me is the impact of this minimum tax on independent oil and gas producers. Independent producers account for 90 percent of exploratory drilling within the United States. Theirs is an especially capital intensive occupation, since the vast majority of holes drilled come up dry. Why in the name of Heaven do we want to dry up capital in the domestic oil industry at a time when there is a desperate need for every drop of domestic oil? Inclusion of oil and gas drilling as a preference item under the minimum tax will not hurt the major corporations—it will hurt the 10,000 independent producers who are vital to project independence, that forgot-

ten goal. This is one of the most obnoxious provisions in the conference report and should certainly be corrected in the future.

The conferees made an improvement in the provisions concerning the Domestic International Sales Corporation—DISC. I objected to the House action which excluded agricultural sales from DISC treatment, which was a wholly arbitrary and discriminatory act. The conference report wisely drops that exclusion. I continue to think that allowing military sales only 50 percent of DISC benefits is a subjective judgment which does not belong in an impartial IRS code.

Another serious flaw is the "boycott" provision. Mr. Speaker, this kind of language has no business in a tax bill, or any other kind of bill for that matter. I must strenuously object to the use of the tax code to bully American businesses into trading with some and not with others. We are creating a "boycott" of our own by marching down this road, and should recognize what we are doing. Again, this is a section which should be examined again in the future.

The conference report retains some very fine features from the House bill. I endorse particularly the extension of the $50,000 corporate surtax exemption and the 20 percent normal tax rate on the first $25,000 of corporate income; the extension of the 10 percent investment tax credit for 4 additional years, and the extension of an additional 2 years for carryforward of business losses. These are helpful tools to aid capital formation, and the conferees are to be congratulated on their inclusion. Regrettably, there are not many more provisions of this nature in the bill.

Thoughout this year, I have watched the development of the reform of estate and gift taxes with great concern. I doubt I have ever seen such unanimity of opinion of any piece of legislation as on the need to update the 1942 laws. Inflation has increased over 200 percent since the estate tax laws were enacted, but the dollar exemption of $60,000 has remained the same. The inexorable growth in inflation rates has, therefore, pushed hundreds of thousands of taxpayers into brackets subject to estate taxes, even though real worth remains relatively stationary. The people who have suffered in this squeeze the most are the owners of family farms and family businesses, many of whose heirs must sell their properties simply to pay the estate tax.

The Estate and Gift Tax Reform Act which was earlier before this House was a step in the right direction, but contained sizeable flaws. The estate tax provisions of the conference report represent a considerable improvement over our version of this reform. First, the credit is increased from an exemption level of $154,000 to $175,000. Second, the carryover basis provision has been modified to establish the tax basis of property at its fair market value as of January 1, 1977, rather than the original purchase price. This provision is still devastating, however. I intend to support a motion which will eliminate any change in the existing carryover basis later today.

In sum, I believe that this bill deserves my vote, while reserving my grave doubts about many of its provisions. I would advise my colleagues that we would be mistaken in trumpeting this Act as any real "reform" of the tax code. That monumental task is still to be accomplished. As a member of the Ways and Means Committee, I intend to devote myself to that as yet elusive goal.

Mr. SCHNEEBELI. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. ARCHER), a member of the committee.

Mr. ARCHER. Mr. Speaker, I reluctantly take the floor to oppose the conference report. It is not an easy decision because the chairman has done an excellent job in this regard in trying to meld together the various desires and various philosophies of a very diverse House of Representatives and a very diverse Congress. But, ultimately, we have to put the good and the bad on the balance scale.

There are two major issues facing this country that to me transcend tax reform. Tax reform is important but those two issues are: The economy, inflation, deficit spending, and a balanced budget on the one hand and, on the other hand, energy.

This country will rise or fall in the years ahead on these two major issues, not on the issue of tax reform.

A year ago we heard great debate in this House on whether we should have a tax reduction without an equivalent reduction in spending. There has not been one word today about that, and I cannot let this House adopt this conference report with a reduction of $17 billion in revenue at a time when this Nation is running a $50 billion deficit without any regard whatsoever for the need to make a dollar-for-dollar spending reduction that was supposedly guaranteed in December of last year, when we adjourned, in any future tax reductions, and it is nowhere to be seen. A $50 billion deficit drives this country to greater and greater inflation, and inflation is the No. 1 concern of the people of America.

So on principle and on balance this major issue causes me to have to cast a vote against a bill that has been carefully tailored to try to harmonize the desires of many in this Congress.

The other issue is energy, and this was touched on briefly by the gentleman from Louisiana. The man who takes the risk to drill the wells to explore to find new oil and gas under very adverse conditions is the independent, the small independent oil man in America. We will either move toward greater energy self-sufficiency through his efforts, or we will fail. This bill requires that he pay 15 percent of every dollar that he spends on labor and on fuel and on drilling costs of money that he spends out of his pocket, and for the privilege of being able to spend that money, he gets to have to borrow an extra 15 percent to have to pay into the Federal Treasury.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SCHNEEBELI. Mr. Speaker, I yield 1 additional minute to the gentleman from Texas.

Mr. ARCHER. Because of my concern not just for the immediacy or the expediency of being able to say that I voted for tax reform, I am more concerned about the two major issues on which this country will rise or fall; so reluctantly I must cast my vote against this conference committee report.

Mr. SCHNEEBELI. Mr. Speaker, the previous gentleman from Texas (Mr. ARCHER) referred to the huge $50 billion deficit. I share his concern, but I think we express our concern probably better in the budget resolution which we adopted earlier, which will come up shortly after we resolve this question on our own conference report. At that time I plan voting against the budget because of this huge deficit. But I think we would better express our concerns for our mounting deficit and continuing deficit at that time.

Mr. Speaker, to summarize my situation, I heartily support the conference report as it is given to the House at this time. Again I want to commend the Chairman, the gentleman from Oregon (Mr. ULLMAN) for his very fine leadership in bringing back this fine report.

Mr. SPEAKER, I yield back the remainder of my time.

Mr. MURPHY of New York. Mr. Speaker, I join my colleagues in endorsing the conferees' work on H.R. 10612. The report before the House today is a significant step toward tax reform and should be supported by the Members of this body.

In considering whether to support this massive conference report which we have before us, I hope my colleagues will heed the recent endorsement of the final version of this legislation that has been given by two of the Nation's most ardent advocates of tax reform—the New York Times and the Washington Post.

Both on the editorial pages and in their analyses, these respected newspapers have urged the adoption of this conference report. While not perfection, this bill does bring us a step closer to an equitable tax system. I insert at this point in the debate the articles and the editorials from the Washington Post and the New York Times:

[From the Washington Post, Sept. 13, 1976]

REFORMING THE TAX LAWS

The tax reform bill has been reformed—not completely, to be sure, but far more substantially than seemed possible a month ago. The House originally passed it in pretty good shape, but then the Senate, in a fit of irresponsibility, wrote into it a vast collection of new tax breaks and miscellaneous atrocities. The struggle swayed back and forth for weeks in the Senate-House conference. That conference has now ended with a compromise that retains many of the House version's strengths and omits most of the Senate bill's mischief. It is a hugely complex piece of legislation, and only the bravest of legislators would claim at this point to comprehend every line fully; certainly we do not. But the main outlines seem clear. In its present form, the bill deserves to be enacted and signed by the President.

In terms of money, and the amount of tax that everybody will pay this year, the most important part of the bill is also the least controversial. It continues the temporary tax cuts that Congress quickly enacted early last year when the full dimensions of the recession were becoming apparent. With unemployment high and rising, hardly anyone would even consider turning off the stimulus that the cuts give the economy. But the bulk

of the bill addresses the much more intricate question of distributing the load.

What does tax reform mean? By one definition, it means improving the fairness of the tax code—in the sense that the ideal law would tax people of similar incomes at similar rates regardless of their accountants' skill at tax avoidance. One constant symbol of the present law's shortcomings is the number of wealthy citizens who manage each year to avoid paying any taxes at all. In respect to them, the bill is indeed a reform. It carries a modest but significant tightening of the minimum tax that they are required to pay regardless of their tax shelters. The bill also eliminates some of the most egregious of the shelters, although it does not contain the systematic clean-up that was in the original House bill.

Another definition of reform is simplification of the law. Here the bill is a clear loss. It adds nothing but more complexity. The unfortunate truth of the matter is that every broad revision of the code attempts to remedy previous injustices and anomalies by making still finer distinctions. A simple tax code is a delightful idea, but we seem to be in the wrong century for it.

Reform also means making the tax system more progressive—shifting more of the load onto the taxpayers with more than average incomes. This bill does not do anything about the broad distribution of the American tax burden. But it makes a couple of highly controversial changes in the closely related question of taxing inherited wealth. Because the current law exempts the first $60,000 of an estate from taxation, only 7 per cent of all Americans leave estates large enough to be taxed at all. The new bill would raise the exemption to $175,000, at which level only the largest 2 per cent of all estates would be taxed. In return for this great concession to inherited wealth, the conference decided that estates should no longer be wholly exempt from the capital gains tax. Suppose a man buys stock at a low price and, by the time of his death, it has risen in value. Under present law, that capital gain is never taxed. Under the bill, it would gradually begin to be taxed (if, but only if, the heirs ever sold it). Even this gradual beginning is too much for some of the congressmen, who are going to make one more attempt to delete it.

They might succed. The tax bill will now come back to the House in a peculiar parliamentary situation that will require a separate vote on the estate and gift tax section. That whole section will be worthless if the House abandons this slow and gentle beginning to taxing the capital gains in estates. It might be noted that inflation continuously raises the income taxes of average citizens by kicking them into higher tax brackets. Particularly in view of these silent tax increases, it is hardly appropriate for Congress to show such disproportionate solicitude for the inheritances of the nation's wealthiest families.

At its present stage, the tax bill also represents a heartening affirmation of the new congressional budget process. Last spring Congress voted, in its first budget resolution, to raise $2 billion by closing tax loopholes. But as the Senate passed it, the tax bill would have opened up $300 million worth of new loopholes. Most of the worst of these provisions were thrown out by the conference, and the substantive changes in the law would now raise a net of about $1.6 billion next year. For legislation hammered out in the heat of a summer before a presidential election, that's not bad at all.

This bill was entirely a congressional initiative, and it is a congressional solution. The White House and the Treasury have had astonishingly little to do with it. The reason is, presumably, that President Ford's long competition with Ronald Reagan for the nomination made it impolitic for him to address most of the issues that the bill raised. But if this much can be accomplished with no support from the administration, it is reasonable to expect that more could be done with the kind of help that at least one of the presidential candidates, Jimmy Carter, is pledging. As for the present bill, it falls short of the original hopes of its sponsors. But on balance, it is worth enacting into law.

[From the Washington Post, Sept. 13, 1976]

ULLMAN SHAKES "LOSER" TAG IN GIVE-AND-TAKE WITH LONG

(By Peter Milius)

At the end of the House-Senate tax bill conference Thursday night, someone at the cluttered table asked Laurence N. Woodworth, chief of the conference committee's staff, how much revenue the bill would raise in the next fiscal year.

As Woodward announced the amount—$1.596 billion—an enormous grin spread across the normally worried face of Rep. Al Ullman (D-Ore.), Ways and Means Committee chairman who had led the House conferees.

The revenue figure—one of the tests by which the degree of "tax reform" in the huge bill will be judged—was within a decimal point of the total the House tax bill would have raised, and almost $2 billion beyond the net loss the Senate bill would have produced.

The smart money had said Ullman would be the loser in the conference, easy pickings for his Senate counterpart, Russell B. Long (D-La.), Finance Committee chairman. Instead, Ullman came out of conference a winner.

The loser label was pinned on Ullman almost from the day he took over Ways and Means two years ago, after his predecessor, Rep. Wilbur D. Mills (D-Ark.), was forced by scandal to step down.

The House was supposed to be newly liberal following the 1974 elections, which had left it two-to-one Democratic and with a large, relatively cohesive and impatient class of reformist freshmen. Ways and Means was supposed to have been re-energized by the addition of new and supposedly progressive members, especially on the Democratic side.

Yet Ullman was embarrassed, first on an energy bill that barely cleared the committee and was diluted on the House floor, then in his first tax bill conference as chairman, where critics said he was outbargained by Long on the oil depletion allowance (though most of the revenue loss from depletion was stopped by the final bill).

It is often said and written of Ullman that he is a decent man. Critics began to complain he might be too decent to do the scheming and head knocking necessary to produce legislation from Ways and Means.

Ullman's defenders replied that the new Ways and Means Committee was a lot less liberal than it was reputed to be. They said the House Democratic leadership, in its usual cautious way, had not given Ullman a working liberal majority, but instead a divided committee that frequently split 19 to 18 on controversial issues. The 12 committee Republicans, voting as a bloc, generally could find six and sometimes seven conservative Democrats, often including Mills, to join them on close questions.

In any case, Ullman's reputation vis-a-vis Long's was such that when the 1976 tax bill moved from the Senate to conference last month, House liberals—the leaders of the Democratic Study Group—went to Speaker Carl Albert (D-Okla.) and Majority Leader Thomas P. O'Neill (D-Mass.) to urge that the bill be junked.

The Senate had so denatured it, they said, that Ullman could never salvage the reform sections in conference, and Congress should simply let tax reform drop until next year, when there might be a new and more supportive administration. They recommended that Congress simply extend last year's tax cuts through next year and go home.

Ullman stoutly resisted, saying he could produce a creditable bill if given the chance. And now he has.

Ullman would be the first to laugh at the idea that, like some legislative Popeye, he ate a can of spinach, then somehow outwitted and outfought Long in the conference. The outcome, and the reasons for it, are not that simple.

For one thing, while the conference was a victory for Ullman, it is not clear that it was a loss for Long. Some cynics think Long may have deliberately loaded the bill in the Senate with provisions he did not really want and planned to give away in conference with the House.

Reformers now are grateful the conference got back about to the terms of the House bill, but the House bill was never regarded as the millennium in tax reform.

It merely struck at some of the most egregious forms of tax avoidance, restricting the use of tax shelters and raising the so-called minimum income tax—a special extra tax on wealthy individuals who, because of other provisions in the code, would otherwise pay no or very low taxes. It made no monumental, fundamental changes in the code.

The bill produced by the conferees, moreover, while about as strong as the House bill if judged by the revenue it would yield, is not as strong in some structural respects. For one thing, it would not crack down as hard on shelters, which would continue. Shelters are investments set up to produce artificial, or accounting, losses that investors can use to reduce their net taxable income (and thus their taxes). In this sense, Long won a little.

A second factor in the outcome of the conference might be called the awakening of Rep. Dan Rostenkowski. The 48-year-old, nine-term Chicago Democrat, who has often seemed half indifferent to tax questions in the past, suddenly started acting like what he is—the 62-year-old Ullman's heir apparent as chairman of Ways and Means. (Rostenkowski is third in seniority among Ways and Means Democrats now, behind Ullman and Rep. James A. Burke (D-Mass.), but Burke is 66 and regarded as unlikely to run for more than one more term.)

Rostenkowski got up early on mornings the conferees were supposed to meet, to study the likely issues and arguments, and he sometimes seemed to be fighting harder for revenue-raising provisions—and against revenue-losers—than Ullman was.

The House conferees, like the House committee, were often narrowly divided. House and Senate sides both voted by the unit rule, and the seven House conferees tended to divide 4 to 3, with Reps. Herman Schneebeli (R-Pa.), Barber Conable (R-N.Y.), and Phil M. Landrum (D-Ga.) on one side; Ullman, Burke, Rostenkowski and Charles A. Vanik (D-Ohio) on the other. Had Rostenkowski been less vehement, Ullman might have well felt in conference as he often did in committee—that he had no choice but to give in.

A third factor in the outcome was the influence of tax reform groups and the new House and Senate budget committees. The budget committees in May set a tax reform revenue target of $2 billion for the fiscal year beginning Oct. 1.

When first the Senate Finance Committee, then the Senate ignored that target in their tax bill, they were held up in public as budget-busters who were adding to the probable deficit in the year ahead just as surely as if they had voted for increased spending.

The two budget committees were a new source of pressure on the two tax committees.

So, too, were the reform groups, led by Ralph Nader's Tax Reform Research Group. They have been around before, but never

in as sophisticated and organized a way as this year. They found and helped publicize a series of special-interest provisions in the Finance Committee bill, and the embarrassed committee finally felt compelled to withdraw 17 of them.

But others—special tax cuts for the railroads, airlines, ship owners, big insurance companies, companies with high anti-pollution costs, Encyclopedia Britannica, PPG Industries, Freeport Minerals and assorted other corporations—remain in the bill.

For Ullman, the victory was clear. But for tax reform, the results were mixed.

THE TAX BILL PASSED TWO CRUCIAL TESTS

(By Edwin L. Dale, Jr.)

WASHINGTON.—Since early this year the huge, complex tax revision bill that was winding its way through Congress has been measured against two tests:

First, would it accomplish significant tax "reform," usually defined as limiting, at least to some extent, the various tax preferences that reduce taxes on the well-to-do? Second, related to the first, would it raise a significant amount of new revenue for the Treasury, so as to meet the revenue requirements established by the new Congressional budget control process?

As the bill, more than three years in gestation, left the Senate last month it seemed that neither test would be met. The Senate version was widely criticized, particularly by liberals. But after nine days of exhausting work by conferees from the House Ways and Means Committee and the Senate Finance Committee, the first tax-writing conference in history that was open to the press and public, the final version of the tax bill that emerged seemed quite respectable on both counts.

Probably the single most important conclusion that should be drawn from the writing of this tax bill is that the budget process now exerts a powerful influence on the revenue side of Congressional decision-making. The budget process had already shown surprising success in bringing some order and control to the expenditure side, but revenues seemed more intractable, particularly in the Senate.

By carefully picking and choosing among the various provisions in the House and Senate bills and particularly by dropping or delaying revenue-losing provisions, the tax conferees managed to produce an estimated revenue gain for the fiscal year 1977 of $1.6 billion, fully meeting the hopes of the budget committees in both houses and conforming to the final budget control resolution for fiscal 1977, which is about to be adopted by Congress.

There was an evident sense of restraint. The Senate conferees dropped costly new provisions granting a tax credit to students or their parents to help pay for higher education, a series of tax incentives to encourage energy conservation, and a credit for the expense of training amateur Olympic-class athletes. And in many little ways, the conferees resolved their differences in favor of minimizing revenue loss.

As for the "reform" aspect, the judgment depends upon the eye of the beholder. Many changes in tax law that liberals term "reform" are regarded by such groups as the American Council on Capital Formation as a further attack on the savings available for investment and on already inadequate corporate profits.

Since the time of President Nixon, the Treasury has supported the basic idea that the various tax preferences—all adopted ostensibly for worthy purposes such as stimulating oil drilling and middle-income housing construction—should not continue to be combined in such a way as to permit some wealthy individuals to avoid tax altogether or reduce their taxes to absurdly low levels. To end that abuse, a "minimum tax" was adopted in 1969, with the important exception of tax-free interest on municipal bonds. A taxpayer is required to add up the various preferences he or she uses and, if they exceed a certain level, to pay a special minimum tax. The main questions surrounding the bill just completed were how much heavier to make the minimum tax and whether some of the preferences should be limited directly, as the House bill would have done.

The issues involved were of surpassing complexity, and the possible outcomes made a big difference to the various types of wealthy taxpayers and tax-sheltered investments. In the end there was a compromise that was tough in all respects. All of the preferences—oil and gas drilling, real estate investments, farming losses by non-farmers, sport franchises and the like—were tightened to varying degrees, although not quite as much as in the House bill. Moreover, the minimum tax was greatly changed. The change will raise the number of persons affected by the tax from about 30,000 now to 300,000 and increase the amount of tax paid by those who are "caught."

The well-off doctor or lawyer who has some capital gains, has invested in a real estate syndicate, perhaps has a farming loss and also has large normal deductions for such things as charitable contributions and state income taxes, used to be able to reduce his tax to a nominal amount. But no more. All the investment preferences and deductions are still available, but he will have to pay a minimum tax on all "preference income" above $10,000. The minimum tax rate under the new bill is 15 percent, compared with 10 percent now.

Much of the additional revenue from the toughened minimum tax, about $1 billion a year, will come from those who have large capital gains, and this troubles those who are worried about "capital formation."

Corporation taxes were largely left alone, except for a reduction in the special benefit for exporting, which has gone mainly to a few large multinational companies. Of greater interest to business was the extension for four more years of the 10 percent investment tax credit, meaning a tax saving of more than $3 billion to companies that make new investments.

It is worth noting that the bill makes the tax system somewhat more "progressive" by extending last year's anti-recession tax reductions through all of 1977, for a saving to individuals of about $15 billion, weighted toward those of low and moderate income. In such areas as child care, alimony deductions and a special retirement credit for the aged, individual taxpayers were also helped a little.

The bill is noteworthy in another respect: it includes the first major reform of the estate and gift tax since 1941. There will be a significant tax relief for all modest-sized estates, through an increase in the amount of an estate exempt from tax, and the law will be toughened somewhat with respect to the very large estates and those who inherit them.

Few liberals will proclaim themselves satisfied with the huge bill. But while it continues to be complicated, the tax system is probably a little fairer than it was before the lengthy effort at change began, and the Government's revenues have been reasonably well preserved.

[From the New York Times, Sept. 12, 1976]

TOWARD EQUITY—THE TAX BILL

The tax bill has made some modest progress toward greater equity by increasing the minimum tax on so-called "preference" income (that is, income shielded from regular income taxes). This will make it virtually impossible for the rich to avoid paying any taxes—unless the whole of their income is derived from the interest on municipal bonds. But whatever their other deductions, they now would have to pay a tax of 15 percent on all other "preference" income after deducting either $10,000 or half the taxpayer's regular taxes, whichever is greater. Though still too generous, this is an improvement over the present situation that allows very wealthy people to pay ridiculously low taxes.

In addition, tax shelters for investors in oil and gas wells, movies, real estate, and sports franchises, though still preserved, have been narrowed. In the other direction, estate taxes have been markedly lightened; the present $60,000 exemption from the estate tax would be converted into a tax credit slated to jump to the equivalent of a tax exemption of $120,000 next year and to rise to $175,000 by 1981.

The conference bill retains a provision imposing stiff tax penalties on companies that cooperate with the Arab boycott. It would require the Secretary of the Treasury to suspend their right to U.S. tax credits on their foreign taxes and to defer the payment of U.S. taxes on foreign earnings until they are repatriated. The President opposes this use of the tax laws as a punitive device, as do we; but we believe the President should sign the tax bill and try to persuade Congress to accept other measures to fight the boycott later, rather than veto the entire bill on that one issue.

While this huge and cumbersome tax bill has been whipped into acceptable overall shape through the discipline of the new budget process and the exposure to open proceedings, the bill has made only the most limited progress toward genuine reform.

True tax reform cannot be achieved by tinkering with the hundreds and thousands of items that constitute the present mess. Whoever is elected President in November should give the highest priority to a drastic overhaul of the tax system for the sake of both equity and simplicity.

The massive tax bill that the Senate and House conferees have agreed upon is no model of tax reform—but it is now more acceptable than it threatened to turn out only a few weeks ago. The improvements in the bill—especially the junking of a great many giveaways that it originally contained—are a tribute to the new budget process and the tax reformers.

The revision and reform sections would bring in $1.6 billion, which is reasonably close to the $2 billion figure the joint Congressional budget committee set last spring as the amount of extra revenue that had to be raised by tax reform. While the budget committee may scale back its revenue requirement to match what the tax committee has done, the fact remains that, through the stubborn resistance of Senator Muskie of Maine and other champions of the new budget process, a host of costly nonreforms were stripped from the tax bill.

As a result, this measure is in line with economic needs as determined by the joint budget committee and its professional staff. And, as the tax bill comes close to the revenue target, the House and Senate have shown fiscal responsibility by accepting the $413 billion ceiling on expenditures set by the budget committee.

There is no way a single fiscal package can simultaneously stop inflation and stimulate more rapid expansion to reduce unemployment; but what this tax-and-spending policy does is focus on the more critical immediate problem, which is to keep the recovery going and reduce unemployment, without exacerbating inflation.

The new tax bill helps to accomplish that purpose by making permanent the 1975 tax cuts for individuals and the refundable income-tax credit for low-income families; these are worth $14.4 billion. And the bill

also makes permanent the 1975 business-tax cuts, worth $1.7 billion, and continues the investment tax credit at 10 percent through 1980, instead of allowing it to revert to 7 percent next year. With unemployment at nearly 8 percent and the economy still so sluggish, it would be most unwise to impose additional tax burdens on consumers and business by letting the 1975 tax cuts lapse.

Mr. FISHER. Mr. Speaker, I rise to support the conference report on the Tax Reform Act of 1976. The end result of nearly 2 years of work by the Ways and Means Committee and this House, the conference report on balance deserves to become law. I see in it more pluses than minuses as I survey its vast scope.

The revenue gain for next year is estimated to be $1.6 billion, a modest amount, not as great as I had hoped, but still in the right direction.

Continuation of the 1975 and 1976 antirecession tax cut is necessary to help overcome the persisting unemployment and business slack. Such continuation will not endanger the economy with more inflation as long as so much excess capacity in industry and unemployment in the labor force exist. The report does contain the necessary tax reduction.

In other respects—tax reform, tax simplification, improved tax administration—modest, though important progress is being offered. But there is nothing wrong with modesty, and it becomes all of us in this House to rejoice in such gains as our legislative process permits. Besides, there is always another day to do battle for further tax reform, simplification and administrative improvement. I intend to take a strong part in future efforts to achieve more reform and more simplification.

I want to add my compliments to those others have bestowed on our Ways and Means Committee chairman. He is a paragon of patience, fairmindedness, and persistence. As one who has pressed frequently for a greater measure of reform than was possible to attain, as one who has been disappointed from time to time with failure to eliminate entirely the undeserved tax loopholes, I do especially appreciate this kind of leadership.

Mr. DRINAN. Mr. Speaker, I would like to speak in favor of the Tax Reform Act, H.R. 10612. The bill is not the type of tax reform that ideally I prefer, but it does reform a number of tax loopholes which clearly should be rectified if we are to establish a more progressive tax system for all Americans.

The Tax Reform Act raises almost $1.6 billion by strengthening existing tax provisions in a number of areas. Some of the reforms which are addressed include tightening the minimum tax, reducing the Domestic Industrial Sales Corporation—DISC—subsidy, reducing the benefits of tax shelters, and reducing the availability of excess foreign tax credits. There is no doubt that a true tax reform bill would go much further in eliminating the inequitable and inefficient tax subsidies which are found throughout the U.S. tax code, but this bill at least makes a worthy beginning.

Mr. Speaker, I am happy to say that H.R. 10612 is a much better bill now than it was a month ago. At that time, the Senate wrote into their bill a vast collection of new tax breaks and loopholes. Although the original House bill, which was passed last December, was a worthy bill, the Senate action threatened to gut the reforms that were made there.

Fortunately, however, the agreements that were eventually hammered out between the House and the Senate resulted in a compromise that retains many of the original strengths of the House version and omits many of the Senate's more deplorable inclusions.

One important aspect of the Tax Reform Act is the continuation of the temporary tax cuts which the Congress enacted last year. At that time, the United States was attempting to break out of the economic recession of many months. The tax cut which was successfully enacted through the Tax Reduction Act provided a significant stimulus to the faltering economy. In view of the fact that high unemployment continues to persist throughout much of the country, it would clearly be bad economic policy to stop the one stimulus which has been so effective in beginning to turn our recessionary economy around.

Mr. Speaker, the tax bill is an important instrument of fiscal and monetary policy. But above all, it is supposed to represent a fair and equitable revenue-raising device for the Federal Government. Our tax code should be fair, so that people of similar incomes are taxed at similar rates, regardless of the tax shelters in which they are able to invest. Yet it has long been clear that our tax code is progressive in name only.

The number of millionaires and wealthy citizens who manage each year to avoid paying any taxes at all is symptomatic of the failure of our current tax code. For example, in 1973, one of the most recent years for which complete tax statistics are available, it was revealed that a total of 24 millionaires with an adjusted gross income of more than $1 million paid no Federal income tax.

To prevent similar tax avoidance in future years, the Congress passed a device known as the minimum tax, which required that a certain minimum tax be paid regardless of the tax shelters which were used. But just the fact that a minimum tax must be needed at all indicates how far we are from true tax reform. Acknowledging this fact, the Tax Reform Act does strengthen the minimum tax somewhat. True reform, however, will not be achieved until the minimum tax device will no longer even be needed.

Another aspect of our tax laws which should be addressed, Mr. Speaker, is the need for simplification. Our tax code is presently so complex that few attorneys and accountants are able to understand its intricacies. In the near future, we must strive to simplify existing law. H.R. 10612 helps very little in this regard, as even the tax reforms accomplished here are complex in themselves. It may be very difficult, to achieve tax simplification, but it is clearly a worthy goal which we should strive for.

I am also supporting as part of this bill, Mr. Speaker, the estate and gift tax provisions as originally passed in the Senate bill. This legislation was needed in order to avoid the unjust impact on farmers and small businessmen who are not able to pass their businesses and farms on to persons within their immediate families, due to the substantial estate taxes that are imposed. In many cases, the method of evaluation used required families to sell the farm or business in order to pay the required estate taxes. Consequently, these provisions ameliorate this effect.

While I do support the estate and gift section as presently constituted, I would be forced to oppose them should the carryover basis provision be deleted from the entire estate and gift tax package. This provision represents a real reform in the bill, and to eliminate it now would jeopardize the passage of the entire estate tax section.

Before I close, Mr. Speaker, I feel it should be noted that the administration has done little to bring about even limited tax reform. The Congress has had to go it alone, and in view of the very sophisticated lobbying which is done on a bill such as this, the lack of initiative by the President represents a large handicap to this legislative effort.

The Tax Reform Act does not constitute the Congress' best reform effort. But in its present form, the bill still deserves to be enacted into law in this session of the Congress.

Mr. BINGHAM. Mr. Speaker, H.R. 10612, the Tax Reform Act of 1976 as agreed to by the conferees, is a progressive bill. It will produce the $1.6 billion net gain in revenue anticipated in the budget resolution and it will do so by shifting a more substantial part of the tax burden where it belongs—on those individuals who can best afford to pay. Certainly I would have preferred a comprehensive simplification of the tax code and equalization of the tax burden to these 1,500 pages of revisions and 250 new provisions, but in several significant areas this bill is, nevertheless, very good.

I have been concerned about tax reform since I first came to Congress, and early in 1975, I participated in the work of the Democratic Congressional Task Force which recommended tax reform as an important element of a sound economic recovery program. In 1967 I introduced a tax equity bill to ease the burden on middle and lower income groups by closing 14 loopholes. Among my proposals were an end to the oil and gas depletion allowance, equalization of the estate and gift tax, and a minimum income tax. In subsequent years I advocated tax relief for the families of the handicapped to help them pay for required home care. I also called for tax relief for the elderly by excluding the first $5,000 of a person's retirement income from that person's taxable gross income. I have supported tax breaks for single persons, commuters, and working parents of young children. The 1969 and 1975 tax bills addressed several of these concerns—a minimum tax was established, across the board tax cuts in the form of rebates were enacted, and the oil and gas depletion allowance was phased out.

The present bill goes still further in this direction. Moreover, in addressing itself to the Arab boycott issue it breaks new ground in discouraging compliance with a discriminatory and repugnant practice and potentially raises large new revenues at the same time.

First, H.R. 10612 extends the tax cuts already on the books. The tax credit of $35 for each person or 2 percent of the first $9,000 of taxable income will continue. Families with incomes under $8,000 will receive an earned income credit and if they owe no taxes or owe less than the credit, they will receive a check for the credit anyway. This, in essence, is a negative income tax for the working poor, an historic innovation of the 1975 bill continued this year.

For those taxpayers who do not itemize their deductions, the minimum standard deduction, which was $1,300 before last year, is now set permanently at $1,700 for single persons and $2,100 for couples. Above these minimums the standard deduction will be 16 percent of income with a ceiling of $2,400, for single people and $2,800 for couples.

A significant new provision provides a tax credit of up to 20 percent of outlay for people who must pay for the care of children or disabled dependents while they are working. That credit is also available to couples even if one of them is only a part-time worker or in school. Under the previous legislation the taxpayer received a deduction, not a credit, and this was allowed only to people working full time.

The retirement income credit for the elderly has been revised. The amount of income for which the 15 percent tax credit may be claimed is increased from $1,524 to $2,500 for a single person and from $2,286 to $3,750 for a married couple. (The result of this will be that many retirees will pay no income tax, as proposed in my bill, previously referred to.) The credit also will not be reduced as drastically as previously when the retiree has earned income.

On the other side of the ledger, this bill raises revenue by hiking the minimum income tax everyone must pay from 10 to 15 percent. This tax is levied on so-called preference income not subject to standard taxation and applies that rate to much more of previously sheltered income as well. The bill also raises from 6 months to a year the length of time one must hold a security to qualify for favorable capital gains rates. The use of tax shelters is circumscribed. Investments in oil drilling, movie making, and in team franchises in sports will be subjected to a higher tax.

Corporations, especially multinationals, will feel the bite of this bill. It imposes new tax restrictions on income multinational companies earn abroad and on income earned on exports by DISC's—subsidiary corporations set up by American companies for export purposes. Perhaps most significant, the bill denies the foreign tax credit, tax deferrals of foreign source income, and DISC benefits to any company found to be complying with the Arab boycott of Israel. By giving tax breaks to companies operating abroad we had been offering incentives to participate in the boycott. The Treasury has lost perhaps a billion dollars a year in revenue and the boycotters of Israel and of Jews have benefited.

I am not completely satisfied with the estate and gift tax reform sections. I have long favored the unification of estate and gift taxes, the tax on generation-skipping trusts, and the carryover basis to eliminate the disparity between taxes on property sold prior to death and property sold subsequently. These three reforms, accomplished in this bill, close some very substantial loopholes long used by the wealthy to escape taxation. The bill also gives relief to small businesses and family farms.

My concern is that the estate tax reduction is extreme. The current $60,000 deduction needed revising but the effect of H.R. 10612 will be to raise the exemption on estate taxes to $175,000 by 1981. The percentage of estates subject to tax will be reduced from 6 percent to less than 2 percent. This is unwarranted.

On balance, however, this tax package is deserving of support, and the House conferees are to be congratulated for securing agreement on many of the House-passed provisions that were superior to the Senate's. The bill makes the most significant changes in the tax law since 1969. It closes loopholes used by the wealthy. It gives breaks to the people who need them most. It raises the necessary revenue and it helps fight the Arab boycott. While it is not comprehensive reform of the tax code, it represents several large steps in the right direction.

Mr. DODD. Mr. Speaker, I rise in support of the conference report to accompany the bill H.R. 10612, the Tax Reform Act of 1976.

In December of last year we passed this bill and sent it to the Senate. It was, at that time, a good first step toward a more equitable system of taxation. In the intervening months, however, the Senate Committee on Finance all but destroyed the progress this body had made.

We sent the Finance Committee a bill which closed many loopholes which large corporations and wealthy individuals now benefit from—at the expense of the average taxpayer; the Senate committee reinstated many of these loopholes and added imaginative new ones.

We sent the Finance Committee a bill which provided temporary incentives for capital investment, in order to promote our economic recovery; the Senate committee took the unwarranted step of making many of these tax preferences permanent.

We sent the Finance Committee a bill which imposed reasonably strict limits on aritficial accounting losses and reformed tax treatment of domestic international sales corporations; in fact, last December one of my major concerns was that the treatment of LAL and DISC should be even stricter than the House bill, and I supported amendments designed to further tighten them. Once again, however, the Senate Committee on Finance chose to undo the reforms accomplished by the House.

On the positive side, the Senate committee agreed to House provisions extending the important individual tax relief measures provided by this Congress under the Tax Reduction Act of 1975, but the result of this extension without the other tax reform measures to insure that the wealthy pay their fair share was that the total bill was unacceptable for budgetary reasons.

In short, Mr. Speaker, the bill which came out of the Senate Committee on Finance did more harm than good; it was regressive tax legislation, not tax reform.

I was concerned that if the conference report on this legislation turned out to be as disappointing as the Senate version, or only marginally better, it would be necessary for Congress to simply extend the current tax reductions and attempt tax reform once again in the next Congress. It would be unfortunate to have to do this, considering the diligent efforts of the House Ways and Means Committee and some Members of the Senate on behalf of tax reform, but it would have been a necessary course to take.

Fortunately, the tax reformers at the conference were largely successful, and we now have a conference report before us which is in substantial agreement with the House version of H.R. 10612. It is a good first step toward tax reform—one which will provide a good foundation for further efforts in this area during the next session of Congress.

The conference report does close loopholes, and, although its limitations on artificial accounting losses and restrictions on the preferential tax treatment of domestic international sales corporations are not as tight as in the House-passed version of H.R. 10612, it is a considerable improvement over existing law.

The conference report also tightens up the minimum income tax provisions substantially, to insure that wealthy individuals will not be able to use tax shelters to get out of paying income taxes entirely.

It is also a victory in the way of providing temporary tax preferences to aid the economy. This is accomplished through a 4-year extension of the elevated investment tax credit provided through the Tax Reduction Act of 1975, and a 2-year extension of the increased corporate surtax exemption and reduced tax rate for small businesses also provided under the Tax Reduction Act. To make these changes permanent, as the Senate version of the bill would have done, was the wrong approach, but these temporary extensions will provide for the kind of capital investment and tax relief for small businesses which is necessary for our long-range economic well-being.

The conferees deleted many of the "special interest" provisions added by the Senate Finance Committee. This is an important accomplishment, as tax equity cannot be achieved so long as provisions exist in the Internal Revenue Code with the name of a certain corporation or individual attached; and because it is important that we strive for tax simplification, rather than a system which is totally incomprehensible.

The legislation we have before us also provides tax relief where it is needed most—for low and middle-income taxpayers, working parents, and older Americans. It extends through calendar year 1977 the reduced withholding rates for the relief of individual taxpayers, provided by this Congress under the Tax Reduction Act of 1975.

It extends through next year the anti-recession tax credit for individual taxpayers and their dependents, and perma-

nently increases the allowance for deduction of child care expenses for working parents.

The conference report also provides much-needed tax relief for older Americans, who have been particularly hard hit by inflation. This would be accomplished through permanent changes allowing a greater retirement income credit, and through a 57-percent increase in the tax exemption on capital gains, realized by persons over 65 years of age, through the sale of a house.

Finally, Mr. Speaker, in passing this conference report, we will be providing long-overdue relief to family-owned farms in this Nation by amending the Federal estate tax statutes. These laws have remained essentially unchanged for more than 30 years, and this has resulted in a situation whereby many families, in passing property from one generation to the next, must sell large portions just to pay the taxes. Though the restrictions on the use of this tax exemption by wealthy individuals seeking to pass along their estates are not as tight as I had hoped, the provisions will provide desperately needed relief to farms and other closely held businesses. I urge that we adopt these changes now, and I am hopeful that we will be successful in the next Congress in tightening the restrictions.

In some areas, this conference report falls short of the necessary requisites for tax reform; nonetheless, I believe it is a positive step toward a more equitable system of taxation, and it is incumbent upon us to act in the public interest by voting in the affirmative. I urge all of my colleagues to join me in supporting this important step.

Ms. HOLTZMAN. Mr. Speaker, I rise in support of the conference report on H.R. 10612, the Tax Reform Act of 1976. With respect to real tax reform, its title is sadly misleading, but I support this legislation primarily because it contains tax reductions and simplifications that will mean some tax relief for many middle-income and elderly taxpayers.

The Tax Reform Act helps middle-income taxpayers by:

Extending through 1977 antirecession tax cuts enacted by Congress last year, the $35 tax credit for each taxpayer and dependent, and the earned income credit for those with low incomes;

Making permanent last year's increase in the standard deduction—16 percent of gross income with a minimum deduction of $1,700 for single persons and $2,100 for couples and maximum of $2,400 for singles and $2,800 for couples. This means not only tax savings but also allows more taxpayers to use the short tax return.

The Tax Reform Act helps retired people by:

Changing the retirement income credit for those 65 and over so that it may offset wages as well as retirement income. This means that the retirement income credit when combined with the other tax benefits available to people over 65—the standard deduction, double personal exemption for older people, and exemption credit—will enable a single person 65 or over to have $5,800 of taxable income exempted and couples can receive $9,200 tax free.

Liberalizing the retirement income credit for retired civil service employees under 65;

Providing that a taxpayer 65 or over who sells his home for $35,000 or less will not pay taxes on any gain from the sale. Under present law, he must pay taxes on some of the excess over a $20,000 sale.

The Tax Reform Act helps women by:

Allowing millions more American families to qualify for tax relief for child care expenses, by changing present child and dependent care deduction to a tax credit and liberalizing eligibility requirements;

Providing that people eligible for a tax sheltered retirement account may set up a tax sheltered retirement account, IRA, for their spouse who has no earnings. It is good that Congress has addressed the problem of retirement security for homemakers.

An important and welcome provision of the bill denies tax benefits to companies that participate in an international boycott. It is high time that our laws stopped offering tax benefits to companies that cooperate with the Arab boycott against Israel.

Like the original House-passed bill, the conference report includes several provisions protecting taxpayers, including a requirement that the IRS notify the taxpayer if it is requesting information about the taxpayer from others, such as banks.

The conference report's claim to substantial reform is, however, slim. While it somewhat increases the minimum tax for the wealthy, it will still allow many rich taxpayers to avoid their fair share of taxes. While it tightens several tax loopholes, it gives new tax benefits to certain industries. The original House bill closed only about $750 million in tax loopholes—a very modest effort to spread the tax burden more equitably. The Senate, however, actually created billions of dollars in new loopholes. The compromise conference report settled for closing about $400 million in loopholes—a perfunctory nod in the direction of tax equity.

The conference report also included a major revision of the inheritance tax laws which had been tacked onto the Senate bill. This estate and gift tax revision increases enormously the amount of tax-free money that the rich can leave to their heirs, thus benefiting fewer than 5 percent of all Americans at the expense of the rest. On the other hand, the estate tax revision phases out the loophole that now allows capital gains on inherited wealth to go tax free. It also includes a provision tightening the restrictions on generation skipping trusts—a favorite estate-tax avoidance gimmick.

The Tax Reform Act of 1976 is, on balance, only a small step toward meaningful tax reform. Our tax laws still overwhelmingly favor the rich at the expense of middle-income Americans. True tax reform would go much farther in eliminating inequitable tax subsidies and reducing the disproportionately heavy burden of low- and middle-income taxpayers.

Mr. ULLMAN. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

MOTION TO RECOMMIT

Mr. ARCHER. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the conference report?

Mr. ARCHER. I am in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ARCHER moves to recommit the conference report on H.R. 10612 to the Committee on Conference.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER pro tempore. The question is on the conference report.

Mr. ULLMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 383, nays 26, not voting 21, as follows:

[Roll No. 739]

YEAS—383

Abdnor	Cederberg	Flowers
Abzug	Chappell	Flynt
Adams	Clancy	Foley
Addabbo	Clausen, Don H.	Ford, Mich.
Alexander	Clawson, Del	Forsythe
Allen	Clay	Fountain
Ambro	Cleveland	Fraser
Anderson, Calif.	Cochran	Frenzel
Anderson, Ill.	Cohen	Frey
Andrews, N.C.	Collins, Ill.	Fuqua
Andrews, N. Dak.	Conable	Gaydos
Annunzio	Conte	Giaimo
Armstrong	Conyers	Gibbons
Ashbrook	Corman	Gilman
Ashley	Cornell	Ginn
Aspin	Cotter	Goodling
AuCoin	Coughlin	Gradison
Badillo	Crane	Grassley
Bafalis	D'Amours	Green
Baldus	Daniel, Dan	Gude
Baucus	Daniel, R. W.	Guyer
Bauman	Daniels, N.J.	Hagedorn
Beard, R.I.	Danielson	Haley
Beard, Tenn.	Davis	Hall, Ill.
Bedell	de la Garza	Hamilton
Bennett	Delaney	Hammer-schmidt
Bergland	Dellums	Hanley
Bevill	Dent	Hannaford
Biaggi	Derrick	Harkin
Biester	Derwinski	Harrington
Bingham	Devine	Harris
Blanchard	Diggs	Harsha
Blouin	Dingell	Hayes, Ind.
Boggs	Dodd	Hechler, W. Va.
Boland	Downey, N.Y.	Heckler, Mass.
Bolling	Downing, Va.	Hefner
Bonker	Drinan	Heinz
Bowen	Duncan, Oreg.	Henderson
Brademas	Duncan, Tenn.	Hicks
Breckinridge	du Pont	Hillis
Brinkley	Early	Holland
Brodhead	Eckhardt	Holt
Brooks	Edgar	Holtzman
Broomfield	Edwards, Ala.	Horton
Brown, Calif.	Edwards, Calif.	Howard
Brown, Mich.	Eilberg	Hubbard
Brown, Ohio	Emery	Hughes
Broyhill	Erlenborn	Hungate
Buchanan	Eshleman	Hutchinson
Burgener	Evans, Colo.	Hyde
Burke, Calif.	Evans, Ind.	Ichord
Burke, Fla.	Evins, Tenn.	Jacobs
Burke, Mass.	Fary	Jeffords
Burlison, Mo.	Fascell	Jenrette
Burton, John	Fenwick	Johnson, Calif.
Burton, Phillip	Findley	Johnson, Colo.
Butler	Fish	Jones, Ala.
Byron	Fisher	Jones, N.C.
Carney	Fithian	Jordan
Carr	Flood	Karth
	Florio	Kasten

Kastenmeier	Myers, Pa.	Shipley
Ketchum	Natcher	Shriver
Keys	Neal	Shuster
Kindness	Nedzi	Sikes
Koch	Nichols	Simon
Krebs	Nix	Sisk
LaFalce	Nolan	Skubitz
Lagomarsino	Nowak	Slack
Landrum	Oberstar	Smith, Iowa
Latta	Obey	Smith, Nebr.
Leggett	O'Brien	Snyder
Lehman	O'Hara	Solarz
Lent	O'Neill	Spellman
Levitas	Ottinger	Spence
Lloyd, Calif.	Passman	Staggers
Lloyd, Tenn.	Patten, N.J.	Stanton, J. William
Long, La.	Patterson, Calif.	Stanton, James V.
Long, Md.	Pattison, N.Y.	Stark
Lott	Paul	Steelman
Lujan	Pepper	Steiger, Wis.
Lundine	Perkins	Stokes
McClory	Pettis	Stratton
McCloskey	Peyser	Stuckey
McCollister	Pickle	Studds
McCormack	Pike	Sullivan
McDade	Poage	Symington
McDonald	Pressler	Talcott
McEwen	Preyer	Taylor, Mo.
McFall	Price	Taylor, N.C.
McHugh	Pritchard	Thompson
McKay	Quie	Thone
McKinney	Quillen	Thornton
Madden	Railsback	Traxler
Madigan	Randall	Treen
Maguire	Rangel	Tsongas
Mann	Rees	Udall
Martin	Regula	Ullman
Mathis	Reuss	Van Deerlin
Mazzoli	Rhodes	Vander Jagt
Meeds	Richmond	Vander Veen
Meyner	Riegle	Vanik
Mezvinsky	Rinaldo	Vigorito
Michel	Roberts	Walsh
Mikva	Robinson	Wampler
Milford	Rodino	Waxman
Miller, Calif.	Roe	Weaver
Miller, Ohio	Rogers	Whalen
Mills	Roncalio	Whitehurst
Mineta	Rooney	Whitten
Minish	Rose	Wiggins
Mink	Rosenthal	Wilson, Bob
Mitchell, Md.	Rostenkowski	Wilson, C. H.
Mitchell, N.Y.	Roush	Winn
Moakley	Roybal	Wirth
Moffett	Ruppe	Wolff
Mollohan	Russo	Wright
Montgomery	Ryan	Wydler
Moore	St Germain	Wylie
Moorhead, Calif.	Santini	Yates
Moorhead, Pa.	Sarasin	Yatron
Morgan	Sarbanes	Young, Alaska
Mosher	Scheuer	Young, Fla.
Moss	Schneebeli	Young, Ga.
Motti	Schroeder	Zablocki
Murphy, Ill.	Schulze	Zeferetti
Murphy, N.Y.	Sebelius	
Murtha	Seiberling	
Myers, Ind.	Sharp	

NAYS—26

Archer	Jarman	Steed
Bell	Jones, Okla.	Steiger, Ariz.
Breaux	Kazen	Symms
Burleson, Tex.	Krueger	Teague
Collins, Tex.	Mahon	Waggonner
Goldwater	Melcher	White
Gonzalez	Rousselot	Wilson, Tex.
Hall, Tex.	Runnels	Young, Tex.
Hightower	Satterfield	

NOT VOTING—21

Carter	Hansen	Jones, Tenn.
Chisholm	Hawkins	Kelly
Conlan	Hébert	Kemp
Dickinson	Helstoski	Matsunaga
English	Hinshaw	Metcalfe
Esch	Howe	Risenhoover
Ford, Tenn.	Johnson, Pa.	Stephens

The Clerk announced the following pairs:

Mr. Matsunaga with Mr. Carter.

Mr. Helstoski with Mr. Howe.

Mrs. Chisholm with Mr. Johnson of Pennsylvania.

Mr. Risenhoover with Mr. Kelly.

Mr. Metcalfe with Mr. Hansen.

Mr. Hawkins with Mr. Conlan.

Mr. Hébert with Mr. Stephens.

Mr. English with Mr. Kemp.

Mr. Ford of Tennessee with Mr. Dickinson.

Mr. Jones of Tennessee with Mr. Esch.

Mr. JONES of Oklahoma changed his vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AMENDMENT NO. 35 REPORTED IN DISAGREEMENT

The SPEAKER. The Clerk will report amendment No. 35 reported back in disagreement.

The Clerk read as follows:

Amendment No. 35: On page 661, after line 16, insert:

TITLE XXII—ESTATE AND GIFT TAXES

SEC. 2201. REVISION OF ESTATE AND GIFT TAX PROVISIONS.

(a) ALLOWANCE OF CREDIT AGAINST ESTATE TAX.—

(1) Part II of subchapter A of chapter 11 (relating to credits against tax) is amended by inserting before section 2011 the following new section:

SEC. 2010. CREDIT AGAINST ESTATE TAX.

"(a) GENERAL RULE.—A credit of $50,000 shall be allowed against the tax imposed by section 2001 with respect to the estate of every decedent.

"(b) TRANSITIONAL RULE.—In the case of decedents dying before January 1, 1981, there shall be substituted for the $50,000 amount set forth in subsection (a) an amount determined under the following table:

"If the decedent dies is—	*The amount of the credit is—*
1977	$30,000
1978	35,000
1979	40,000
1980	45,000".

(2) REPEAL OF SPECIFIC EXEMPTION.—Section 2052 (relating to specific exemption for purposes of the estate tax) is hereby repealed.

(3) TECHNICAL, CLERICAL, AND CONFORMING CHANGES.—

(A) CREDIT FOR STATE DEATH TAXES.—Section 2011 (relating to credit for State death taxes) is amended—

(i) by striking out "taxable estate" each place it appears in subsection (b) (including the heading to the table) and inserting in lieu thereof "adjusted taxable estate";

(ii) by adding at the end of subsection (b) the following new sentence:

"For purposes of this section, the term 'adjusted taxable estate' means the taxable estate reduced by $60,000."; and

(iii) by striking out "taxable estate" each place it appears in subsection (e) and inserting in lieu thereof "adjusted taxable estate".

(B) CREDIT FOR GIFT TAX.—Subsection (a) of section 2012 (relating to credit for gift tax) is amended by striking out "provided by section 2011" and inserting in lieu thereof "provided by section 2011 and the credit provided by section 2010".

(C) CREDIT FOR TAX ON PRIOR TRANSFERS.—

(i) The first sentence of section 2013(b) is amended by striking out "and increased by the exemption provided for by section 2052 or section 2106(a)(3), or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for purposes of the estate tax".

(ii) Subparagraph (A) of section 2013 (c)(1) is amended to read as follows:

"(A) the estate tax imposed by section 2001 or section 2101 (after deducting the credits provided for in section 2010, 2011, 2012, and 2014) computed without regard to this section, exceeds".

(D) CREDIT IN CASE OF ESTATES OF NONRESIDENTS NOT CITIZENS.—Section 2102 (relating to credits against tax in case of estates of nonresidents not citizens) is amended by adding at the end thereof the following new subsection:

"(c) CREDIT AGAINST ESTATE TAX.—

"(1) IN GENERAL.—A credit of $5,000 shall be allowed against the tax imposed by section 2101.

"(2) TRANSITIONAL RULE.—In the case of decedents who are neither residents nor citizens of the United States dying before January 1, 1981, there shall be substituted for the $5,000 amount set forth in paragraphs (1) and (3)(A) an amount determined under the following table:

"If the decedent dies in—	*The amount of the credit is—*
1977	$3,000
1978	3,500
1979	4,000
1980	4,500

"(3) RESIDENTS OF POSSESSIONS OF THE UNITED STATES.—In the case of a decedent who is considered to be a nonresident not a citizen of the United States under section 2209, the credit under this subsection shall be the greater of—

"(A) $5,000, or

"(B) that proportion of $14,767 (or in the case of a decedent dying in a calendar year before January 1, 1982, the amount applicable to such year as determined under section 2010(b)) which the value of that part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

"(4) APPLICATION OF OTHER CREDITS.—For purposes of subsection (a), sections 2011 to 2013, inclusive, shall be applied as if the credit allowed under this subsection were allowed under section 2010.".

(E) REPEAL OF SPECIFIC EXEMPTIONS.—Paragraph (3) of section 2106(a) (relating to specific exemption in case of decedent nonresidents not citizens) is hereby repealed.

(F) CREDIT FOR FOREIGN DEATH TAXES.—Paragraph (2) of section 2014(b) (relating to limitations on credit) is amended by striking out "sections 2011 and 2012" and inserting in lieu thereof "sections 2010, 2011, and 2012".

(G) LIABILITY OF LIFE INSURANCE BENEFICIARIES.—The first sentence of section 2206 (relating to liability of life insurance beneficiaries) is amended by striking out "the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2051" and inserting in lieu thereof "the taxable estate".

(H) LIABILITY OF RECIPIENTS OF CERTAIN PROPERTY.—The first sentence of section 2207 (relating to liability of recipient of property over which decedent had power of appointment) is amended by striking out "the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2052, or section 2106(a), as the case may be" and inserting in lieu thereof "the taxable estate".

(I) RETURN BY EXECUTOR.—Subsection (a) of section 6018 (relating to estate tax returns by executor) is amended to read as follows:

"(a) RETURNS BY EXECUTOR.—

"(1) CITIZENS OR RESIDENTS.—In all cases where the gross estate at the death of a citizen or resident exceeds—

"(A) $60,000, in the case of a death before January 1, 1977,

"(B) $130,000, in the case of a death during 1977,

"(C) $147,000, in the case of a death during 1978,

"(D) $164,000, in the case of a death during 1979,

"(E) $181,000, in the case of a death during 1980, and

"(F) $197,000, in the case of a death after December 31, 1980,

the executor shall make a return with respect to the estate tax imposed by subtitle B.

"(2) NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.—In the case of the estate of every non-resident not a citizen of the United States, if that part of the gross estate which is situated in the United States exceeds—

"(A) $30,000, in the case of a death before January 1, 1977,

"(B) $60,000, in the case of a death during 1977,

"(C) $70,000, in the case of a death during 1978,

"(D) $80,000, in the case of a death during 1979,

"(E) $90,000, in the case of a death during 1980,

"(F) $100,000, in the case of a death after December 31, 1980,

the executor shall make a return with respect to the estate tax imposed by subtitle B.".

(J) CLERICAL AMENDMENTS.—

(i) The table of sections for part II of subchapter A of chapter 11 is amended by inserting before the item relating to section 2011 the following new item:

"Sec. 2010. Credit against estate tax.".

(ii) The table of sections for part IV of subchapter A of chapter 11 is amended by striking out the item relating to section 2052.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(b) INCREASE IN LIMITATION ON ESTATE TAX MARITAL DEDUCTION.—

(1) IN GENERAL.—Paragraph (1) of section 2056(c) (relating to limitation on marital deduction) is amended to read as follows:

"(1) LIMITATION.—

"(A) IN GENERAL.—The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of—

"(i) $250,000, or

"(ii) 50 percent of the value of the adjusted gross estate (as defined in paragraph (2)).

"(B) COMMUNITY PROPERTY ADJUSTMENT.—The $250,000 amount set forth in subparagraph (A)(i) shall be reduced by the excess (if any) of—

"(i) the amount of the subtraction determined under clauses (i), (ii), and (iii) of paragraph (2)(B), over

"(ii) the excess of the aggregate of the deductions allowed under sections 2053 and 2054 over the amount taken into account with respect to such deductions under clause (iv) of paragraph (2)(B).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to the estates of decedents dying after December 31, 1976.

(c) VALUATION FOR PURPOSES OF THE FEDERAL ESTATE TAX OF CERTAIN REAL PROPERTY DEVOTED TO FARMING, WOODLANDS, SCENIC OPEN SPACES, AND HISTORIC SITES.—

(1) GENERAL RULE.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2032 the following new section:

"SEC. 2032A. VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.

"(a) VALUE BASED ON USE ON BASIS OF WHICH PROPERTY QUALIFIES.—

"(1) GENERAL RULE.—If—

"(A) the decendent was (at the time of his death) a citizen or resident of the United States, and

"(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use on the basis of which it qualifies, under subsection (b), as qualified real property.

"(2) LIMITATION.—The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $1,000,000.

"(b) QUALIFIED REAL PROPERTY.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified real property' means real property located in the United States which, on the date of the decedent's death, was being used for a qualified use, but only if—

"(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which—

"(i) on the date of the decedent's death, was being used for a qualified use, and

"(ii) was acquired from or passed from the decedent to a qualified heir of the decedent,

"(B) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

"(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which such real property was—

"(i) owned by the decendent, and

"(ii) used for a qualified use, and

"(D) such property is designated in the agreement referred to in subsection (d)(2).

"(2) QUALIFIED USE.—For purposes of this section, the term 'qualified use' means the devotion of the property to any of the following:

"(A) farming (including the production of agricultural commodities and the raising of livestock),

"(B) woodland (including land used for the commercial production of trees and land publicly used for undeveloped scenic or outdoor recreational purposes),

"(C) open pastoral space, or

"(D) maintenance of historic values but only if such property is listed in the National Register of Historic Places, either separately or as part of a district so listed.

"(3) ADJUSTED VALUE.—For purposes of paragraph (1), the term 'adjusted value' means—

"(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053 (a), or

"(B) in the case of of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053(a).

"(c) TAX TREATMENT OF DISPOSITIONS AND CONVERSIONS TO NONQUALIFIED USES.—

"(1) IMPOSITION OF ADDITIONAL ESTATE TAX.—If, within 10 years after the decedent's death and before the death of the qualified heir—

"(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

"(B) the qualified real property is converted to a nonqualified use (within the meaning of paragraph (7)),

then there is hereby imposed an additional estate tax.

"(2) AMOUNT OF ADDITIONAL TAX.—

"(A) IN GENERAL.—The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of—

"(i) the adjusted tax difference attributable to such interest, or

"(ii) the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

"(B) ADJUSTED TAX DIFFERENCE ATTRIBUTABLE TO INTEREST.—For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference for the estate (determined under subparagraph (C)) as—

"(i) the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to

"(ii) a similar excess determined for all qualified real property.

"(C) ADJUSTED TAX DIFFERENCE WITH RESPECT TO THE ESTATE.—For purposes of subparagraph (B), the term 'adjusted tax difference with respect to the estate' means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term 'estate tax liability' means the tax imposed by section 2001 reduced by the credits allowable against such tax.

"(D) PARTIAL DISPOSITIONS.—For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a conversion to a nonqualified use of such a portion—

"(i) then the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

"(ii) the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

"(3) PHASEOUT OF ADDITIONAL TAX AFTER 24 MONTHS.—If the date of the disposition or conversion referred to in paragraph (1) occurs more than 24 months and less than 120 months after the date of the death of the decedent, the amount of the tax imposed by this subsection shall be reduced (but not below zero) by 20 percent plus an amount determined by multiplying 80 percent of the amount of such tax (determined without regard to this paragraph) by a fraction—

"(A) the numerator of which is the number of full months after such death in excess of 24, and

"(B) the denominator of which is 96.

"(4) ONLY ONE ADDITIONAL TAX IMPOSED WITH RESPECT TO ANY ONE PORTION.—In the case of an interest acquired from (or passing from) any decedent—

"(A) if subparagraph (A) of paragraph (1) applies to any portion of an interest, subparagraph (B) of such paragraph shall not apply with respect to such interest, and

"(B) if subparagraph (B) of paragraph (1) applies to any portion of an interest, subparagraph (A) of such paragraph shall not apply with respect to such interest.

"(5) DUE DATE.—The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or conversion referred to in paragraph (1).

"(6) LIABILITY FOR TAX.—The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest.

"(7) CONVERSION TO NONQUALIFIED USE.—For purposes of paragraph (1)(B), real property is converted to a nonqualified use on the first occurrence of any of—

"(A) the conversion of the real property with respect to which the election provided in this section was made, or any portion thereof, to a use other than one or more of the qualified uses described in subsection (b)(2); or

"(B) the rezoning of such property to permit a use other than one or more of the qualified uses described in subsection (b)(2),

if such rezoning occurs at the request of the owner; or

"(C) if such property qualified for the election only pursuant to subsection (b)(2)(D), removal of such property from the National Register of Historic Places, or discontinuance of maintenance of the historic values.

"(d) ELECTION; AGREEMENT.—

"(1) ELECTION.—The election under this section shall be made no later than the time prescribed under section 6075(a) for filing the return of tax under section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.

"(2) AGREEMENT.—The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

"(e) DEFINITIONS; SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED HEIR.—The term 'qualified heir' means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified farm real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

"(2) MEMBER OF FAMILY.—The term 'member of the family' means, with respect to any individual, only such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as a child of such individual by blood.

"(3) CERTAIN REAL PROPERTY INCLUDED.—Residential buildings and related improvements occupied on a regular basis by the owner or lessee of the real property or by persons employed by such owner or lessee for the purpose of operating or maintaining the real property and improvements described in subsection (b)(1), and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

"(f) STATUTE OF LIMITATIONS.—If qualified real property is disposed of or is converted to a nonqualified use, then—

"(1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or conversion shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or conversion, and

"(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(g) APPLICATION OF THIS SECTION AND SECTION 6324B TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The Secretary shall prescribe regulations setting forth the application of this section and section 6324B in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of section 6166 (b)).".

(2) SPECIAL LIEN.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting after section 6324A the following new section:

"SEC. 6324B. SPECIAL LIEN FOR ADDITIONAL ESTATE TAX ATTRIBUTABLE TO FARM, ETC., VALUATION.

"(a) GENERAL RULE.—In the case of any interest in qualified real property (within the meaning of section 2032A(b)), an amount equal to the adjusted tax difference attributable to such interest (within the meaning of section 2032A(c)(2)(B)), shall be a lien in favor of the United States on the property in which such interest exists.

"(b) PERIOD OF LIEN.—The lien imposed by this section shall arise at the time an election is filed under section 2032A and shall continue with respect to any interest in the qualified real property—

"(1) until the liability for tax under subsection (c) of section 2032A with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time, or

"(2) until it is established to the satisfaction of the Secretary that no further tax liability may arise under section 2032A(c) with respect to such interest.

"(c) CERTAIN RULES MADE APPLICABLE.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this section as if it were a lien imposed by section 6324A.

"(d) SUBSTITUTION OF SECURITY FOR LIEN.—To the extent provided in regulations prescribed by the Secretary, the furnishing of security may be substituted for the lien imposed by this section.".

(3) CREDIT FOR TAX ON PRIOR TRANSFERS.—Section 2013 (relating to credit for tax on prior transfers) is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF ADDITIONAL TAX IMPOSED UNDER SECTION 2032A.—If section 2032A applies to any property included in the gross estate of the transferor and an additional tax is imposed with respect to such property under section 2032A(c) before the date which is 2 years after the date of the decedent's death, for purposes of this section—

"(1) the additional tax imposed by section 2032A (c) shall be treated as a Federal estate tax payable with respect to the estate of the transferor; and

"(2) the value of such property and the amount of the taxable estate of the transferor shall be determined as if section 2032A did not apply with respect to such property.".

(4) CLERICAL AMENDMENTS.—

(A) The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2032 the following new item:

"Sec. 2032A. Valuation of certain farm, etc., real property.".

(B) The table of sections for subchapter C of chapter 64 is amended by inserting after the item relating to section 6324A the following new item:

"Sec. 6324B. Special lien for additional estate tax attributable to farm, etc., valuation.".

(5) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

(d) EXTENSIONS OF TIME FOR PAYMENT OF ESTATE TAX.—

(1) REASONABLE CAUSE SUBSTITUTED FOR UNDUE HARDSHIP IN DETERMINING ELIGIBILITY FOR EXTENSIONS OF TIME FOR PAYMENT OF ESTATE TAX.—

(A) Paragraph (2) of section 6161(a) (relating to extension of time for paying estate tax) is amended to read as follows:

"(2) ESTATE TAX.—The Secretary may, for reasonable cause, extend the time for payment of—

"(A) any part of the amount determined by the executor as the tax imposed by chapter 11, or

"(B) any part of any installment under section 6166 (including any part of a deficiency prorated to any installment under section 6166),

for a reasonable period not in excess of 10 years from the date prescribed by section 6151(a) for payment of the tax (or, in the case of an amount referred to in subparagraph (B), if later, not beyond the date which is 12 months after the due date for the last installment)."

(B) Subsection (b) of section 6161 (relating to extension of time for payment of certain deficiencies) is amended to read as follows:

"(b) AMOUNT DETERMINED AS DEFICIENCY.—

"(1) INCOME, GIFT, AND CERTAIN OTHER TAXES.—Under regulations prescribed by the Secretary, the Secretary may extend the time for the payment of the amount determined as a deficiency of a tax imposed by chapter 1, 12, 42, or 43 for a period not to exceed 18 months from the date fixed for the payment of the deficiency, and in exceptional cases, for a further period not to exceed 12 months. An extension under this paragraph may be granted only where it is shown to the satisfaction of the Secretary that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, 42, or 43, or to the donor in the case of a tax imposed by chapter 12.

"(2) ESTATE TAX.—Under regulations prescribed by the Secretary, the Secretary may, for reasonable cause, extend the time for the payment of any deficiency of a tax imposed by chapter 11 for a reasonable period not to exceed 4 years from the date otherwise fixed for the payment of the deficiency.

"(3) NO EXTENSION FOR CERTAIN DEFICIENCIES.—No extension shall be granted under this subsection for any deficiency if the deficiency is due to negligence, to the intentional disregard of rules and regulations, or to fraud with intent to evade tax.".

(C) Subsection (b) of section 6163 (relating to extension to prevent undue hardship in case of reversionary or reminder interest) is amended to read as follows:

"(b) EXTENSION FOR REASONABLE CAUSE.—At the expiration of the period of postponement provided for in subsection (a), the Secretary may, for reasonable cause, extend the time for payment for a reasonable period or periods not in excess of 3 years from the expiration of the period of postponement provided in subsection (a).".

(D) Subsection (d) of section 6503 (relating to extensions of time for payment of estate tax) is amended by striking out "section 6166" and inserting in lieu thereof "section 6163 or 6166".

(2) EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX WHERE ESTATE CONSISTS OF INTEREST IN CLOSELY HELD BUSINESS.—

(A) 3-YEAR DEFERRAL 12-YEAR INSTALLMENT PAYMENT.—

(i) Subsection (a) of section 6166 (relating to extension of time for payment of estate tax where estate consists of interest in closely held business) is amended by striking out "but not exceeding 10" and inserting in lieu thereof "but not exceeding 12".

(ii) Subsection (e) of section 6166 (relating to date for payment of installments) is amended to read as follows:

"(e) DATE FOR PAYMENT OF INSTALLMENTS.—If an election is made under subsection (a), the first installment shall be paid on or before the date selected by the executor which is not more than 3 years after the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this subsection for payment of the preceding installment.".

(iii) Subsection (g) of section 6166 (relating to time for payment of interest) is amended to read as follows:

"(g) TIME FOR PAYMENT OF INTEREST.—If the time for payment of any amount of tax has been extended under this section—

"(1) INTEREST FOR THE FIRST 3 YEARS.—Interest payable under section 6601 on any

unpaid portion of such amount attributable to the first 3 years after the date prescribed by section 6151(a) for payment of the tax shall be paid annually.

"(2) INTEREST FOR PERIODS AFTER FIRST 3 YEARS.—Interest payable under section 6601 on any unpaid portion of such amount attributable to any period after the 3-year period referred to in paragraph (1) shall be paid annually at the same time as, and as a part of, each installment payment of the tax.

"(3) INTEREST IN THE CASE OF CERTAIN DEFICIENCIES.—In the case of a deficiency to which subsection (f) applies which is assessed after the close of the 3-year period referred to in paragraph (1), interest attributable to such 3-year period, and interest assigned under paragraph (2) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

"(4) SELECTION OF SHORTER PERIOD.—If the executor has selected a period shorter than 3 years under subsection (e), such shorter period shall be substituted for 3 years in paragraphs (1), (2), and (3) of this subsection.".

(iv) Subsection (i) of section 6166 (relating to transitional rules) is amended to read as follows:

"(i) ELECTION IN CASE OF CERTAIN DEFICIENCIES.—

"(1) IN GENERAL.—If—

"(A) a deficiency in the tax imposed by section 2001 is assessed,

"(B) the estate qualifies under subsection (a), and

"(C) the executor has not made an election under subsection (a),

the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to the intentional disregard of rules and regulations, or to fraud with intent to evade tax.

"(2) TIME OF ELECTION.—An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary for the payment of the deficiency, and shall be made in such manner as the Secretary shall by regulations prescribe.

"(3) EFFECT OF ELECTION ON PAYMENT.—If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (b)) be prorated to the installments which would have been due if an election had been timely made under subsection (a) at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date of payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.".

(B) 6-PERCENT INTEREST RATE.—Section 6601 (relating to interest on underpayment, nonpayment, or extension of time for payment, of tax) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) 6-PERCENT RATE ON CERTAIN PORTION OF ESTATE TAX EXTENDED UNDER SECTION 6166.—

"(1) IN GENERAL.—If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166 and the annual rate provided by subsection (a) exceeds 6 percent, interest on the 6-percent portion of such amount shall (in lieu of such annual rate) be paid at the rate of 6 percent. For purposes of this subsection, the amount of any deficiency which is prorated to installments payable under section 6166 shall be treated as an amount of tax payable in installments under such section.

"(2) 6-PERCENT PORTION.—For purposes of this subsection, the term '6-percent portion' means the lesser of—

"(A) an amount equal to—

"(i) $295,700, in the case of decedents dying in 1977,

"(ii) $290,700, in the case of decedents dying in 1978,

"(iii) $285,700, in the case of decedents dying in 1979,

"(iv) $280,700, in the case of decedents dying in 1980, or

"(v) $275,700, in the case of decedents dying after December 31, 1980, or

"(B) the amount of the tax imposed by chapter 11 which is extended as provided in section 6166.

"(3) TREATMENT OF PAYMENTS.—If the amount of tax imposed by chapter 11 which is extended as provided in section 6166 exceeds the 6-percent portion, any payment of a portion of such amount shall, for purposes of computing interest for periods after such payment, be treated as reducing the 6-percent portion by an amount which bears the same ratio to the amount of such payment as the amount of the 6-percent portion (determined without regard to this paragraph) bears to the amount of the tax which is extended as provided in section 6166.".

(3) SPECIAL LIEN FOR ESTATE TAX DEFERRED UNDER SECTION 6166; DISCHARGE OF EXECUTOR FROM PERSONAL LIABILITY.—

(A) IN GENERAL.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting after section 6324 the following new section:

"SEC. 6324A. SPECIAL LIEN FOR ESTATE TAX DEFERRED UNDER SECTION 6166.

"(a) GENERAL RULE.—In the case of any estate with respect to which an election has been made under section 6166, if the executor makes an election under this section (at such time and in such manner as the Secretary shall by regulations prescribe) and files the agreement referred to in subsection (c), the deferred amount (plus any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on the section 6166 lien property.

"(b) SECTION 6166 LIEN PROPERTY.—

"(1) IN GENERAL.—For purposes of this section, the term 'section 6166 lien property' means interests in real and other property to the extent such interests—

"(A) can be expected to survive the deferral period, and

"(B) are designated in the agreement referred to in subsection (c).

"(2) MAXIMUM VALUE OF REQUIRED PROPERTY.—The maximum value of the property which the Secretary may require as section 6166 lien property with respect to any estate shall be a value which is not greater than the sum of—

"(A) the deferred amount, and

"(B) the aggregate interest amount.

For purposes of the preceding sentence, the value of any property shall be determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11 and shall be determined by taking into account any encumbrance such as a lien under section 6324B.

"(3) PARTIAL SUBSTITUTION OF BOND FOR LIEN.—If the value required as section 6166 lien property pursuant to paragraph (2) exceeds the value of the interests in property covered by the agreement referred to in subsection (c), the Secretary may accept a bond in an amount equal to such excess conditioned on the payment of the amount extended in accordance with the terms of such extension.

"(c) AGREEMENT.—The agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement—

"(1) consenting to the creation of the lien under this section with respect to such property, and

"(2) designating a responsible person who shall be the agent for the beneficiaries of the estate and for the persons who have consented to the creation of the lien in dealings with the Secretary on matters arising under section 6166 or this section.

"(d) SPECIAL RULES.—

"(1) REQUIREMENT THAT LIEN BE FILED.—The lien imposed by this section shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of section 6323(f) has been filed by the Secretary. Such notice shall not be required to be refiled.

"(2) PERIOD OF LIEN.—The lien imposed by this section shall arise at the time the executor is discharged from liability under section 2204 (or, if earlier, at the time notice is filed pursuant to paragraph (1)) and shall continue until the liability of the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.

"(3) PRIORITIES.—Even though notice of a lien imposed by this section has been filed as provided in paragraph (1), such lien shall not be valid—

"(A) REAL PROPERTY TAX AND SPECIAL ASSESSMENT LIENS.—To the extent provided in section 6323(b)(6).

"(B) REAL PROPERTY SUBJECT TO A MECHANIC'S LIEN FOR REPAIRS AND IMPROVEMENTS.—In the case of any real property subject to a lien for repair or improvement, as against a mechanic's lienor.

"(C) REAL PROPERTY CONSTRUCTION OR IMPROVEMENT FINANCING AGREEMENT.—As against any security interest set forth in paragraph (3) of section 6323(c) (whether such security interest came into existence before or after tax lien filing).

Subparagraphs (B) and (C) shall not apply to any security interest which came into existence after the date on which the Secretary filed notice (in a manner similar to notice filed under section 6323(f)) that payment of the deferred amount has been accelerated under section 6166(h).

"(4) LIEN TO BE IN LIEU OF SECTION 6324 LIEN.—If there is a lien under this section on any property with respect to any estate, there shall not be any lien under section 6324 on such property with respect to the same estate.

"(5) ADDITIONAL LIEN PROPERTY REQUIRED IN CERTAIN CASES.—If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the aggregate interest amount, the Secretary may require the addition of property to the agreement (but he may not require under this paragraph that the value of the property covered by the agreement exceed such unpaid portion). If property having the required value is not added to the property covered by the agreement (or if other security equal to the required value is not furnished) within 90 days after notice and demand therefor by the Secretary, the failure to comply with the preceding sentence shall be treated as an act accelerating payment of the installments under section 6166(h).

"(6) LIEN TO BE IN LIEU OF BOND.—The Secretary may not require under section 6165 the furnishing of any bond for the payment of any tax to which an agreement which meets the requirements of subsection (c) applies.

"(e) DEFINITIONS.—For purposes of this section—

"(1) DEFERRED AMOUNT.—The term 'deferred amount' means the aggregate amount deferred under section 6166 (determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11).

"(2) AGGREGATE INTEREST AMOUNT.—The term 'aggregate interest amount' means the

aggregate amount of interest which will be payable over the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11).

"(3) DEFERRAL PERIOD.—The term 'deferral period' means the period for which the payment of tax is deferred pursuant to the election under section 6166.

"(4) APPLICATION OF DEFINITIONS IN CASE OF DEFICIENCIES.—In the case of a deficiency, a separate deferred amount, aggregate interest amount, and deferral period shall be determined as of the due date of the first installment after the deficiency is prorated to installments under section 6166.".

(B) DISCHARGE OF EXECUTOR FROM PERSONAL LIABILITY.—Section 2204 (relating to discharge of fiduciary from personal liability) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL LIEN UNDER SECTION 6324A.—For purposes of the second sentence of subsection (a) and the last sentence of subsection (b), an agreement which meets the requirements of section 6324A (relating to special lien for estate tax deferred under section 6166) shall be treated as the furnishing of a bond with respect to the amount for which the time for payment has been extended under section 6166.".

(C) CLERICAL AMENDMENT.—The table of sections for subchapter C of chapter 64 is amended by inserting after the item relating to section 6324 the following new item:

"Sec. 6324A. Special lien for estate tax deferred under section 6166.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to the estates of decedents dying after December 31, 1976.

SEC. 2202. CERTAIN GENERATION-SKIPPING TRANSFERS.

(a) IMPOSITION OF TAX.—Subtitle B (relating to estate and gift taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 13—TAX ON CERTAIN GENERATION-SKIPPING TRANSFERS

"SUBCHAPTER A. Tax imposed.
"SUBCHAPTER B. Definitions and special rules.
"SUBCHAPTER C. Administration.

"Subchapter A—Tax Imposed

"Sec. 2601. Tax imposed.
"Sec. 2602. Amount of tax.
"Sec. 2603. Liability for tax.

"SEC. 2601. TAX IMPOSED.

"A tax is hereby imposed on every generation-skipping transfer in the amount determined under section 2602.

"SEC. 2602. AMOUNT OF TAX

"(a) GENERAL RULE.—The amount of the tax imposed by section 2601 with respect to any transfer shall be the excess of—

"(1) a tentative tax computed in accordance with the applicable rate schedule (as in effect on the date of transfer) on the sum of—

"(A) the fair market value of the property transferred (determined as of the date of transfer),

"(B) the aggregate fair market value (determined for purposes of this chapter) of all prior transfers of the deemed transferor to which this chapter applied, and

"(C) the amount of—

"(i) the taxable gifts (within the meaning of section 2503) made by the deemed transferor before this transfer if the deemed transferor is alive at the time of the transfer, or

"(ii) the taxable estate of the deemed transferor if the deemed transferor has died before this transfer, over

"(2) a tentative tax (similarly computed) on the sum of the amounts determined under subparagraphs (B) and (C) of paragraph (1).

For purposes of the preceding sentence, the term 'applicable rate schedule' means the rate schedule set forth in section 2501(a) if the deemed transfer or is alive at the time of the transfer or the rate schedule set forth in section 2001 if the deemed transferor has died before the transfer.

"(b) MULTIPLE SIMULTANEOUS TRANSFER.—If two or more transfers which are taxable under section 2601 and which have the same deemed transferor occur at the same time, the tax imposed by section 2601 on each such transfer shall be the amount which bears the same ratio to—

"(1) the amount of the tax which would be imposed by section 2601 if the aggregate of such transfers were a single transfer, as

"(2) the fair market value of the property transferred in such transfer bears to the aggregate fair market value of all property transferred in such transfers.

"(c) DENIAL OF DEDUCTIONS, CREDITS, ETC.—

"(1) IN GENERAL.—Except as provided in paragraphs (2), (3), (4), and (5), no deduction, exclusion, exemption, or credit shall be allowed against the tax imposed by section 2601.

"(2) EXCEPTION FOR UNUSED PORTION OF ESTATE TAX CREDIT.—The portion of the credit under section 2010 (relating to estate tax credit) which exceeds the sums of—

"(A) the tax imposed by section 2001, and

"(B) the taxes previously imposed by section 2601 with respect to this deemed transferor,

shall be allowed as a credit against the tax imposed by section 2601. The amount of the credit allowed by the preceding sentence shall not exceed the amount of the tax imposed by section 2601.

"(3) EXCEPTION FOR CREDIT FOR TAX ON PRIOR TRANSFERS.—The credit under section 2013 (relating to credit for tax on prior transfers) shall be allowed against the tax imposed by section 2601.

"(4) EXCEPTION FOR CHARITABLE DEDUCTION.—The deduction under section 2055, 2106(a)(2), or 2522, whichever is appropriate, shall be allowed in determining the tax imposed by section 2601.

"(5) MARITAL DEDUCTION.—For purposes of section 2056 (relating to bequests, etc., to surviving spouse), if the generation-skipping transfer occurs at the death of the deemed transferor or within 3 years and 9 months thereafter, the value of the gross estate of the deemed transferor shall be deemed to be increased by the amount of such transfer.

"SEC. 2603. LIABILITY FOR TAX.

"(a) PERSONAL LIABILITY.—

"(1) IN GENERAL.—If the tax imposed by section 2601 is not paid when due then—

"(A) except to the extent provided in paragraph (2), the trustee shall be personally liable for any portion of such tax which is attributable to a taxable termination, and

"(B) the distributee of the property shall be personally liable for such tax to the extent provided in paragraph (3).

"(2) LIMITATION ON PERSONAL LIABILITY OF TRUSTEE.—The trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the application to the transfer of rates of tax which exceed the rates of tax furnished by the Secretary to the trustee as being the rates at which the transfer may reasonably be expected to be taxed.

"(3) LIMITATION OF PERSONAL LIABILITY OF DISTRIBUTEE.—The distributee of the property shall be personally liable for the tax imposed by section 2601 only to the extent of an amount equal to the fair market value (determined as of the time of the distribution) of the property recived by the distributee in the distribution.

"(b) LIEN.—The tax imposed by section 2601 on any transfer shall be a lien on the property transferred until the tax is paid in full or becomes unenforceable by reason of lapse of time.

"Subchapter B—Definitions and Special Rules

"Sec. 2611. Generation-skipping transfer.
"Sec. 2612. Deemed transferor.
"Sec. 2613. Other definitions.
"Sec. 2614. Special rules.

"SEC. 2611. GENERATION-SKIPPING TRANSFER.

"(a) GENERATION-SKIPPING TRANSFER DEFINED.—For purposes of this chapter, the terms 'generation-skipping transfer' and 'transfer' mean any taxable distribution or taxable termination with respect to a generation-skipping trust or trust equivalent.

"(b) GENERATION-SKIPPING TRUST.—For purposes of this chapter, the term 'generation-skipping trust' means any trust having younger generation beneficiaries (within the meaning of section 2613(c)(1)) who are assigned to more than one generation.

"(c) ASCERTAINMENT OF GENERATION.—For purposes of this chapter, the generation to which any person (other than the grantor) belongs shall be determined in accordance with the following rules:

"(1) an individual who is a lineal descendant of a grandparent of the grantor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the grantor,

"(2) an individual who has been at any time married to a person described in paragraph (1) shall be assigned to the generation of the person so described,

"(3) a relationship by the half blood shall be treated as a relationship by the whole blood,

"(4) a relationship by legal adoption shall be treated as a relationship by blood,

"(5) an individual who is not assigned to a generation by reason of the foregoing paragraphs shall be assigned to a generation on the basis of the date of such individual's birth, with—

"(A) an individual born not more thn 12½ years after the date of the birth of the grantor assigned to the grantor's generation,

"(B) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the grantor assigned to the first generation younger than the grantor, and

"(C) similar rules for a new generation every 25 years,

"(6) an individual who, but for this paragraph, would be assigned to more than one generation shall be assigned to the youngest such generation, and

"(7) if any beneficiary of the trust is an estate or a trust, partnership, corporation, or other entity (other than an organization described in section 511(a)(2) and other than a charitable trust described in section 511(b)(2)), each individual having a beneficial interest in such entity shall be treated as a beneficiary of the trust and shall be assigned to a generation under the foregoing provisions of this subsection.

"(d) GENERATION-SKIPPING TRUST EQUIVALENT.—

"(1) IN GENERAL.—For purposes of this chapter, the term 'generation-skipping trust equivalent' means any arrangement which, although not a trust, has substantially the same effect as a generation-skipping trust.

"(2) EXAMPLES OF ARRANGEMENTS TO WHICH SUBSECTION RELATES.—Arrangements to be taken into account for purposes of determining whether or not paragraph (1) applies include (not are not limited to) arrangements involving life estates and remainders, estates for years, insurance and annuities, and split interests.

"(3) REFERENCES TO TRUSTS INCLUDE REFERENCES TO TRUST EQUIVALENTS.—Any reference in this chapter in respect of a generation-skipping trust shall include the appropriate reference in respect of a generation-skipping trust equivalent.

"SEC. 2612. DEEMED TRANSFEROR.

"(a) GENERAL RULE.—For purposes of this chapter, the deemed transferor with respect to a transfer is—

"(1) except as provided in paragraph (2), the parent of the transferee of the property who is more closely related to the grantor of the trust than the other parent of such transferee (or if neither parent is related to such grantor, the parent having a closer affinity to the grantor), or

"(2) if the parent described in paragraph (1) is not a younger generation beneficiary of the trust but 1 or more ancestors of the transferee is a younger generation beneficiary related by blood or adoption to the grantor of the trust, the youngest of such ancestors.

"(b) DETERMINATION OF RELATIONSHIP.—For purposes of subsection (a), a parent related to the grantor of the trust by blood or adoption is more closely related than a parent related to such grantor by marriage.

"SEC. 2613. OTHER DEFINITIONS.

"(a) TAXABLE DISTRIBUTION.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'taxable distribution' means any distribution which is not out of the income of the trust (within the meaning of section 643(b)) from a generation-skipping trust to any younger generation beneficiary who is assigned to a generation younger than the generation assignment of any other person who is a younger generation beneficiary.

"(2) SOURCE OF DISTRIBUTIONS.—If, during the taxable year of the trust, there are distributions out of such income of the trust and out of corpus, for purposes of paragraph (1) the distributions of such income shall be deemed to have been made to the beneficiaries (to the extent of the aggregate distributions made to each such beneficiary during such year) in descending order of generations, beginning with the beneficiaries assigned to the oldest generation.

"(3) PAYMENT OF TAX.—If any portion of the tax imposed by this chapter with respect to any transfer is paid out of the income or corpus of the trust, an amount equal to the portion so paid shall be deemed to be a generation-skipping transfer.

"(4) DISTRIBUTIONS SUBJECT TO GIFT OR ESTATE TAX EXCLUDED.—The term 'taxable distribution' does not include any transfer to the extent such transfer is subject to a tax imposed by chapter 11 or 12.

"(b) TAXABLE TERMINATION.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'taxable termination' means the termination (by death, lapse of time, exercise or nonexercise, or otherwise) of the interest or power in a generation-skipping trust of any younger generation beneficiary who is assigned to any generation older than the generation assignment of any other person who is a younger generation beneficiary of that trust.

"(2) TIME CERTAIN TERMINATION DEEMED TO OCCUR.—

"(A) WHERE 2 OR MORE BENEFCIARIES ARE ASSIGNED TO SAME GENERATION.—In any case where 2 or more younger generation beneficiaries of a trust are assigned to the same generation, except to the extent provided in regulations prescribed by the Secretary, the transfer constituting the termination with respect to each such beneficiary shall be treated as occurring at the time when the last such termination occurs.

"(B) SAME BENEFICIARY HAS MORE THAN 1 INTEREST OR POWER.—In any case where a younger generation beneficiary of a trust has both an interest and a power, or more than 1 interest or power, in the trust, except to the extent provided in regulations prescribed by the Secretary, the termination with respect to each such interest or power shall be treated as occurring at the time when the last such termination occurs.

"(3) DEEMED RECIPIENTS OF CERTAIN TERMINATIONS.—Where, at the time of any termination, it is not clear who will be the transferee of any portion of the property transferred, such portion shall be deemed transferred pro rata to all beneficiaries of the trust in accordance with the amount which each of them would receive under a maximum exercise of discretion on their behalf. For purposes of the preceding sentence, where it is not clear whether discretion will be exercised per stirpes or per capita, it shall be presumed that the discretion will be exercised per stirpes.

"(4) TERMINATION OF POWER.—In the case of the termination of any power, the property transferred shall be deemed to be the property subject to the power immediately before the termination (determined without the application of paragraph (2)).

"(5) TERMINATIONS SUBJECT TO GIFT OR ESTATE TAX EXCLUDED.—The term "taxable termination' does not include any transfer to the extent such transfer is subject to a tax imposed by chapter 11 or 12.

"(6) COORDINATION WITH SUBSECTION (a).—

"(A) TERMINATIONS TAKE PRECEDENCE OVER DISTRIBUTIONS.—If—

"(i) the death of an individual or any other occurrence is a taxable termination with respect to any property, and

"(ii) such occurrence also requires the distribution of part or all of such property in a distribution which would (but for this subparagraph) be a taxable distribution,

then a taxable distribution shall be deemed not to have occurred with respect to the portion described in clause (i).

"(B) CERTAIN PRIOR TRANSFERS.—To the extent that—

"(i) the demand transferor in any prior transfer of the property of the trust being transferred in this transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the deemed transferor in this transfer, and

"(ii) the transferee in such prior transfer was assigned to the same generation as (or a higher generation than) the generation assignment of the transferee in this transfer,

the terms 'taxable termination' and 'taxable distribution' do not include this later transfer.

"(c) YOUNGER GENERATION BENEFICIARY; BENEFICIARY.—For purposes of this chapter—

"(1) YOUNGER GENERATION BENEFICIARY.—The term 'younger generation beneficiary' means any beneficiary who is assigned to a generation younger than the grantor's generation.

"(2) BENEFICIARY.—The term 'beneficiary' means any person who has an interest or power in the trust.

"(d) INTEREST OR POWER.—For purposes of this chapter—

"(1) INTEREST.—The term 'interest' means a right to receive income or corpus from the trust.

"(2) POWER.—The term 'power' means any power to establish or alter beneficial enjoyment of the corpus or income of the trust.

"(e) LIMITED POWER TO APPOINT AMONG LINEAL DESCENDANTS OF GRANTOR NOT TAKEN INTO ACCOUNT IN CERTAIN CASES.—For purposes of this chapter, if any individual—

"(1) does not have any interest in the trust, and

"(2) does not have any power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries who are lineal descendants of the grantor assigned to a generation younger than the generation assignment of such individual,

then such individual shall be treated as not having any power in the trust.

"SEC. 2614. SPECIAL RULES.

"(a) DISCLAIMERS.—If any beneficiary of a trust—

"(1) disclaims any interest or power in such trust on or before the day which is 9 months after the date the trust becomes irrevocable,

"(2) after such disclaimer, such interest or power does not exist, and

"(3) there has been no distribution from the trust with respect to such interest, or no exercise of such powers, as the case may be, then this chapter shall apply to such trust as if such interest or power had never come into being.

"(b) ALLOWANCE OF DEDUCTION AGAINST INCOME TAX.—If any amount distributed out of a generation-skipping trust or trust equivalent is included in the gross income of the transferee, there shall be allowed as a deduction in computing against the tax imposed by chapter 1 an amount equal to the tax imposed by this chapter on such amount, reduced by any credit allowable with respect to the tax imposed by this chapter on the amount distributed.

"(c) NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.—If the deemed transferor of any transfer is, at the time of the transfer, a nonresident not a citizen of the United States—

"(1) if the deemed transferor is alive at the time of the transfer, there shall be taken into account only property which would be taken into account for purposes of chapter 12, or

"(2) if the deemed transferor has died before the transfer, there shall be taken into account only property which would be taken into account for purposes of chapter 11.

"Subchapter C—Administration

"Sec. 2621. Administration.
"Sec. 2622. Regulations.

"SEC. 2621. ADMINISTRATION.

"(a) GENERAL RULE.—Insofar as applicable and not inconsistent with the provisions of this chapter—

"(1) if the deemed transferor is not alive at the time of the transfer, all provisions of law (including penalties) applicable to chapter 11 or section 2001 are hereby made applicable in respect of this chapter or section 2601, as the case may be, and

"(2) if the deemed transferor is alive at the time of the transfer, all provisions of law (including penalties) applicable to chapter 12 or section 2501 are hereby made applicable in respect of this chapter or section 2601, as the case may be.

"(b) CERTAIN PROVISIONS MADE INAPPLICABLE.—For purposes of this chapter, the following provisions shall not apply:

"(1) section 6166 (relating to extensions of time for payment of estate tax where estate consists largely of interest in closely held business), and

"(2) section 2032A (relating to valuation of certain real property).

"SEC. 2622. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter, including regulations providing the extent to which substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts.".

(b) TECHNICAL, CLERICAL, AND CONFORMING CHANGES).—

(1) CLERICAL CHANGES.—The table of chapters for subtitle B is amended by adding at the end thereof the following new item:

"CHAPTER 13. Tax on certain generation-skipping transfers.".

(2) CREDIT FOR TAX ON PRIOR TRANSFERS.—Section 2013 (relating to credit for tax on prior transfers) is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF TAX IMPOSED ON CERTAIN GENERATION-SKIPPING TRANSFER.—If any property was transferred to the decendent in a transfer which is taxable under section 2601 (relating to tax imposed on generation-skipping transfers) and if the deemed transferor (as defined in section 2612) is not alive at the time of such transfer, for purposes of this section—

"(1) such property shall be deemed to have

passed to the decendent from the deemed transferor;

"(2) the tax payable under section 2601 on such transfer shall be treated as a Federal estate tax payable with respect to the estate of the deemed transferor; and

"(3) the amount of the taxable estate of the deemed transferor shall be increased by the value of such property as determined for purposes of the tax imposed by section 2601 on the transfer.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to any generation-skipping transfer (within the meaning of section 2611(a) of the Internal Revenue Code of 1954) made after April 30, 1976.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to any generation-skipping transfer—

(A) under a trust which was irrevocable on April 30, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after April 30, 1976, or

(B) in the case of a decedent dying before January 1, 1978, pursuant to a will (or revocable trust) which was in existence on April 30, 1976, and was not amended at any time after that date in any respect which will result in the creation of, or increasing the amount of, a generation-skipping transfer. For purposes of subparagraph (B), if the decendent on April 30, 1976, was under a mental disability to change the disposition of his property, the period set forth in such subparagraph shall not expire before the date which is 2 years after the date on which he first regains his competence to dispose of such property.

(3) GENERATION-SKIPPING TRUST EQUIVALENT.—For purposes of this subsection, in the case of a generation-skipping trust equivalent (within the meaning of subsection (d) of section 2611 of the Internal Revenue Code of 1954), the provisions of such subsection (d) shall apply.

SEC. 2203. GIFT TAX TREATMENT OF COMMUNITY PROPERTY.

(a) IN GENERAL.—Section 2517(b) (relating to certain annuities under qualified plans) is amended by adding at the end thereof the following new subsection:

"(d) EXEMPTION OF CERTAIN ANNUITY INTERESTS CREATED BY COMMUNITY PROPERTY LAWS.—Notwithstanding any other provision of law, in the case of an employee on whose behalf contributions or payments are made by his employer or former employer under a trust or plan described in subsection (a)(1) or (2), or toward the purchase of a contract described in subsection (a)(3), which under subsection (b) are not considered as contributed by the employee, benefits attributable to such contributions or payments shall, for purposes of this chapter, not be considered as a transfer by the spouse of the employee to the extent that the value of any interest of such spouse in such contributions or payments or in such trust or plan or such contract—

"(1) is attributable to such contribution or payments, and

"(2) arises solely by reason of such spouse's interest in community income under the community property laws of the State.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to calendar quarters ending after December 31, 1976.

SEC. 2204. CREDIT AGAINST CERTAIN ESTATE TAXES.

(a) IN GENERAL.—Subject to the provisions of subsections (b), (c), and (d), credit against the tax imposed under chapter 11 of the Internal Revenue Code of 1954 (relating to estate tax) with respect to the estate of LaVere Redfield shall be allowed by the Secretary of the Treasury or his delegate for the conveyance of real property located within the boundaries of the Toiyabe National Forest.

(b) AMOUNT OF CREDIT.—The amount treated as a credit shall be equal to the fair market value of the real property transferred as of the valuation date used for purposes of the tax imposed and interest thereon under chapter 11 of the Internal Revenue Code of 1954.

(c) DEED REQUIREMENTS.—The provisions of this section shall apply only if the executrixes of the estate execute a deed (in accordance with the laws of the State in which such real estate is situated) transferring title to the United States which is satisfactory to the Attorney General or his designee.

(d) ACCEPTANCE AS NATIONAL FOREST.—The provisions of this section shall apply only if the real property transferred is accepted by the Secretary of the Department of Agriculture and added to the Toiyabe National Forest. The lands shall be transferred to the Secretary of Agriculture without reimbursement or payment from the Department of Agriculture.

(e) EFFECTIVE DATE.—The provisions of this section shall be effective on the date of enactment of this Act.

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the amendment reported back in disagreement be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

Mr. CONABLE. Mr. Speaker, reserving the right to object, I intend to move against the previous question on this matter. I wish to state this for the information of the Members at this time, although I am a little late in my reservation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

MOTION OFFERED BY MR. ULLMAN

Mr. ULLMAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. ULLMAN moves that the House recede from its disagreement to the amendment of the Senate numbered 35 and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 2201. UNIFIED RATE SCHEDULE FOR ESTATE AND GIFT TAXES; UNIFIED CREDIT IN LIEU OF SPECIFIC EXEMPTIONS.

(a) CHANGES IN ESTATE TAX.—

(1) IMPOSITION OF TAX; RATE SCHEDULE.—Section 2001 (relating to rate of tax) is amended to read as follows:

"SEC. 2001. IMPOSITION AND RATE OF TAX.

"(a) IMPOSITION.—A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

"(b) COMPUTATION OF TAX.—The tax imposed by this section shall be the amount equal to the excess (if any) of—

"(1) a tentative tax computed in accordance with the rate schedule set forth in subsection (c) on the sum of—

"(A) the amount of the taxable estate, and

"(B) the amount of the adjusted taxable gifts, over

"(2) the aggregate amount of tax payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976.

For purposes of paragraph (1)(B), the term 'adjusted taxable gifts' means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

"(c) RATE SCHEDULE.—

"If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $10,000	18 percent of such amount.
Over $10,000 but not over $20,000	$1,800, plus 20 percent of the excess of such amount over $10,000.
Over $20,000 but not over $40,000	$3,800, plus 22 percent of the excess of such amount over $20,000.
Over $40,000 but not over $60,000	$8,200, plus 24 percent of the excess of such amount over $40,000.
Over $60,000 but not over $80,000	$13,000, plus 26 percent of the excess of such amount over $60,000.
Over $80,000 but not over $100,000	$18,200, plus 28 percent of the excess of such amount over $80,000.
Over $100,000 but not over $150,000	$23,800, plus 30 percent of the excess of such amount over $100,000.
Over $150,000 but not over $250,000	$33,800, plus 32 percent of the excess of such amount over $150,000.
Over $250,000 but not over $500,000	$70,800, plus 34 percent of the excess of such amount over $250,000.
Over $500,000 but not over $750,000	$155,800, plus 37 percent of the excess of such amount over $500,000.
Over $750,000 but not over $1,000,000	$248,300, plus 39 percent of the excess of such amount over $750,000.
Over $1,000,000 but not over $1,250,000	$345,800, plus 41 percent of the excess of such amount over $1,000,000.
Over $1,250,000 but not over $1,500,000	$448,300, plus 43 percent of the excess of such amount over $1,250,000.

Over $1,500,000 but not over $2,000,000	$555,800, plus 45 percent of the excess of such amount over $1,500,000.
Over $2,000,000 but not over $2,500,000	$780,800, plus 49 percent of the excess of such amount over $2,000,000.
Over $2,500,000 but not over $3,000,000	$1,025,800, plus 53 percent of the excess of such amount over $2,500,000.
Over $3,000,000 but not over $3,500,000	$1,290,800, plus 57 percent of the excess of such amount over $3,000,000.
Over $3,500,000 but not over $4,000,000	$1,575,800, plus 61 percent of the excess of such amount over $3,500,000.
Over $4,000,000 but not over $4,500,000	$1,880,800, plus 65 percent of the excess of such amount over $4,000,000.
Over $4,500,000 but not over $5,000,000	$2,205,800, plus 69 percent of the excess of such amount over $4,500,000.
Over $5,000,000	$2,550,800, plus 70 percent of the excess of such amount over $5,000,000.

"(d) ADJUSTMENT FOR GIFT TAX PAID BY SPOUSE.—For purposes of subsection (b)(2), if—

"(1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent's spouse, and

"(2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012(d)) shall be treated as a tax payable with respect to a gift made by the decedent."

(2) ALLOWANCE OF UNIFIED CREDIT.—Part II of subschapter A of chapter 11 (relating to credits against the estate tax) is amended by inserting before section 2011 the following new section:

"SEC. 2010. UNIFIED CREDIT AGAINST ESTATE TAX.

"(a) GENERAL RULE.—A credit of $47,000 shall be allowed to the estate of every decedent against the tax imposed by section 2001.

"(b) PHASE-IN OF $47,000 CREDIT.—

"In the case of decedents dying in:	Subsection (a) shall be applied by substituting for '$47,000' the following amount:
1977	$30,000
1978	34,000
1979	38,000
1980	42,500

"(c) ADJUSTMENT TO CREDIT FOR CERTAIN GIFTS MADE BEFORE 1977.—The amount of the credit allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976.

"(d) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 2001."

(3) TERMINATION OF CREDIT FOR GIFT TAX.—Section 2012 (relating to credit for gift tax) is amended by adding at the end thereof the following new subsection:

"(e) SECTION INAPPLICABLE TO GIFTS MADE AFTER DECEMBER 31, 1976.—No credit shall be allowed under this section with respect to the amount of any tax paid under chapter 12 on any gift made after December 31, 1976."

(4) REPEAL OF SPECIFIC EXEMPTION.—Section 2052 (relating to exemption for purposes of the estate tax) is hereby repealed.

(5) ADJUSTMENTS FOR GIFTS MADE WITHIN 3 YEARS OF DEATH.—Section 2035 (relating to transactions in contemplation of death) is amended to read as follows:

"SEC. 2035. ADJUSTMENTS FOR GIFTS MADE WITHIN 3 YEARS OF DECEDENT'S DEATH.

"(a) INCLUSION OF GIFTS MADE BY DECEDENT.—Except as provided in subsection (b), the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

"(1) any bona fide sale for an adequate and full consideration in money or money's worth, and

"(2) any gift excludable in computing taxable gifts by reason of section 2503(b) (relating to $3,000 annual exclusion for purposes of the gift tax) determined without regard to section 2513(a).

"(c) INCLUSION OF GIFT TAX ON CERTAIN GIFTS MADE DURING 3 YEARS BEFORE DECEDENT'S DEATH.—The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse after December 31, 1976, and during the 3-year period ending on the date of the decedent's death."

(b) CHANGES IN GIFT TAX.—

(1) RATE OF TAX.—Subsection (a) of section 2502 (relating to rate of gift tax) is amended to read as follows:

"(a) COMPUTATION OF TAX.—The tax imposed by section 2501 for each calendar quarter shall be an amount equal to the excess of—

"(1) a tentative tax, computed in accordance with the rate schedule set forth in section 2001(c), on the aggregate sum of the taxable gifts for such calendar quarter and for each of the preceding calendar years and calendar quarters, over

"(2) a tentative tax, computed in accordance with such rate schedule, on the aggregate sum of the taxable gifts for each of the preceding calendar years and calendar quarters."

(2) UNIFIED CREDIT.—Subchapter A of chapter 12 (relating to determination of gift tax liability) is amended by adding at the end thereof the following new section:

"SEC. 2505. UNIFIED CREDIT AGAINST GIFT TAX.

"(a) GENERAL RULE.—In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar quarter an amount equal to—

"(1) $47,000 reduced by

"(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar quarters.

"(b) PHASE-IN OF $47,000 CREDIT.—

"In the case of gifts made:	Subsection (a)(1) shall be applied by substituting for '$47,000' the following amount:
After December 31, 1976, and before July 1, 1977	$6,000
After June 30, 1977, and before January 1, 1978	30,000
After December 31, 1977, and before January 1, 1979	34,000
After December 31, 1978, and before January 1, 1980	38,000
After December 31, 1979, and before January 1, 1981	42,500

"(c) ADJUSTMENT TO CREDIT FOR CERTAIN GIFTS MADE BEFORE 1977.—The amount allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the individual after September 8, 1976.

"(d) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the credit allowed under subsection (a) for any calendar quarter shall not exceed the amount of the tax imposed by section 2501 for such calendar quarter."

(3) REPEAL OF SPECIFIC EXEMPTION.—Section 2521 (relating to specific exemption in the case of the gift tax) is hereby repealed.

(c) TECHNICAL, CLERICAL, AND CONFORMING CHANGES.—

(1) CHANGES IN ESTATE TAX.—

(A) CREDIT FOR STATE DEATH TAXES.—Section 2011 (relating to credit for State death taxes) is amended—

(i) by striking out "taxable estate" each place it appears in subsection (b) (including the heading to the table) and inserting in lieu thereof "adjusted taxable estate";

(ii) by adding at the end of subsection (b) the following new sentence:

"For purposes of this section, the term 'adjusted taxable estate' means the taxable estate reduced by $60,000.",

(iii) by striking out "taxable estate" each place it appears in subsection (e) and inserting in lieu thereof "adjusted taxable estate"; and

(iv) by adding at the end thereof the following new subsection:

"(f) LIMITATION BASED ON AMOUNT OF TAX.—The credit provided by this section shall not exceed the amount of the tax imposed by section 2001, reduced by the amount of the unified credit provided by section 2010."

(B) CREDIT FOR GIFT TAX.—Subsection (a) of section 2012 (relating to credit for gift tax) is amended by striking out "provided by section 2011" and inserting in lieu thereof "provided by section 2011 and the unified credit provided by section 2010".

(C) CREDIT FOR TAX ON PRIOR TRANSFERS.—

(i) The first sentence of section 2013(b) is amended by striking out "and increased by the exemption provided for by section 2052 or section 2106(a)(3), or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for purposes of the estate tax".

(ii) Subparagraph (A) of section 2013 (e)(1) is amended to read as follows:

"(A) the estate tax imposed by section 2001 or section 2101 (after deducting the credits provided for in sections 2010, 2011,

2012, and 2014) computed without regard to this section, exceeds".

(D) RATE OF TAX IN CASE OF NONRESIDENTS NOT CITIZENS.— Section 2101 (relating to tax imposed in the case of estates of nonresidents not citizens) is amended to read as follows:

"SEC. 2101. TAX IMPOSED.

"(a) IMPOSITION.—Except as provided in section 2107, a tax is hereby imposed on the transfer of the taxable estate (determined as provided in section 2106) of every decedent nonresident not a citizen of the United States.

"(b) COMPUTATION OF TAX.—The tax imposed by this section shall be the amount equal to the excess (if any) of—

"(1) a tentative tax computed in accordance with the rate schedule set forth in subsection (d) on the sum of—

"(A) the amount of the taxable estate, and

"(B) the amount of the adjusted taxable gifts, over

"(2) a tentative tax computed in accordance with the rate schedule set forth in subsection (d) on the amount of the adjusted taxable gifts.

"(c) ADJUSTMENTS FOR TAXABLE GIFTS.—

"(1) ADJUSTED TAXABLE GIFTS DEFINED.—For purposes of this section, the term 'adjusted taxable gifts' means the total amount of the taxable gifts (within the meaning of section 2503 as modified by section 2511) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

"(2) ADJUSTMENT FOR CERTAIN GIFT TAX.—For purposes of this section, the rules of section 2001(d) shall apply.

"(d) RATE SCHEDULE.—

"If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over $100,000	6% of such amount.
Over $100,000 but not over $500,000	$6,000 plus 12% of excess over $100,000.
Over $500,000 but not over $1,000,000	$54,000, plus 18% of excess over $500,000.
Over $1,000,000 but not over $2,000,000	$144,000, plus 24% of excess over $1,000,000.
Over $2,000,000	$384,000, plus 30% of excess over $2,000,000."

(E) CREDIT IN CASE OF ESTATES OF NONRESIDENTS NOT CITIZENS.—

(i) Section 2102 (relating to credits against tax in case of estates of nonresidents not citizens) is amended by adding at the end thereof the following new subsection:

"(c) UNIFIED CREDIT.—

"(1) IN GENERAL.—A credit of $3,600 shall be allowed against the tax imposed by section 2101.

"(2) RESIDENTS OF POSSESSIONS OF THE UNITED STATES.—In the case of a decedent who is considered to be a 'nonresident not a citizen of the United States' under section 2209, the credit under this subsection shall be the greater of—

"(A) $3,600, or

"(B) that proportion of $15,075 which the value of that part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated.

"(3) PHASE-IN OF PARAGRAPH (2)(B) AMOUNT.—In the case of a decedent dying before 1979, paragraph (2)(B) shall be applied—

"(A) in the case of a decedent dying during 1977, by substituting '$8,480' for '$15,075',

"(B) in the case of a decedent dying during 1978, by substituting '$10,080' for '$15,075',

"(C) in the case of a decedent dying during 1979, by substituting '$11,680' for '$15,075', and

"(D) in the case of a decedent dying during 1980, by substituting '$13,388' for '$15,075'.

"(4) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under this subsection shall not exceed the amount of the tax imposed by section 2101.

"(5) APPLICATION OF OTHER CREDITS.—For purposes of subsection (a), sections 2011 to 2013, inclusive, shall be applied as if the credit allowed under this subsection were allowed under section 2010."

(ii) Subsection (c) of section 2107 (relating to expatriation to avoid tax) is amended to read as follows:

"(c) CREDITS.—

"(1) UNIFIED CREDIT.—

"(A) IN GENERAL.—A credit of $13,000 shall be allowed against the tax imposed by subsection (a).

"(B) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under this paragraph shall not exceed the amount of the tax imposed by subsection (a).

"(2) OTHER CREDITS.—The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with subsections (a) and (b) of section 2102. For purposes of subsection (a) of section 2102, sections 2011 to 2013, inclusive, shall be applied as if the credit allowed under paragraph (1) were allowed under section 2010."

(F) REPEAL OF SPECIFIC EXEMPTION.—Paragraph (3) of section 2106(a) (relating to specific exemption in case of decedents nonresidents not citizens) is hereby repealed.

(G) CREDIT FOR FOREIGN DEATH TAXES.—Paragraph (2) of section 2014(b) (relating to limitations on credit) is amended by striking out "sections 2011 and 2012" and inserting in lieu thereof "sections 2010, 2011, and 2012".

(H) LIABILITY OF LIFE INSURANCE BENEFICIARIES.—The first sentence of section 2206 (relating to liability of life insurance beneficiaries) is amended by striking out "the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2051" and inserting in lieu thereof "the taxable estate".

(I) LIABILITY OF RECIPIENTS OF CERTAIN PROPERTY.—The first sentence of section 2207 (relating to liability of recipient of property over which decedent had power of appointment) is amended by striking out "the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2052, or section 2106(a), as the case may be" and inserting in lieu thereof "the taxable estate".

(J) RETURN BY EXECUTOR.—Subsection (a) of section 6018 (relating to estate tax returns by executor) is amended—

(i) by striking out "$60,000" in paragraph (1) and inserting in lieu thereof "$175,000";

(ii) by striking out "$30,000" in paragraph (2) and inserting in lieu thereof "$60,000"; and

(iii) by adding at the end thereof the following new paragraphs:

"(3) PHASE-IN OF FILING REQUIREMENT AMOUNT.—In the case of a decedent dying before 1981, paragraph (1) shall be applied—

"(A) in the case of a decedent dying during 1977, by substituting '$120,000' for '$175,000',

"(B) in the case of a decedent dying during 1978, by substituting '$134,000' for '$175,000',

"(C) in the case of a decedent dying during 1979, by substituting '$147,000' for '$175,000', and

"(D) in the case of a decedent dying during 1980, by substituting '$161,000' for '$175,000'.

"(4) ADJUSTMENT FOR CERTAIN GIFTS.—The amount applicable under paragraph (1) and the amount set forth in paragraph (2) shall each be reduced (but not below zero) by the sum of—

"(A) the amount of the adjusted taxable gifts (within the meaning of section 2001(b)) made by the decedent after December 31, 1976, plus

"(B) the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976."

(K) REVOCABLE TRANSFERS.—

(i) Paragraph (1) of section 2038(a) (relating to revocable transfers) is amended by striking out "in contemplation of decedent's death" and inserting in lieu thereof "during the 3-year period ending on the date of the decedent's death".

(ii) Paragraph (2) of section 2038(a) (relating to revocable transfer) is amended by striking out "in contemplation of his death" and inserting in lieu thereof "during the 3-year period ending on the date of the decedent's death".

(L) PROPERTY WITHIN THE UNITED STATES.—Subsection (b) of section 2104 (relating to revocable transfers and transfers in contemplation of death) is amended by striking out "AND TRANSFERS IN CONTEMPLATION OF DEATH" in the subsection heading and inserting in lieu thereof "AND TRANSFERS WITHIN 3 YEARS OF DEATH".

(M) PRIOR INTERESTS.—Section 2044 (relating to prior interests) is amended by striking out "specifically provided therein" and inserting in lieu thereof "specifically provided by law".

(N) CLERICAL AMENDMENTS.—

(i) The item relating to section 2001 in the table of sections for part I of subchapter A of chapter 11 is amended to read as follows:

"Sec. 2001. Imposition and rate of tax."

(ii) The table of sections for part II of subchapter A of chapter 11 is amended by inserting before the item relating to section 2011 the following new item:

"Sec. 2010. Unified credit against estate tax."

(iii) The table of sections for part III of subchapter A of chapter 11 is amended by striking out the item relating to section 2035 and inserting in lieu thereof the following new item:

"Sec. 2035. Adjustments for gifts made within 3 years of decedent's death."

(iv) The table of sections for part IV of subchapter A of chapter 11 is amended by striking out the item relating to section 2052.

(2) CHANGES IN GIFT TAX.—

(A) TAXABLE GIFTS FOR PRECEDING YEARS AND QUARTERS.—Subsection (a) of section 2504 (relating to taxable gifts for preceding years and quarters) is amended by striking out "except that" and all that follows and inserting in lieu thereof "except that the specific exemption in the amount, if any, allowable under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) shall be applied in all computations in respect of calendar years or calendar quarters ending before January 1, 1977, for purposes of computing the tax for any calendar quarter."

(B) CLERICAL AMENDMENTS.—

(i) The table of sections for subchapter A of chapter 12 is amended by adding at the end thereof the following new item:

"Sec. 2505. Unified credit against gift tax."

(ii) The table of sections for subchapter C of chapter 12 is amended by striking out the item relating to section 2521.

(d) EFFECTIVE DATES.—

(1) The amendments made by subsections (a) and (c)(1) shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) and subparagraphs (K) and (L) of subsection (c)(1) shall not apply to transfers made before January 1, 1977.

(2) The amendments made by subsections (b) and (c)(2) shall apply to gifts made after December 31, 1976.

SEC. 2202. INCREASE IN LIMITATIONS ON MARITAL DEDUCTIONS; FRACTIONAL INTERESTS OF SPOUSE.

(a) INCREASE IN ESTATE TAX MARITAL DEDUCTION.—Paragraph (1) of section 2056 (c) (relating to limitation on marital deduction) is amended to read as follows:

"(1) LIMITATION.—

"(A) IN GENERAL.—The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of—

"(i) $250,000, or

"(ii) 50 percent of the value of the adjusted gross estate (as defined in paragraph (2)).

"(B) ADJUSTMENT FOR CERTAIN GIFTS TO SPOUSE.—If a deduction is allowed to the decedent under section 2523 with respect to any gift made to his spouse after December 31, 1976, the limitation provided by subparagraph (A) (determined without regard to this subparagraph) shall be reduced (but not below zero) by the excess (if any) of—

"(i) the aggregate of the deductions allowed to the decedent under section 2523 with respect to gifts made after December 31, 1976, over

"(ii) the aggregate of the deductions which would have been allowable under section 2523 with respect to gifts made after December 31, 1976, if the amount deductible under such section with respect to any gift were 50 percent of its value.

"(C) COMMUNITY PROPERTY ADJUSTMENT.—The $250,000 amount set forth in subparagraph (A)(i) shall be reduced by the excess (if any) of—

"(i) the amount of the subtraction determined under clauses (i) (ii), and (iii) of paragraph (2)(B), over

"(ii) the excess of the aggregate of the deductions allowed under sections 2053 and 2054 over the amount taken into account with respect to such deductions under clause (iv) of paragraph (2)(B)."

(b) INCREASE IN GIFT TAX MARITAL DEDUCTION.—Subsection (a) of section 2523 (relating to deduction for gift to spouse) is amended to read as follows:

"(a) ALLOWANCE OF DEDUCTION.—

"(1) IN GENERAL.—Where a donor who is a citizen or resident transfers during the calendar quarter by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar quarter an amount with respect to such interest equal to its value.

"(2) LIMITATION.—The aggregate of the deductions allowed under paragraph (1) for any calendar quarter shall not exceed the sum of—

"(A) $100,000 reduced (but not below zero) by the aggregate of the deductions allowed under this section for preceding calendar quarters beginning after December 31, 1976; plus

"(B) 50 percent of the lesser of—

"(i) the amount of the deductions allowable under paragraph (1) for such calendar quarter (determined without regard to this paragraph); or

"(ii) the amount (if any) by which the aggregate of the amounts determined under clause (i) for the calendar quarter and for each preceding calendar quarter beginning after December 31, 1976, exceeds $200,000."

(c) FRACTIONAL INTEREST OF SPOUSE.—

(1) IN GENERAL.—Section 2040 (relating to joint interests) is amended by adding at the end thereof the following new subsection:

"(b) CERTAIN JOINT INTERESTS OF HUSBAND AND WIFE.—

"(1) INTERESTS OF SPOUSE EXCLUDED FROM GROSS ESTATE.—Notwithstanding subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest.

"(2) QUALIFIED JOINT INTEREST DEFINED.—For purposes of paragraph (1), the term 'qualified joint interest' means any interest in property held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if—

"(A) such joint interest was created by the decedent, the decedent's spouse, or both,

"(B)(i) in the case of personal property, the creation of such joint interest constituted in whole or in part a gift for purposes of chapter 12, or

"(ii) in the case of real property, an election under section 2515 applies with respect to the creation of such joint interest, and

"(C) in the case of a joint tenancy, only the decedent and the decedent's spouse are joint tenants."

(2) AMENDMENT OF RELATED GIFT TAX PROVISION.—Subsection (c) of section 2515 (relating to election with respect to tenancies by the entirety) is amended to read as follows:

"(c) EXERCISE OF ELECTION.—

"(1) IN GENERAL.—The election provided by subsection (a) shall be exercised by including such creation of a tenancy by the entirety as a transfer by gift, to the extent such transfer constitutes a gift (determined without regard to this section), in the gift tax return of the donor for the calendar quarter in which such tenancy by the entirety was created, filed within the time prescribed by law, irrespective of whether or not the gift exceeds the exclusion provided by section 2503(b).

"(2) SUBSEQUENT ADDITIONS IN VALUE.—If the election provided by subsection (a) has been made with respect to the creation of any tenancy by the entirety, such election shall also apply to each addition made to the value of such tenancy by the entirety.

"(3) CERTAIN ACTUARIAL COMPUTATIONS NOT REQUIRED.—In the case of any election under subsection (a) with respect to any property, the retained interest of each spouse shall be treated as one-half of the value of their joint interest."

(3) CLERICAL AMENDMENT.—Section 2040 is amended by striking out "The value" and inserting in lieu thereof the following:

"(a) GENERAL RULE.—The value".

(d) EFFECTIVE DATES.—

(1)(A) Except as provided in subparagraph (B), the amendment made by subsection (a) shall apply with respect to the estates of decedents dying after December 31, 1976.

(B) If—

(i) the decedent dies after December 31, 1976, and before January 1, 1979,

(ii) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before January 1, 1977, or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

(iii) the formula referred to in clause (ii) was not amended at any time after December 31, 1976, and before the death of the decedent, and

(iv) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent.

(2) The amendment made by subsection (b) shall apply to gifts made after December 31, 1976.

(3) The amendments made by subsection (c) shall apply to joint interests created after December 31, 1976.

SEC. 2203. VALUATION FOR PURPOSES OF THE FEDERAL ESTATE TAX OF CERTAIN REAL PROPERTY DEVOTED TO FARMING OR CLOSELY HELD BUSINESSES.

(a) GENERAL RULE.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2032 the following new section:

"SEC. 2032A. VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.

"(a) VALUE BASED ON USE UNDER WHICH PROPERTY QUALIFIES.—

"(1) GENERAL RULE.—If—

"(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

"(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

"(2) LIMITATION.—The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $500,000.

"(b) QUALIFIED REAL PROPERTY.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified real property' means real property located in the United States which, on the date of the decedent's death, was being used for a qualified use, but only if—

"(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which—

"(i) on the date of the decedent's death, was being used for a qualified use, and

"(ii) was acquired from or passed from the decedent to a qualified heir of the decedent.

"(B) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C),

"(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

"(i) such real property was owned by the decedent or a member of the decedent's family and used for a qualified use, and

"(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

"(D) such real property is designated in the agreement referred to in subsection (d)(2).

"(2) QUALIFIED USE.—For purposes of this section, the term 'qualified use' means the devotion of the property to any of the following:

"(A) use as a farm for farming purposes, or

"(B) use in a trade or business other than the trade or business of farming.

"(3) ADJUSTED VALUE.—For purposes of paragraph (1), the term 'adjusted value' means—

"(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

"(B) in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053(a).

"(c) TAX TREATMENT OF DISPOSITIONS AND FAILURES TO USE FOR QUALIFIED USE.—

"(1) IMPOSITION OF ADDITIONAL ESTATE TAX.—If, within 15 years after the decedent's death and before the death of the qualified heir—

"(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

"(B) the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,

then, there is hereby imposed an additional estate tax.

"(2) AMOUNT OF ADDITIONAL TAX.—

"(A) IN GENERAL.—The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of—

"(i) the adjusted tax difference attributable to such interest, or

"(ii) the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

"(B) ADJUSTED TAX DIFFERENCE ATTRIBUTABLE TO INTEREST.—For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as—

"(i) the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to

"(ii) a similar excess determined for all qualified real property.

"(C) ADJUSTED TAX DIFFERENCE WITH RESPECT TO THE ESTATE.—For purposes of subparagraph (B), the term 'adjusted tax difference with respect to the estate' means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term 'estate tax liability' means the tax imposed by section 2001 reduced by the credits allowable against such tax.

"(D) PARTIAL DISPOSITIONS.—For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion—

"(i) the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

"(ii) the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

"(3) PHASEOUT OF ADDITIONAL TAX BETWEEN 10TH AND 15TH YEARS.—If the date of the disposition or cessation referred to in paragraph (1) occurs more than 120 months and less than 180 months after the date of the death of the decedent, the amount of the tax imposed by this subsection shall be reduced (but not below zero) by an amount determined by multiplying the amount of such tax (determined without regard to this paragraph) by a fraction—

"(A) the numerator of which is the number of full months after such death in excess of 120, and

"(B) the denominator of which is 60.

"(4) ONLY 1 ADDITIONAL TAX IMPOSED WITH RESPECT TO ANY 1 PORTION.—In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

"(5) DUE DATE.—The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or cessation referred to in paragraph (1).

"(6) LIABILITY FOR TAX.—The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest.

"(7) CESSATION OF QUALIFIED USE.—For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if—

"(A) such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subsection (b), or

"(B) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating 3 years or more during which—

"(i) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business, and

"(ii) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

"(d) ELECTION; AGREEMENT.—

"(1) ELECTION.—The election under this section shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.

"(2) AGREEMENT.—The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

"(e) DEFINITIONS; SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED HEIR.—The term 'qualified heir' means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

"(2) MEMBER OF FAMILY.—The term 'member of the family' means, with respect to any individual, only such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as a child of such individual by blood.

"(3) CERTAIN REAL PROPERTY INCLUDED.—In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

"(4) FARM.—The term 'farm' includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

"(5) FARMING PURPOSES.—The term 'farming purposes' means—

"(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

"(B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

"(C)(i) the planting, cultivating, caring for, or cutting of trees, or

"(ii) the preparation (other than milling) of trees for market.

"(6) MATERIAL PARTICIPATION.—Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

"(7) METHOD OF VALUING FARMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing—

"(i) the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual State and local real estate taxes for such comparable land, by

"(ii) the average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

"(B) EXCEPTION.—The formula provided by subparagraph (A) shall not be used—

"(i) where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

"(ii) where the executor elects to have the value of the farm for farming purposes determined under paragraph (8).

"(8) METHOD OF VALUING CLOSELY HELD BUSINESS INTERESTS, ETC.—In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

"(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors,

"(B) The capitalization of the fair rental value of the land for farmland or closely held business purposes,

"(C) Assessed land values in a State which provides a differential or use value assessment law for farmland or closely held business,

"(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that nonagricultural use is not a significant factor in the sales price, and

"(E) Any other factor which fairly values the farm or closely held business value of the property.

"(f) STATUTE OF LIMITATIONS.—If qualified real property is disposed of or ceases to be used for a qualified use, then—

"(1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of

3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation, and

"(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(g) APPLICATION OF THIS SECTION AND SECTION 6324B TO INTERESTS IN PARTNERSHIPS, CORPORATIONS, AND TRUSTS.—The Secretary shall prescribe regulations setting forth the application of this section and section 6324B in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b))."

(b) SPECIAL LIEN.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting after section 6324A the following new section:

"SEC. 6324B. SPECIAL LIEN FOR ADDITIONAL ESTATE TAX ATTRIBUTABLE TO FARM, ETC., VALUATION.

"(a) GENERAL RULE.—In the case of any interest in qualified real property (within the meaning of section 2032A(b)), an amount equal to the adjusted tax difference attributable to such interest (within the meaning of section 2032A(c)(2)(B)) shall be a lien in favor of the United States on the property in which such interest exists.

"(b) PERIOD OF LIEN.—The lien imposed by this section shall arise at the time an election is filed under section 2032A and shall continue with respect to any interest in the qualified farm real property—

"(1) until the liability for tax under subsection (c) of section 2032A with respect to such interest has been satisfied or has become unenforceable by reason of lapse of time, or

"(2) until it is established to the satisfaction of the Secretary that no further tax liability may arise under section 2032A(c) with respect to such interest.

"(c) CERTAIN RULES MADE APPLICABLE.—The rules set forth in paragraphs (1), (3), and (4) of section 6324A(d) shall apply with respect to the lien imposed by this section as if it were a lien imposed by section 6324A.

"(d) SUBSTITUTION OF SECURITY FOR LIEN.—To the extent provided in regulations prescribed by the Secretary, the furnishing of security may be substituted for the lien imposed by this section."

(c) CREDIT FOR TAX ON PRIOR TRANSFERS.—Section 2013 (relating to credit for tax on prior transfers) is amended by adding at the end thereof the following new subsection:

"(f) TREATMENT OF ADDITIONAL TAX IMPOSED UNDER SECTION 2032A.—If section 2032A applies to any property included in the gross estate of the transferor and an additional tax is imposed with respect to such property under section 2032A(c) before the date which is 2 years after the date of the decedent's death, for purposes of this section—

"(1) the additional tax imposed by section 2032A(c) shall be treated as a Federal estate tax payable with respect to the estate of the transferor; and

"(2) the value of such property and the amount of the taxable estate of the transferor shall be determined as if section 2032A did not apply with respect to such property."

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2032 the following new item:

"Sec. 2032A. Valuation of certain farm, etc., real property."

(2) The table of sections for subchapter C of chapter 64 is amended by inserting after the item relating to section 6324A the following new item:

"Sec. 6324B. Special lien for additional estate tax attributable to farm, etc., valuation."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1976.

SEC. 2204. EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX.

(a) GENERAL RULE.—Subchapter B of chapter 62 (relating to extensions of time for payment of tax) is amended by redesignating section 6166 as section 6166A and by inserting after section 6165 the following new section:

"SEC. 6166. ALTERNATE EXTENSION OF TIME FOR PAYMENT OF ESTATE TAX WHERE ESTATE CONSISTS LARGELY OF INTEREST IN CLOSELY HELD BUSINESS.

"(a) 5-YEAR DEFERRAL, 10-YEAR INSTALLMENT PAYMENT.—

"(1) IN GENERAL.—If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds 65 percent of the adjusted gross estate, the executor may elect to pay part or all of the tax imposed by section 2001 in 2 or more (but not exceeding 10) equal installments.

"(2) LIMITATION.—The maximum amount of tax which may be paid in installments under this subsection shall be an amount which bears the same ratio to the tax imposed by section 2001 (reduced by the credits against such tax) as—

"(A) the closely held business amount, bears to

"(B) the amount of the adjusted gross estate.

"(3) DATE FOR PAYMENT OF INSTALLMENTS.—If an election is made under paragraph (1), the first installment shall be paid on or before the date selected by the executor which is not more than 5 years after the date prescribed by section 6151(a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.

"(4) ELIGIBILITY FOR ELECTION.—No election may be made under this section by the executor of the estate of any decedent if an election under section 6166A applies with respect to the estate of such decedent.

"(b) DEFINITIONS AND SPECIAL RULES.—

"(1) INTEREST IN CLOSELY HELD BUSINESS.—For purposes of this section, the term 'interest in a closely held business' means—

"(A) an interest as a proprietor in a trade or business carried on as a proprietorship;

"(B) an interest as a partner in a partnership carrying on a trade or business, if—

"(i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or

"(ii) such partnership had 15 or fewer partners; or

"(C) stock in a corporation carrying on a trade or business if—

"(i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or

"(ii) such corporation had 15 or fewer shareholders.

"(2) RULES FOR APPLYING PARAGRAPH (1).—For purposes of paragraph (1)—

"(A) TIME FOR TESTING.—Determinations shall be made as of the time immediately before the decedent's death.

"(B) CERTAIN INTERESTS HELD BY HUSBAND AND WIFE.—Stock or a partnership interest which—

"(i) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a State, or

"(ii) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common,

shall be treated as owned by one shareholder or one partner, as the case may be.

"(C) INDIRECT OWNERSHIP.—Property owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For purposes of the preceding sentence, a person shall be treated as a beneficiary of any trust only if such person has a present interest in the trust.

"(3) FARMHOUSES AND CERTAIN OTHER STRUCTURES TAKEN INTO ACCOUNT.—For purposes of the 65-percent requirement of subsection (a)(1), an interest in a closely held business which is the business of farming includes an interest in residential buildings and related improvements on the farm which are occupied on a regular basis by the owner or lessee of the farm or by persons employed by such owner or lessee for purposes of operating or maintaining the farm.

"(4) VALUE.—For purposes of this section, value shall be value determined for purposes of chapter 11 (relating to estate tax).

"(5) CLOSELY HELD BUSINESS AMOUNT.—For purposes of this section, the term 'closely held business amount' means the value of the interest in a closely held business which qualifies under subsection (a)(1).

"(6) ADJUSTED GROSS ESTATE.—For purposes of this section, the term 'adjusted gross estate' means the value of the gross estate reduced by the sum of the amounts allowable as a deduction under section 2053 or 2054. Such sum shall be determined on the basis of the facts and circumstances in existence on the date (including extensions) for filing the return of tax imposed by section 2001 (or, if earlier, the date on which such return is filed).

"(c) SPECIAL RULE FOR INTERESTS IN 2 OR MORE CLOSELY HELD BUSINESSES.—For purposes of this section, interests in 2 or more closely held businesses, with respect to each of which there is included in determining the value of the decedent's gross estate more than 20 percent of the total value of each such business, shall be treated as an interest in a single closely held business. For purposes of the 20-percent requirement of the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in property held by the decedent and the surviving spouse as community property or as joint tenants, tenants by the entirety, or tenants in common shall be treated as having been included in determining the value of the decedent's gross estate.

"(d) ELECTION.—Any election under subsection (a) shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe. If an election under subsection (a) is made, the provisions of this subtitle shall apply as though the Secretary were extending the time for payment of the tax.

"(e) PRORATION OF DEFICIENCY TO INSTALLMENTS.—If an election is made under subsection (a) to pay any part of the tax imposed by section 2001 in installments and a deficiency has been assessed, the deficiency shall (subject to the limitation provided by subsection (a)(2)) be prorated to the installments payable under subsection (a). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to

negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

"(f) TIME FOR PAYMENT OF INTEREST.—If the time for payment of any amount of tax has been extended under this section—

"(1) INTEREST FOR FIRST 5 YEARS.—Interest payable under section 6601 of any unpaid portion of such amount attributable to the first 5 years after the date prescribed by section 6151(a) for payment of the tax shall be paid annually.

"(2) INTEREST FOR PERIODS AFTER FIRST 5 YEARS.—Interest payable under section 6601 on any unpaid portion of such amount attributable to any period after the 5-year period referred to in paragraph (1) shall be paid annually at the same time as, and as a part of, each installment payment of the tax.

"(3) INTEREST IN THE CASE OF CERTAIN DEFICIENCIES.—In the case of a deficiency to which subsection (e) applies which is assessed after the close of the 5-year period referred to in paragraph (1), interest attributable to such 5-year period, and interest assigned under paragraph (2) to any installment the date for payment of which has arrived on or before the date of the assessment of the deficiency, shall be paid upon notice and demand from the Secretary.

"(4) SELECTION OF SHORTER PERIOD.—If the executor has selected a period shorter than 5 years under subsection (a)(3), such shorter period shall be substituted for 5 years in paragraphs (1), (2), and (3) of this subsection.

"(g) ACCELERATION OF PAYMENT.—

"(1) DISPOSITION OF INTEREST; WITHDRAWAL OF FUNDS FROM BUSINESS.—

"(A) If—

"(i) one-third or more in value of an interest in a closely held business which qualifies under subsection (a)(1) is distributed, sold, exchanged, or otherwise disposed of, or

"(ii) aggregate withdrawals of money and other property from the trade or business, an interest in which qualifies under subsection (a)(1), made with respect to such interest, equal or exceed one-third of the value of such trade or business,

then the extension of time for payment of tax provided in subsection (a) shall cease to apply, and any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

"(B) In the case of a distribution in redemption of stock to which section 303 (or so much of section 304 as relates to section 303) applies—

"(i) subparagraph (A)(i) does not apply with respect to the stock redeemed; and for purposes of such subparagraph the interest in the closely held business shall be considered to be such interest reduced by the value of the stock redeemed, and

"(ii) subparagraph (A)(ii) does not apply with respect to withdrawals of money and other property distributed; and for purposes of such subparagraph the value of the trade or business shall be considered to be such value reduced by the amount of money and other property distributed.

This subparagraph shall apply only if, on or before the date prescribed by subsection (a)(3) for the payment of the first installment which becomes due after the date of the distribution (or, if earlier, on or before the day which is 1 year after the date of the distribution), there is paid an amount of the tax imposed by section 2001 not less than the amount of money and other property distributed.

"(C) Subparagraph (A)(i) does not apply to an exchange of stock pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1) nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies; but any stock received in such an exchange shall be treated for purposes of subparagraph (A)(i) as an interest qualifying under subsection (a)(1).

"(D) Subparagraph (A)(i) does not apply to a transfer of property of the decedent to a person entitled by reason of the decedent's death to receive such property under the decedent's will, the applicable law of descent and distribution, or a trust created by the decedent.

"(2) UNDISTRIBUTED INCOME OF ESTATE.—

"(A) If an election is made under this section and the estate has undistributed net income for any taxable year ending on or after the due date for the first installment, the executor shall, on or before the date prescribed by law for filing the income tax return for such taxable year (including extensions thereof), pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments.

"(B) For purposes of subparagraph (A), the undistributed net income of the estate for any taxable year is the amount by which the distributable net income of the estate for such taxable year (as defined in section 643) exceeds the sum of—

"(i) the amounts for such taxable year specified in paragraphs (1) and (2) of section 661(a) (relating to deduction for distributions, etc.);

"(ii) the amount of tax imposed for the taxable year on the estate under chapter 1; and

"(iii) the amount of the tax imposed by section 2001 (including interest) paid by the executor during the taxable year (other than any amount paid pursuant to this paragraph).

"(3) FAILURE TO PAY INSTALLMENT.—If any installment under this section is not paid on or before the date fixed for its payment by this section (including any extension of time for the payment of such installment), the unpaid portion of the tax payable in installments shall be paid upon notice and demand from the Secretary.

"(h) ELECTION IN CASE OF CERTAIN DEFICIENCIES.—

"(1) IN GENERAL.—If—

"(A) a deficiency in the tax imposed by section 2001 is assessed,

"(B) the estate qualifies under subsection (a)(1), and

"(C) the executor has not made an election under subsection (a),

the executor may elect to pay the deficiency in installments. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

"(2) TIME OF ELECTION.—An election under this subsection shall be made not later than 60 days after issuance of notice and demand by the Secretary for the payment of the deficiency, and shall be made in such manner as the Secretary shall by regulations prescribe.

"(3) EFFECT OF ELECTION ON PAYMENT.—If an election is made under this subsection, the deficiency shall (subject to the limitation provided by subsection (a)(2)) be prorated to the installments which would have been due if an election had been timely made under subsection (a) at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date of payment of which would have arrived shall be paid at the time of the making of the election under this subsection. The portion of the deficiency so prorated to installments the date for payment of which would not have so arrived shall be paid at the time such installments would have been due if such an election had been made.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to the application of this section.

"(j) CROSS REFERENCES.—

"(1) Security.—

"For authority of the Secretary to require security in the case of an extension under this section, see section 6165.

"(2) Lien.—

"For special lien (in lieu of bond) in the case of an extension under this section, see section 6324A.

"(3) Period of limitation.—

"For extension of the period of limitation in the case of an extension under this section, see section 6503(d).

"(4) Interest.—

"For provisions relating to interest on tax payable in installments under this section, see subsection (j) of section 6601."

(b) 4-PERCENT INTEREST RATE.—Section 6601 (relating to interest on underpayment, nonpayment, or extension of time for payment of tax) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) 4-PERCENT RATE ON CERTAIN PORTION OF ESTATE TAX EXTENDED UNDER SECTION 6166.—

"(1) IN GENERAL.—If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6166, interest on the 4-percent portion of such amount shall (in lieu of the annual rate provided by subsection (a)) be paid at the rate of 4 percent. For purposes of this subsection, the amount of any deficiency which is prorated to installments payable under section 6166 shall be treated as an amount of tax payable in installments under such section.

"(2) 4-PERCENT PORTION.—For purposes of this subsection, the term '4-percent portion' means the lesser of—

"(A) $345,800 reduced by the amount of the credit allowable under section 2010(a); or

"(B) the amount of the tax imposed by chapter 11 which is extended as provided in section 6166.

"(3) TREATMENT OF PAYMENTS.—If the amount of tax imposed by chapter 11 which is extended as provided in section 6166 exceeds the 4-percent portion, any payment of a portion of such amount shall, for purposes of computing interest for periods after such payment, be treated as reducing the 4-percent portion by an amount which bears the same ratio to the amount of such payment as the amount of the 4-percent portion (determined without regard to this paragraph) bears to the amount of the tax which is extended as provided in section 6166."

(c) REASONABLE CAUSE SUBSTITUTED FOR UNDUE HARDSHIP IN DETERMINING ELIGIBILITY FOR EXTENSION OF PAYMENT OF ESTATE TAX.—

(1) Paragraph (2) of section 6161(a) (relating to extension of time for paying estate tax) is amended to read as follows:

"(2) ESTATE TAX.—The Secretary may, for reasonable cause, extend the time for payment of—

"(A) any part of the amount determined by the executor as the tax imposed by chapter 11, or

"(B) any part of any installment under section 6166 or 6166A (including any part of a deficiency prorated to any installment under such section),

for a reasonable period not in excess of 10 years from the date prescribed by section 6151(a) for payment of the tax (or, in the case of an amount referred to in subparagraph (B), if later, not beyond the date which is 12 months after the due date for the last installment)."

(2) Subsection (b) of section 6161 (relating to extension of time for payment of certain deficiencies) is amended to read as follows:

"(b) AMOUNT DETERMINED AS DEFICIENCY.—

"(1) INCOME, GIFT, AND CERTAIN OTHER TAXES.—Under regulations prescribed by the Secretary, the Secretary may extend the time for the payment of the amount determined as a deficiency of a tax imposed by chapter 1, 12, 41, 42, 43, or 44 for a period not to exceed 18 months from the date fixed for the payment of the deficiency, and in exceptional cases, for a further period not to exceed 12

months. An extension under this paragraph may be granted only where it is shown to the satisfaction of the Secretary that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, 41, 42, 43, or 44, or to the donor in the case of a tax imposed by chapter 12.

"(2) ESTATE TAX.—Under regulations prescribed by the Secretary, the Secretary may, for reasonable cause, extend the time for the payment of any deficiency of a tax imposed by chapter 11 for a reasonable period not to exceed 4 years from the date otherwise fixed for the payment of the deficiency.

"(3) NO EXTENSION FOR CERTAIN DEFICIENCIES.—No extension shall be granted under this subsection for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax."

(3) Subsection (b) of section 6163 (relating to extension to prevent undue hardship in case of reversionary or remainder interest) is amended to read as follows:

"(b) EXTENSION FOR REASONABLE CAUSE.—At the expiration of the period of postponement provided for in subsection (a), the Secretary may, for reasonable cause, extend the time for payment for a reasonable period or periods not in excess of 3 years from the expiration of the period of postponement provided in subsection (a)."

(4) Subsection (d) of section 6503 (relating to extensions of time for payment of estate tax) is amended by striking out "section 6166" and inserting in lieu thereof "section 6163, 6166, or 6166A".

(d) SPECIAL LIEN FOR ESTATE TAX DEFERRED UNDER SECTION 6166.—

(1) IN GENERAL.—Subchapter C of chapter 64 (relating to lien for taxes) is amended by inserting after section 6324 the following new section:

"SEC. 6324A. SPECIAL LIEN FOR ESTATE TAX DEFERRED UNDER SECTION 6166 OR 6166A.

"(a) GENERAL RULE.—In the case of any estate with respect to which an election has been made under section 6166 or 6166A, if the executor makes an election under this section (at such time and in such manner as the Secretary shall by regulations prescribe) and files the agreement referred to in subsection (c), the deferred amount (plus any interest, additional amount, addition to tax, assessable penalty, and costs attributable to the deferred amount) shall be a lien in favor of the United States on the section 6166 lien property.

"(b) SECTION 6166 LIEN PROPERTY.—

"(1) IN GENERAL.—For purposes of this section, the term 'section 6166 lien property' means interests in real and other property to the extent such interests—

"(A) can be expected to survive the deferral period, and

"(B) are designated in the agreement referred to in subsection (c).

"(2) MAXIMUM VALUE OF REQUIRED PROPERTY.—The maximum value of the property which the Secretary may require as section 6166 lien property with respect to any estate shall be a value which is not greater than the sum of—

"(A) the deferred amount, and

"(B) the aggregate interest amount.

For purposes of the preceding sentence, the value of any property shall be determined as of the date prescribed by section 6151 (a) for payment of the tax imposed by chapter 11 and shall be determined by taking into account any encumbrance such as a lien under section 6324B.

"(3) PARTIAL SUBSTITUTION OF BOND FOR LIEN.—If the value required as section 6166 lien property pursuant to paragraph (2) exceeds the value of the interests in property covered by the agreement referred to in subsection (c), the Secretary may accept bond in an amount equal to such excess conditioned on the payment of the amount extended in accordance with the terms of such extension.

"(c) AGREEMENT.—The agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement—

"(1) consenting to the creation of the lien under this section with respect to such property, and

"(2) designating a responsible person who shall be the agent for the beneficiaries of the estate and for the persons who have consented to the creation of the lien in dealings with the Secretary on matters arising under section 6166 or 6166A or this section.

"(d) SPECIAL RULES.—

"(1) REQUIREMENT THAT LIEN BE FILED.—The lien imposed by this section shall not be valid as against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor until notice thereof which meets the requirements of section 6323 (f) has been filed by the Secretary. Such notice shall not be required to be refiled.

"(2) PERIOD OF LIEN.—The lien imposed by this section shall arise at the time the executor is discharged from liability under section 2204 (or, if earlier, at the time notice is filed pursuant to paragraph (1)) and shall continue until the liability for the deferred amount is satisfied or becomes unenforceable by reason of lapse of time.

"(3) PRIORITIES.—Even though notice of a lien imposed by this section has been filed as provided in paragraph (1), such lien shall not be valid—

"(A) REAL PROPERTY TAX AND SPECIAL ASSESSMENT LIENS.—To the extent provided in section 6323(b)(6).

(B) REAL PROPERTY SUBJECT TO A MECHANIC'S LIEN FOR REPAIRS AND IMPROVEMENTS.—In the case of any real property subject to a lien for repair or improvement, as against a mechanic's lienor.

"(C) REAL PROPERTY CONSTRUCTION OR IMPROVEMENT FINANCING AGREEMENT.—As against any security interest set forth in paragraph (3) of section 6323(c) (whether such security interest came into existence before or after tax filing).

Subparagraphs (B) and (C) shall not apply to any security interest which came into existence after the date on which the Secretary filed notice (in a manner similar to notice filed under section 6323(f)) that payment of the deferred amount has been accelerated under section 6166(g) or 6166A(h).

"(4) LIEN TO BE IN LIEU OF SECTION 6324 LIEN.—If there is a lien under this section on any property with respect to any estate, there shall not be any lien under section 6324 on such property with respect to the same estate.

"(5) ADDITIONAL LIEN PROPERTY REQUIRED IN CERTAIN CASES.—If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the aggregate interest amount, the Secretary may require the addition of property to the agreement (but he may not require under this paragraph that the value of the property covered by the agreement exceed such unpaid portion). If property having the required value is not added to the property covered by the agreement (or if other security equal to the required value is not furnished) within 90 days after notice and demand therefor by the Secretary, the failure to comply with the preceding sentence shall be treated as an act accelerating payment of the installments under section 6166(g) or 6166A(h).

"(6) LIEN TO BE IN LIEU OF BOND.—The Secretary may not require under section 6165 the furnishing of any bond for the payment of any tax to which an agreement which meets the requirements of subsection (c) applies.

"(e) DEFINITIONS.—For purposes of this section—

"(1) DEFERRED AMOUNT.—The term 'deferred amount' means the aggregate amount deferred under section 6166 or 6166A (determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11).

"(2) AGGREGATE INTEREST AMOUNT.—The term 'aggregate interest amount' means the aggregate amount of interest which will be payable over the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11).

"(3) DEFERRAL PERIOD.—The term 'deferral period' means the period for which the payment of tax is deferred pursuant to the election under section 6166 or 6166A.

"(4) APPLICATION OF DEFINITIONS IN CASE OF DEFICIENCIES.—In the case of a deficiency, a separate deferred amount, aggregate interest amount, and deferral period shall be determined as of the due date of the first installment after the deficiency is prorated to installments under section 6166 or 6166A."

(2) DISCHARGE OF EXECUTOR FROM PERSONAL LIABILITY.—Section 2204 (relating to discharge of fiduciary from personal liability) is amended by adding at the end thereof the following new subsection:

"(c) SPECIAL LIEN UNDER SECTION 6324A.—For purposes of the second sentence of subsection (a) and the last sentence of subsection (b), an agreement which meets the requirements of section 6324A (relating to special lien for estate tax deferred under section 6166 or 6166A) shall be treated as the furnishing of bond with respect to the amount for which the time for payment has been extended under section 6166 or 6166A."

(e) AMENDMENTS OF SECTION 303.—

(1) EXTENSION OF PERIOD FOR DISTRIBUTION.—Paragraph (1) of section 303(b) (relating to distributions in redemption of stock to pay death taxes) is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or ", and by adding at the end thereof the following new subparagraph:

"(C) if an election has been made under section 6166, or 6166A and if the time prescribed by this subparagraph expires at a later date than the time prescribed by subparagraph (B) of this paragraph, within the time determined under section 6166 or 6166A for the payment of the installments."

(2) RELATIONSHIP OF STOCK TO DECEDENT'S ESTATE.—

(A) Subparagraph (A) of section 303(b)(2) is amended to read as follows:

"(A) IN GENERAL.—Subsection (a) shall apply to a distribution by a corporation only if the value (for Federal estate tax purposes) of all of the stock of such corporation which is included in determining the value of the decedent's gross estate exceeds 50 percent of the excess of—

"(i) the value of the gross estate of such decedent, over

"(ii) the sum of the amounts allowable as a deduction under section 2053 or 2054."

(B) The first sentence of subparagraph (B) or section 303(b)(2) is amended by striking out "the 35 percent and 50 percent requirements" and inserting in lieu thereof "the 50 percent requirement."

(3) RELATIONSHIP OF SHAREHOLDER TO ESTATE TAX.—Subsection (b) of section 303 is amended by adding at the end thereof the following new paragraphs:

"(3) RELATIONSHIP OF SHAREHOLDER TO ESTATE TAX.—Subsection (a) shall apply to a distribution by a corporation only to the extent that the interest of the shareholder is reduced directly (or through a binding obligation to contribute) by any payment of an amount described in paragraph (1) or (2) of subsection (a).

"(4) ADDITIONAL REQUIREMENTS FOR DISTRIBUTIONS MADE MORE THAN 4 YEARS AFTER DECEDENT'S DEATH.—In the case of amounts distributed more than 4 years after the date

of the decedent's death, subsection (a) shall apply to a distribution by a corporation only to the extent of the lesser of—

"(A) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which remained unpaid immediately before the distribution, or

"(B) the aggregate of the amounts referred to in paragraph (1) or (2) of subsection (a) which are paid during the 1-year period beginning on the date of such distribution."

(4) STOCK WITH SUBSTITUTED BASIS.—Subsection (c) of section 303 (relating to stock with substituted basis) is amended by striking out "limitation specified in subsection (b)(1)" and inserting in lieu thereof "limitations specified in subsection (b)".

(f) TECHNICAL, CLERICAL, AND CONFORMING CHANGES.—

(1) The table of sections for subchapter C of chapter 64 is amended by inserting after the item relating to section 6324 the following new item:

"Sec. 6324A. Special lien for estate tax deferred under section 6166 or 6166A."

(2) Section 7403(a) (relating to action to enforce lien or to subject property to payment of tax) is amended by adding at the end thereof the following new sentence: "For purposes of the preceding sentence, any acceleration of payment under section 6166 (g) or 6166A(h) shall be treated as a neglect to pay tax."

(3) Paragraph (2) of section 2011(c) (relating to credit for State death taxes) is amended by striking out "section 6161" and inserting in lieu thereof "section 6161, 6166 or 6166A".

(4) The last sentence of section 2204(b) is amended by striking out "has not been extended under" and inserting in lieu thereof "has been extended under".

(5) The table of sections for subchapter B of chapter 62 is amended by striking out the item relating to section 6166 and inserting in lieu thereof the following:

"Sec. 6166. Alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business.

"Sec. 6166A. Extension of time for payment of estate tax where estate tax consists largely of interest in closely held business.".

(6) Subsections (a) and (b) of section 2204 (relating to discharge of fiduciary from personal liability) are as amended by striking out "or 6166" and inserting in lieu thereof "6166 or 6166A".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1976.

SEC. 2205. CARRYOVER BASIS.

(a) GENERAL RULE.—

(1) AMENDMENT OF SECTION 1014.—Subsection (d) of section 1014 (relating to basis of property acquired from a decedent) is amended to read as follows:

"(d) DECEDENTS DYING AFTER DECEMBER 31, 1976.—In the case of a decedent dying after December 31, 1976, this section shall not apply to any property for which a carryover basis is provided by section 1023."

(2) CARRYOVER BASIS.—Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by redesignating section 1023 as section 1024 and by inserting after section 1022 the following new section:

"SEC. 1023. CARRYOVER BASIS FOR CERTAIN PROPERTY ACQUIRED FROM A DECEDENT DYING AFTER DECEMBER 31, 1976.

"(a) GENERAL RULE.—

"(1) CARRYOVER BASIS.—Except as otherwise provided in this section, the basis of carryover basis property acquired from a decedent dying after December 31, 1976, in the hands of the person so acquiring it shall be the adjusted basis of the property immediately before the death of the decedent, further adjusted as provided in this section.

"(2) LOSS ON PERSONAL AND HOUSEHOLD EFFECTS.—In the case of any carryover basis property which, in the hands of the decedent, was a personal or household effect, for purposes of determining loss, the basis of such property in the hands of the person acquiring such property from the decedent shall not exceed its fair market value.

"(b) CARRYOVER BASIS PROPERTY DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'carryover basis property' means any property which is acquired from or passed from a decedent (within the meaning of section 1014(b)) and which is not excluded pursuant to paragraph (2) or (3).

"(2) CERTAIN PROPERTY NOT CARRYOVER BASIS PROPERTY.—The term 'carryover basis property' does not include—

"(A) any item of gross income in respect of a decedent described in section 691;

"(B) property described in section 2042 (relating to proceeds of life insurance);

"(C) a joint and survivor annuity under which the surviving annuitant is taxable under section 72, and payments and distributions under a deferred compensation plan described in part I of subchapter D of chapter 1 to the extent such payments and distributions are taxable to the decedent's beneficiary under chapter 1;

"(D) property included in the decedent's gross estate by reason of section 2035, 2038, or 2041 which has been disposed of before the decedent's death in a transaction in which gain or loss is recognizable for purposes of chapter 1;

"(E) stock or a stock option passing from the decedent to the extent income in respect of such stock or stock option is includible in gross income under section 422(c)(1), 423(c), or 424(c)(1); and

"(F) property described in section 1014(b)(5).

"(3) $10,000 EXCLUSION FOR CERTAIN ASSETS.—

"(A) EXCLUSION.—The term 'carryover basis property' does not include any asset—

"(i) which, in the hands of the decedent, was a personal or household effect, and

"(ii) with respect to which the executor has made an election under this paragraph.

"(B) LIMITATION.—The fair market value of all assets designated under this subsection with respect to any decedent shall not exceed $10,000.

"(C) ELECTION.—An election under this paragraph with respect to any asset shall be made by the executor not later than the date prescribed by section 6075(a) for filing the return of tax imposed by section 2001 or 2101 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.

"(c) INCREASE IN BASIS FOR FEDERAL AND STATE ESTATE TAXES ATTRIBUTABLE TO APPRECIATION.—The basis of appreciated carryover basis property (determined after any adjustment under subsection (h)) which is subject to the tax imposed by section 2001 or 2101 in the hands of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the Federal and State estate taxes as—

"(1) the net appreciation in value of such property, bears to

"(2) the fair market value of all property which is subject to the tax imposed by section 2001 or 2101.

"(d) $60,000 MINIMUM FOR BASES OF CARRYOVER BASIS PROPERTIES.—

"(1) IN GENERAL.—If $60,000 exceeds the aggregate bases (as determined after any adjustment under subsection (h) or (c)) of all carryover basis property, the basis of each appreciated carryover basis property (after any adjustment under subsection (h) or (c)) shall be increased by an amount which bears the same ratio to the amount of such excess as—

"(A) the net appreciation in value of such property, bears to

"(B) the net appreciation in value of all such property.

"(2) SPECIAL RULE FOR PERSONAL OR HOUSEHOLD EFFECT.—For purposes of paragraph (1), the basis of any property which is a personal or household effect shall be treated as not greater than the fair market value of such property.

"(3) NONRESIDENT NOT CITIZEN.—This subsection shall not apply to any carryover basis property acquired from any decedent who was (at the time of his death) a nonresident not a citizen of the United States.

"(e) FURTHER INCREASE IN BASIS FOR CERTAIN STATE SUCCESSION TAX PAID BY TRANSFEREE OF PROPERTY.—If—

"(1) any person acquires appreciated carryover basis property from a decedent, and

"(2) such person actually pays an amount of estate, inheritance, legacy, or succession taxes with respect to such property to any State or the District of Columbia for which the estate is not liable,

then the basis of such property (after any adjustment under subsection (h), (c), or (d)) shall be increased by an amount which bears the same ratio to the aggregate amount of all such taxes paid by such persons as—

"(A) the net appreciation in value of such property, bears to

"(B) the fair market value of all property acquired by such person which is subject to such taxes.

"(f) SPECIAL RULES AND DEFINITIONS FOR APPLICATION OF SUBSECTIONS (c), (d), AND (e).—

"(1) FAIR MARKET VALUE LIMITATION.—The adjustments under subsection (c), (d), and (e) shall not increase the basis of property above its fair market value.

"(2) NET APPRECIATION.—For purposes of this section, the net appreciation in value of any property is the amount by which the fair market value of such property exceeds the adjusted basis of such property immediately before the death of the decedent (as determined after any adjustment under subsection (h)). For purposes of subsection (d), such adjusted basis shall be increased by the amount of any adjustment under subsection (c), and, for purposes of subsection (e), such adjusted basis shall be increased by the amount of any adjustment under subsection (c) or (d).

"(3) FEDERAL AND STATE ESTATE TAXES.—For purposes of subsection (c), the term 'Federal and State estate taxes' means—

"(A) the tax imposed by section 2001 or 2101, reduced by the credits against such tax, and

"(B) any estate, inheritance, legacy, or succession taxes, for which the estate is liable, actually paid by the estate to any State or the District of Columbia.

"(4) CERTAIN MARITAL AND CHARITABLE DEDUCTION PROPERTY TREATED AS NOT SUBJECT TO TAX.—For purposes of subsection (c) and (e), property shall be treated as not subject to a tax—

"(A) with respect to the tax imposed by section 2001 or 2101, to the extent that a deduction is allowable with respect to such property under section 2055 or 2056 or under section 2106(a)(2), and

"(B) with respect to State estate taxes and with respect to the State taxes referred to in subsection (e)(2), to the extent that such property is not subject to such taxes.

"(5) APPRECIATED CARRYOVER BASIS PROPERTY.—For purposes of this section, the term 'appreciated carryover basis property' means any carryover basis property if the fair market value of such property exceeds the adjusted basis of such property immediately before the death of the decedent.

"(g) OTHER SPECIAL RULES AND DEFINITIONS.—

"(1) FAIR MARKET VALUE.—For purposes of this section, when not otherwise distinctly expressed, the term 'fair market value' means value as determined under chapter 11.

"(2) PROPERTY PASSING FROM THE DECEDENT.—For purposes of this section, property passing from the decedent shall be treated as property acquired from the decedent.

"(3) DECEDENT'S BASIS UNKNOWN.— If the facts necessary to determine the basis (unadjusted) of carryover basis property immediately before the death of the decedent are unknown to the person acquiring such property from the decedent, such basis shall be treated as being the fair market value of such property as of the date (or approximate date) at which such property was acquired by the decedent or by the last preceding owner in whose hands it did not have a basis determined in whole or in part by reference to its basis in the hands of a prior holder.

"(4) CERTAIN MORTGAGES.—For purposes of subsections (c), (d), and (e), if—

"(A) there is an unpaid mortgage on, or indebtedness in respect of, property,

"(B) such mortgage or indebtedness does not constitute a liability of the estate, and

"(C) such property is included in the gross estate undiminished by such mortgage or indebtedness,

then the fair market value of such property to be treated as included in the gross estate shall be the fair market value of such property, diminished by such mortgage or indebtedness.

"(h) ADJUSTMENT TO BASIS FOR DECEMBER 31, 1976, FAIR MARKET VALUE.—

"(1) MARKETABLE BONDS AND SECURITIES.—If the adjusted basis immediately before the death of the decedent of any property which is carryover basis property reflects the adjusted basis of any marketable bond or security on December 31, 1976, and if the fair market value of such bond or security on December 31, 1976, exceeded its adjusted basis on such date, then, for purposes of determining gain, the adjusted basis of such property shall be increased by the amount of such excess.

"(2) PROPERTY OTHER THAN MARKETABLE BONDS AND SECURITIES.—

"(A) IN GENERAL.—If—

"(i) the adjusted basis immediately before the death of the decedent of any property which is carryover basis property reflects the adjusted basis on December 31, 1976, of any property other than a marketable bond or security, and

"(ii) the value of such carryover basis property (as determined with respect to the estate of the decedent without regard to section 2032) exceeds the adjusted basis of such property immediately before the death of the decedent (determined without regard to this subsection),

then, for purposes of determining gain, the adjusted basis of such property immediately before the death of the decedent (determined without regard to this subsection) shall be increased by the amount determined under subparagraph (B).

"(B) AMOUNT OF INCREASE.—The amount of the increase under this subparagraph for any property is the sum of—

"(i) the excess referred to in subparagraph (A)(ii), reduced by an amount equal to all adjustments for depreciation, amortization, or depletion for the holding period of such property, and then multiplied by the applicable fraction determined under subparagraph (C), and

"(ii) the adjustments to basis for depreciation, amortization, or depletion which are attributable to that portion of the holding period for such property which occurs before January 1, 1977.

"(C) APPLICABLE FRACTION.—For purposes of subparagraph (B)(i), the term 'applicable fraction' means, with respect to any property, a fraction—

"(i) the numerator of which is the number of days in the holding period with respect to such property which occurs before January 1, 1977, and

"(ii) the denominator of which is the total number of days in such holding period.

"(D) SUBSTANTIAL IMPROVEMENTS.—Under regulations prescribed by the Secretary, if there is a substantial improvement of any property, such substantial improvement shall be treated as a separate property for purposes of this paragraph.

"(E) DEFINITIONS.—For purposes of this paragraph—

"(i) The term 'marketable bond or security' means any security for which, as of December 1976, there was a market on a stock exchange, in an over-the-counter market, or otherwise.

"(ii) The term 'holding period' means, with respect to any carryover basis property, the period during which the decedent (or, if any other person held such property immediately before the death of the decedent, such other person) held such property as determined under section 1223; except that such period shall end on the date of the decedent's death.

"(i) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section."

(3) AMENDMENT OF SECTION 1016.—Section 1016(a) (relating to adjustments to basis) is amended by striking out the period at the end thereof and by inserting in lieu thereof a semicolon and by adding at the end thereof the following new paragraph:

"(23) to the extent provided in section 1023, relating to carryover basis for certain property acquired from a decedent dying after December 31, 1976."

(4) AMENDMENTS OF SECTION 691.—

(A) Section 691(c)(2)(A) (relating to deduction for estate tax in case of income in respect of decedents) is amended to read as follows:

"(A) The term 'estate tax' means Federal and State estate taxes (within the meaning of section 1023(f)(3))."

(B) Section 691(c)(2)(C) is amended to read as follows:

"(C) The estate tax attributable to such net value shall be an amount which bears the same ratio to the estate tax as such net value bears to the value of the gross estate."

(5) REPEAL OF SECTION 1246(e).—Section 1246 (relating to gain on foreign investment company stock) is amended by striking out subsection (e) and by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(b) NONRECOGNITION OF GAIN WHERE CERTAIN APPRECIATED CARRYOVER BASIS PROPERTY IS USED IN SATISFACTION OF A PECUNIARY BEQUEST.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end thereof the following new section:

"SEC. 1040. USE OF CERTAIN APPRECIATED CARRYOVER BASIS PROPERTY TO SATISFY PECUNIARY BEQUEST.

"(a) GENERAL RULE.—If the executor of the estate of any decedent satisfies the right of any person to receive a pecuniary bequest with appreciated carryover basis property (as defined in section 1023(f)(5)), then gain on such exchange shall be recognized to the estate only to the extent that, on the date of such exchange, the fair market value of such property exceeds the value of such property for purposes of chapter 11.

"(b) SIMILAR RULE FOR CERTAIN TRUSTS.—To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where—

"(1) by reason of the death of the decedent, a person has a right to receive from a trust a specific dollar amount which is the equivalent of a pecuniary bequest, and

"(2) the trustee of the trust satisfies such right with carryover basis property to which section 1023 applies.

"(c) BASIS OF PROPERTY ACQUIRED IN EXCHANGE DESCRIBED IN SUBSECTION (a) OR (b).—The basis of property acquired in an exchange with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the exchange, increased by the amount of the gain recognized to the estate or trust on the exchange."

(c) LIMITATION OF INCREASE IN BASIS FOR GIFT TAX PAID TO THAT PORTION OF GIFT TAX ATTRIBUTABLE TO NET APPRECIATION IN VALUE.—Subsection (d) of section 1015 (relating to increased basis for gift tax paid) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR GIFTS MADE AFTER DECEMBER 31, 1976.—

(A) IN GENERAL.—In the case of any gift made after December 31, 1976, the increase in basis provided by this subsection with respect to any gift for the gift tax paid under chapter 12 shall be an amount (not in excess of the amount of tax so paid) which bears the same ratio to the amount of tax so paid as—

"(i) the net appreciation in value of the gift, bears to

"(ii) the amount of the gift.

"(B) NET APPRECIATION.—For purposes of paragraph (1), the net appreciation in value of any gift is the amount by which the fair market value of the gift exceeds the donor's adjusted basis immediately before the gift."

(d) INFORMATION REQUIREMENT.—

(1) IN GENERAL.—Subpart A of part III of subchapter A of chapter 61 (relating to information concerning persons subject to special provisions) is amended by inserting after section 6039 the following new section:

"SEC. 6039A. INFORMATION REGARDING CARRYOVER BASIS PROPERTY ACQUIRED FROM A DECEDENT.

"(a) IN GENERAL.—Every executor (as defined in section 2203) shall furnish the Secretary such information with respect to carryover basis property to which section 1023 applies as the Secretary may by regulations prescribe.

"(b) STATEMENTS TO BE FURNISHED TO PERSONS WHO ACQUIRE PROPERTY FROM A DECEDENT.—Every executor who is required to furnish information under subsection (a) shall furnish in writing to each person acquiring an item of such property from the decedent (or to whom the item passes from the decedent) the adjusted basis of such item."

(2) PENALTIES.—Subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6694. FAILURE TO FILE INFORMATION WITH RESPECT TO CARRYOVER BASIS PROPERTY.

"(a) INFORMATION REQUIRED TO BE FURNISHED TO THE SECRETARY.—Any executor who fails to furnish information required under subsection (a) of section 6039A on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, shall pay a penalty of $100 for each such failure, but the total amount imposed for all such failures shall not exceed $5,000.

"(b) INFORMATION REQUIRED TO BE FURNISHED TO BENEFICIARIES.—Any executor who fails to furnish in writing to each person described in subsection (b) of section 6039A the information required under such subsection, unless it is shown that such failure is due to reasonable cause and not to willful neglect, shall pay a penalty of $50 for each such failure, but the total amount imposed for all such failures shall not exceed $2,500."

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for part II of subchapter O of chapter 1 is amended by striking out the item relating to section 1023 and inserting in lieu thereof the following:

"Sec. 1023. Carryover basis for certain property acquired from a decedent dying after December 31, 1976.
"Sec. 1024. Cross references."

(2) The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end thereof the following:

"Sec. 1040. Use of certain appreciated carryover basis property to satisfy pecuniary bequest."

(3) The table of sections for part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6039 the following:

"Sec. 6039A. Information regarding carryover basis property acquired from a decedent."

(4) The table of sections for subchapter B of chapter 68 is amended by adding at the end thereof the following:

"Sec. 6694. Failure to file information with respect to carryover basis property."

(f) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall apply in respect of decedents dying after December 31, 1976.

(2) The amendment made by subsection (c) shall apply to gifts made after December 31, 1976.

SEC. 2206. CERTAIN GENERATION-SKIPPING TRANSFERS.

(a) IMPOSITION OF TAX.—Subtitle B (relating to estate and gift taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 13—TAX ON CERTAIN GENERATION-SKIPPING TRANSFERS

"SUBCHAPTER A. Tax imposed.
"SUBCHAPTER B. Definitions and special rules.
"SUBCHAPTER C. Administration.

"Subchapter A—Tax Imposed

"Sec. 2601. Tax imposed.
"Sec. 2602. Amount of tax.
"Sec. 2603. Liability for tax.

"SEC. 2601. TAX IMPOSED.

"A tax is hereby imposed on every generation-skipping transfer in the amount determined under section 2602.

"SEC. 2602. AMOUNT OF TAX.

"(a) GENERAL RULE.—The amount of the tax imposed by section 2601 with respect to any transfer shall be the excess of—

"(1) a tentative tax computed in accordance with the rate schedule set forth in section 2001(c) (as in effect on the date of transfer) on the sum of—

"(A) the fair market value of the property transferred determined as of the date of transfer (or in the case of an election under subsection (d), as of the applicable valuation date prescribed by section 2032),

"(B) the aggregate fair market value (determined for purposes of this chapter) of all prior transfers of the deemed transferor to which this chapter applied,

"(C) the amount of the adjusted taxable gifts (within the meaning of section 2001 (b)) made by the deemed transferor before this transfer, and

"(D) if the deemed transferor has died at the same time as, or before, this transfer, the taxable estate of the deemed transferor, over

"(2) a tentative tax (similarly computed) on the sum of the amounts determined under subparagraphs (B), (C), and (D) of paragraph (1).

"(b) MULTIPLE SIMULTANEOUS TRANSFERS.—If two or more transfers which are taxable under section 2601 and which have the same deemed transferor occur by reason of the same event, the tax imposed by section 2601 on each such transfer shall be the amount which bears the same ratio to—

"(1) the amount of the tax which would be imposed by section 2601 if the aggregate of such transfers were a single transfer, as

"(2) the fair market value of the property transferred in such transfer bears to the aggregate fair market value of all property transferred in such transfers.

"(c) DEDUCTIONS, CREDITS, ETC.—

"(1) GENERAL RULE.—Except as otherwise provided in this subsection, no deduction, exclusion, exemption, or credit shall be allowed against the tax imposed by section 2601.

"(2) CHARITABLE DEDUCTIONS ALLOWED.—The deduction under section 2055, 2106(a)(2), or 2522, whichever is appropriate, shall be allowed in determining the tax imposed by section 2601.

"(3) UNUSED PORTION OF UNIFIED CREDIT.—If the generation-skipping transfer occurs at the same time as, or after, the death of the deemed transferor, then the portion of the credit under section 2010(a) (relating to unified credit) which exceeds the sum of—

"(A) the tax imposed by section 2001, and

"(B) the taxes theretofore imposed by section 2601 with respect to this deemed transferor,

shall be allowed as a credit against the tax imposed by section 2601. The amount of the credit allowed by the preceding sentence shall not exceed the amount of the tax imposed by section 2601.

"(4) CREDIT FOR TAX ON PRIOR TRANSFERS.—The credit under section 2013 (relating to credit for tax on prior transfers) shall be allowed against the tax imposed by section 2601. For purposes of the preceding sentence, section 2013 shall be applied as if so much of the property subject to tax under section 2601 as is not taken into account for purposes of determining the credit allowable by section 2013 with respect to the estate of the deemed transferor passed from the transferor (as defined in section 2013) to the deemed transferor.

"(5) COORDINATION WITH ESTATE TAX.—

"(A) ADJUSTMENTS TO MARITAL DEDUCTION.—If the generation-skipping transfer occurs at the same time as, or within 9 months after, the death of the deemed transferor, for purposes of section 2056 (relating to bequests, etc., to surviving spouse), the value of the gross estate of the deemed transferor shall be deemed to be increased by the amount of such transfer.

"(B) CERTAIN EXPENSES ATTRIBUTABLE TO GENERATION-SKIPPING TRANSFER.—If the generation-skipping transfer occurs at the same time as, or after the death of the deemed transferor, for purposes of this section, the amount taken into account with respect to such transfer shall be reduced—

"(i) in the case of a taxable termination, by any item referred to in section 2053 or 2054 to the extent that a deduction would have been allowable under such section for such item if the amount of the trust had been includible in the deemed transferor's gross estate and if the deemed transferor had died immediately before such transfer; or

"(ii) in the case of a taxable distribution, by any expense incurred in connection with the determination, collection, or refund of the tax imposed by section 2601 on such transfer.

"(C) CREDIT FOR STATE INHERITANCE TAX.—If the generation-skipping transfer occurs at the same time as, or after, the death of the deemed transferor, there shall be allowed as a credit against the tax imposed by section 2601 an amount equal to that portion of the estate, inheritance, legacy, or succession tax actually paid to any State or the District of Columbia in respect of any property included in the generation-skipping transfer, but only to the extent of the lesser of—

"(i) that portion of such taxes which is levied on such transfer, or

"(ii) the excess of the limitation applicable under section 2011(b) if the adjusted taxable estate of the decedent had been increased by the amount of the transfer and all prior generation-skipping transfers to which this subparagraph applied which had the same deemed transferor, over the sum of the amount allowable as a credit under section 2011 with respect to the estate of the decedent plus the aggregate amounts allowable under this subparagraph with respect to such prior generation-skipping transfers.

"(d) ALTERNATE VALUATION.—

"(1) IN GENERAL.—In the case of—

"(A) 1 or more generation-skipping transfers from the same trust which have the same deemed transferor and which are taxable terminations occurring at the same time as the death of such deemed transferor; or

"(B) 1 or more generation-skipping transfers from the same trust with different deemed transferors—

"(i) which are taxable terminations occurring on the same day; and

"(ii) which would, but for section 2613(b)(2), have occurred at the same time as the death of the individuals who are the deemed transferors with respect to the transfers;

the trustee may elect to value all of the property transferred in such transfers in accordance with section 2032.

"(2) SPECIAL RULES.—If the trustee makes an election under paragraph (1) with respect to any generation-skipping transfer, section 2032 shall be applied by taking into account (in lieu of the date of the decedent's death) the following date:

"(A) in the case of any generation-skipping transfer described in paragraph (1)(A), the date of the death of the deemed transferor described in such paragraph, or

"(B) in the case of any generation-skipping transfer described in paragraph (1)(B), the date on which such transfer occurred.

"(e) TRANSFERS WITHIN 3 YEARS OF DEATH OF DEEMED TRANSFEROR.—Under regulations prescribed by the Secretary, the principles of section 2035 shall apply with respect to transfers made during the 3-year period ending on the date of the deemed transferor's death. In the case of any transfer to which this subsection applies, the amount of the tax imposed by this chapter shall be determined as if the transfer occurred after the death of the deemed transferor and appropriate adjustments shall be made with respect to the amount of any prior transfer which is taken into account under subparagraph (B) or (C) of subsection (a)(1).

"SEC. 2603. LIABILITY FOR TAX.

"(a) PERSONAL LIABILITY.—

"(1) IN GENERAL.—If the tax imposed by section 2601 is not paid, when due then—

"(A) except to the extent provided in paragraph (2), the trustee shall be personally liable for any portion of such tax which is attributable to a taxable termination, and

"(B) the distributee of the property shall be personally liable for such tax to the extent provided in paragraph (3).

"(2) LIMITATION OF PERSONAL LIABILITY OF TRUSTEE WHO RELIES ON CERTAIN INFORMATION FURNISHED BY THE SECRETARY.—

"(A) INFORMATION WITH RESPECT TO RATES.—The trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the application to the transfer of rates of tax which exceed the rates of tax furnished by the Secretary to the trustee as being the rates at which the transfer may reasonably be expected to be taxed.

"(B) AMOUNT OF REMAINING EXCLUSION.—The trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the fact that—

"(i) the amount furnished by the Secretary to the trustee as being the amount of the exclusion for a transfer to a grandchild of the grantor of the trust which may reasonably be expected to remain with respect to the deemed transferor, is less than

"(ii) the amount of such exclusion remaining with respect to such deemed transferor.

"(3) LIMITATION OF PERSONAL LIABILITY OF DISTRIBUTEE.—The distributee of the property shall be personally liable for the tax imposed by section 2601 only to the extent of an amount equal to the fair market value (determined as of the time of the distribution) of the property received by the distributee in the distribution.

"(b) LIEN.—The tax imposed by section 2601 on any transfer shall be a lien on the property transferred until the tax is paid in full or becomes unenforceable by reason of lapse of time.

"Subchapter B—Definitions and Special Rules

"Sec. 2611. Generation-skipping transfer.
"Sec. 2612. Deemed transferor.
"Sec. 2613. Other definitions.
"Sec. 2614. Special rules.

"SEC. 2611. GENERATION-SKIPPING TRANSFER.

"(a) GENERATION-SKIPPING TRANSFER DEFINED.—For purposes of this chapter, the terms 'generation-skipping transfer' and 'transfer' mean any taxable distribution or taxable termination with respect to a generation-skipping trust or trust equivalent.

"(b) GENERATION-SKIPPING TRUST.—For purposes of this chapter, the term 'generation-skipping trust' means any trust having younger generation beneficiaries (within the meaning of section 2613(c)(1)) who are assigned to more than one generation.

"(c) ASCERTAINMENT OF GENERATION.—For purposes of this chapter, the generation to which any person (other than the grantor) belongs shall be determined in accordance with the following rules:

"(1) an individual who is a lineal descendant of a grandparent of the grantor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the grantor,

"(2) an individual who has been at any time married to a person described in paragraph (1) shall be assigned to the generation of the person so described and an individual who has been at any time married to the grantor shall be assigned to the grantor's generation,

"(3) a relationship by the half blood shall be treated as a relationship by the whole blood,

"(4) a relationship by legal adoption shall be treated as a relationship by blood,

"(5) an individual who is not assigned to a generation by reason of the foregoing paragraphs shall be assigned to a generation on the basis of the date of such individual's birth, with—

"(A) an individual born not more than 12½ years after the date of the birth of the grantor assigned to the grantor's generation,

"(B) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the grantor assigned to the first generation younger than the grantor, and

"(C) similar rules for a new generation every 25 years,

"(6) an individual who, but for this paragraph, would be assigned to more than one generation shall be assigned to the youngest such generation, and

"(7) if any beneficiary of the trust is an estate or a trust, partnership, corporation, or other entity (other than an organization described in section 511(a)(2) and other than a charitable trust described in section 511(b)(2)), each individual having an indirect interest or power in the trust through such entity shall be treated as a beneficiary of the trust and shall be assigned to a generation under the foregoing provisions of this subsection.

"(d) GENERATION-SKIPPING TRUST EQUIVALENT.—

"(1) IN GENERAL.—For purposes of this chapter, the term 'generation-skipping trust equivalent' means any arrangement which, although not a trust, has substantially the same effect as a generation-skipping trust.

"(2) EXAMPLES OF ARRANGEMENTS TO WHICH SUBSECTION RELATES.—Arrangements to be taken into account for purposes of determining whether or not paragraph (1) applies include (but are not limited to) arrangements involving life estates and remainders, estates for years, insurance and annuities, and split interests.

"(3) REFERENCES TO TRUST INCLUDE REFERENCES TO TRUST EQUIVALENTS.—Any reference in this chapter in respect of a generation-skipping trust shall include the appropriate reference in respect of a generation-skipping trust equivalent.

"SEC. 2612. DEEMED TRANSFEROR.

"(a) GENERAL RULE.—For purposes of this chapter, the deemed transferor with respect to a transfer is—

"(1) except as provided in paragraph (2), the parent of the transferee of the property who is more closely related to the grantor of the trust than the other parent of such transferee (or if neither parent is related to such grantor, the parent having a closer affinity to the grantor), or

"(2) if the parent described in paragraph (1) is not a younger generation beneficiary of the trust but 1 or more ancestors of the transferee is a younger generation beneficiary related by blood or adoption to the grantor of the trust, the youngest of such ancestors.

"(b) DETERMINATION OF RELATIONSHIP.—For purposes of subsection (a), a parent related to the grantor of the trust by blood or adoption is more closely related than a parent related to such grantor by marriage.

"SEC. 2613. OTHER DEFINITIONS.

"(a) TAXABLE DISTRIBUTION.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'taxable distribution' means any distribution which is not out of the income of the trust (within the meaning of section 643(b)) from a generation-skipping trust to any younger generation beneficiary who is assigned to a generation younger than the generation assignment of any other person who is a younger generation beneficiary. For purposes of the preceding sentence, an individual who at no time has had anything other than a future interest or future power (or both) in the trust shall not be considered as a younger generation beneficiary.

"(2) SOURCE OF DISTRIBUTIONS.—If, during the taxable year of the trust, there are distributions out of the income of the trust (within the meaning of section 643(b)) and out of other amounts, for purposes of paragraph (1) the distributions of such income shall be deemed to have been made to the beneficiaries (to the extent of the aggregate distributions made to each such beneficiary during such year) in descending order of generations, beginning with the beneficiaries assigned to the oldest generation.

"(3) PAYMENT OF TAX.—If any portion of the tax imposed by this chapter with respect to any transfer is paid out of the income or corpus of the trust, an amount equal to the portion so paid shall be deemed to be a generation-skipping transfer.

"(4) CERTAIN DISTRIBUTIONS EXCLUDED FROM TAX.—The term 'taxable distribution' does not include—

"(A) any transfer to the extent such transfer is to a grandchild of the grantor of the trust and does not exceed the limitation provided by subsection (b)(6), and

"(B) any transfer to the extent such transfer is subject to tax imposed by chapter 11 or 12.

"(b) TAXABLE TERMINATION.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'taxable termination' means the termination (by death, lapse of time, exercise or nonexercise, or otherwise) of the interest or power in a generation-skipping trust of any younger generation beneficiary who is assigned to any generation older than the generation assignment of any other person who is a younger generation beneficiary of that trust. Such term does not include a termination of the interest or power of any person who at no time has had anything other than a future interest or future power (or both) in the trust.

"(2) TIME CERTAIN TERMINATIONS DEEMED TO OCCUR.—

"(A) WHERE 2 OR MORE BENEFICIARIES ARE ASSIGNED TO SAME GENERATION.—In any case where 2 or more younger generation beneficiaries of a trust are assigned to the same generation, except to the extent provided in regulations prescribed by the Secretary, the transfer constituting the termination with respect to each such beneficiary shall be treated as occurring at the time when the last such termination occurs.

"(B) SAME BENEFICIARY HAS MORE THAN 1 INTEREST OR POWER.—In any case where a younger generation beneficiary of a trust has both an interest and a power, or more than 1 interest or power, in the trust, except to the extent provided in regulations prescribed by the Secretary, the termination with respect to each such interest or power shall be treated as occurring at the time when the last such termination occurs.

"(C) UNUSUAL ORDER OF TERMINATION.—

"(i) IN GENERAL.—If—

"(I) but for this subparagraph, there would have been a termination (determined after the application of subparagraphs (A) and (B)) of an interest or power of a younger generation beneficiary (hereinafter in this subparagraph referred to as the 'younger beneficiary'), and

"(II) at the time such termination would have occurred, a beneficiary (hereinafter in this subparagraph referred to as the 'older beneficiary') of the trust assigned to a higher generation than the generation of the younger beneficiary has a present interest or power in the trust,

then, except to the extent provided in regulations prescribed by the Secretary, the transfer constituting the termination with respect to the younger beneficiary shall be treated as occurring at the time when the termination of the last present interest or power of the older beneficiary occurs.

"(ii) SPECIAL RULES.—If clause (i) applies with respect to any younger beneficiary—

"(I) this chapter shall be applied first to the termination of the interest or power of the older beneficiary as if such termination occurred before the termination of the power or interest of the younger beneficiary; and

"(II) the value of the property taken into account for purposes of determining the tax (if any) imposed by this chapter with respect to the termination of the interest or power of the younger beneficiary shall be reduced by the tax (if any) imposed by this chapter with respect to the termination of the interest or power of the older beneficiary.

"(D) SPECIAL RULE.—Subparagraphs (A) and (C) shall also apply where a person assigned to the same generation as, or a higher generation than, the person whose power or interest terminates has a present power or interest immediately after the termination and such power or interest arises as a result of such termination.

"(3) DEEMED TRANSFEREES OF CERTAIN TERMINATIONS.—Where, at the time of any termination, it is not clear who will be the transferee of any portion of the property transferred, except to the extent provided in regulations prescribed by the Secretary, such portion shall be deemed transferred pro

rata to all beneficiaries of the trust in accordance with the amount which each of them would receive under a maximum exercise of discretion on their behalf. For purposes of the preceding sentence, where it is not clear whether discretion will be exercised per stirpes or per capita, it shall be presumed that the discretion will be exercised per stirpes.

"(4) TERMINATION OF POWER.—In the case of the termination of any power, the property transferred shall be deemed to be the property subject to the power immediately before the termination (determined without the application of paragraph (2)).

"(5) CERTAIN TERMINATIONS EXCLUDED FROM TAX.—The term 'taxable termination' does not include—

"(A) any transfer to the extent such transfer is to a grandchild of the grantor of the trust and does not exceed the limitation provided by paragraph (6), and

"(B) any transfer to the extent such transfer is subject to a tax imposed by chapter 11 or 12.

"(6) $250,000 LIMIT ON EXCLUSION OF TRANSFERS TO GRANDCHILDREN.—In the case of any deemed transferor, the maximum amount excluded from the terms 'taxable distribution' and 'taxable termination' by reason of provisions exempting from such terms transfers to the grandchildren of the grantor of the trust shall be $250,000. The preceding sentence shall be applied to transfers from one or more trusts in the order in which such transfers are made or deemed made.

"(7) COORDINATION WITH SUBSECTION (a).—

"(A) TERMINATIONS TAKE PRECEDENCE OVER DISTRIBUTIONS.—If—

"(i) the death of an individual or any other occurrence is a taxable termination with respect to any property, and

"(ii) such occurrence also requires the distribution of part or all of such property in a distribution which would (but for this subparagraph) be a taxable distribution,

then a taxable distribution shall be deemed not to have occurred with respect to the portion described in clause (i).

"(B) CERTAIN PRIOR TRANSFERS.—To the extent that—

"(i) the deemed transferor in any prior transfer of the property of the trust being transferred in this transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the deemed transferor in this transfer,

"(ii) the transferee in such prior transfer was assigned to the same generation as (or a higher generation than) the generation assignment of the transferee in this transfer, and

"(iii) such transfers do not have the effect of avoiding tax under this chapter with respect to any transfer,

the terms 'taxable termination' and 'taxable distribution' do not include this later transfer.

"(c) YOUNGER GENERATION BENEFICIARY; BENEFICIARY.—For purposes of this chapter—

"(1) YOUNGER GENERATION BENEFICIARY.—The term 'younger generation beneficiary' means any beneficiary who is assigned to a generation younger than the grantor's generation.

"(2) TIME FOR ASCERTAINING YOUNGER GENERATION BENEFICIARIES.—A person is a younger generation beneficiary of a trust with respect to any transfer only if such person was a younger generation beneficiary of the trust immediately before the transfer (or, in the case of a series of related transfers, only if such person was a younger generation beneficiary of the trust immediately before the first of such transfers).

"(3) BENEFICIARY.—The term 'beneficiary' means any person who has a present or future interest or power in the trust.

"(d) INTEREST OR POWER.—For purposes of this chapter—

"(1) INTEREST.—A person has an interest in a trust if such person—

"(A) has a right to receive income or corpus from the trust, or

"(B) is a permissible recipient of such income or corpus.

"(2) POWER.—The term 'power' means any power to establish or alter beneficial enjoyment of the corpus or income of the trust.

"(e) LIMITED POWER TO APPOINT AMONG LINEAL DESCENDANTS OF GRANTOR NOT TAKEN INTO ACCOUNT IN CERTAIN CASES.—For purposes of this chapter, if any individual does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries who are lineal descendants of the grantor assigned to a generation younger than the generation assignment of such individual, then such individual shall be treated as not having any power in the trust.

"(f) EFFECT OF ADOPTION.—For purposes of this chapter, a relationship by legal adoption shall be treated as a relationship by blood.

"SEC. 2614. SPECIAL RULES.

"(a) BASIS ADJUSTMENT.—If property is transferred to any person pursuant to a generation-skipping transfer, which occurs before the death of the deemed transferor, the basis of such property in the hands of the transferee shall be increased (but not above the fair market value of such property) by an amount equal to that portion of the tax imposed by section 2601 with respect to the transfer which is attributable to the excess of the fair market value of such property over its adjusted basis immediately before the transfer. If property is transferred in a generation-skipping transfer subject to tax under this chapter which occurs at the same time as, or after, the death of the deemed transferor, the basis of such property shall be adjusted in a manner similar to the manner provided by section 1023 without regard to subsection (d) thereof (relating to basis of property passing from a decedent dying after December 31, 1976).

"(b) NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.—If the deemed transferor of any transfer is, at the time of the transfer, a nonresident not a citizen of the United States and—

"(1) if the deemed transferor is alive at the time of the transfer, there shall be taken into account only property which would be taken into account for purposes of chapter 12, or

"(2) if the deemed transferor has died at the same time as, or before, the transfer, there shall be taken into account only property which would be taken into account for purposes of chapter 11.

"(c) DISCLAIMERS.—

"For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.

"Subchapter C—Administration

"Sec. 2621. Administration.

"Sec. 2622. Regulations.

"SEC. 2621. ADMINISTRATION.

"(a) GENERAL RULE.—Insofar as applicable and not inconsistent with the provisions of this chapter—

"(1) if the deemed transferor is not alive at the time of the transfer, all provisions of subtitle F (including penalties) applicable to chapter 11 or section 2001 are hereby made applicable in respect of this chapter or section 2601, as the case may be, and

"(2) if the deemed transferor is alive at the time of the transfer, all provisions of subtitle F (including penalties) applicable to chapter 12 or section 2501 are hereby made applicable in respect of this chapter or section 2601, as the case may be.

"(b) SECTIONS 6166 AND 6166A NOT APPLICABLE.—For purposes of this chapter, sections 6166 and 6166A (relating to extensions of time for payment of estate tax where estate consists largely of interest in closely held business) shall not apply.

"(c) RETURN REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary shall prescribe by regulations the person who is required to make the return with respect to the tax imposed by this chapter and the time by which any such return must be filed. To the extent practicable, such regulations shall provide that—

"(A) the person who is required to make such return shall be—

"(i) in the case of a taxable distribution, the distributee, or

"(ii) in the case of a taxable termination, the trustee; and

"(B) the return shall be filed—

"(i) in the case of a generation-skipping transfer occurring before the death of the deemed transferor, on or before the 90th day after the close of the taxable year of the trust in which such transfer occurred, or

"(ii) in the case of a generation-skipping transfer occurring at the same time as, or after, the death of the deemed transferor, on or before the 90th day after the last day prescribed by law (including extensions) for filing the return of tax under chapter 11 with respect to the estate of the deemed transferor (or if later, the day which is 9 months after the day on which such generation-skipping transfer occurred).

"(2) INFORMATION RETURNS.—The Secretary may by regulations require the trustee to furnish the Secretary with such information as he determines to be necessary for purposes of this chapter.

"SEC. 2622. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necesary or appropriate to carry out the purposes of this chapter, including regulations providing the extent to which substantially separate and independent shares of different beneficiaries in the trust shall be treated as separate trusts."

(b) TECHNICAL, CLERICAL, AND CONFORMING CHANGES.—

(1) CLERICAL CHANGE.—The table of chapters for subtitle B is amended by adding at the end thereof the following new item:

"CHAPTER 13. Tax on certain generation-skipping transfers."

(2) CREDIT FOR TAX ON PRIOR TRANSFERS.—Section 2013 (relating to credit for tax on prior transfers) is amended by adding at the end thereof the following new subsection:

"(g) TREATMENT OF TAX IMPOSED ON CERTAIN GENERATION-SKIPPING TRANSFERS.—If any property was transferred to the decedent in a transfer which is taxable under section 2601 (relating to tax imposed on generation-skipping transfers) and if the deemed transferor (as defined in section 2612) is not alive at the time of such transfer, for purposes of this section—

"(1) such property shall be deemed to have passed to the decedent from the deemed transferor;

"(2) the tax payable under section 2601 on such transfer shall be treated as a Federal estate tax payable with respect to the estate of the deemed transferor; and

"(3) the amount of the taxable estate of the deemed transferor shall be increased by the value of such property as determined for purposes of the tax imposed by section 2601 on the transfer."

(3) INCOME IN RESPECT OF A DECEDENT.—Subsection (c) of section 691 (relating to deduction for estate tax) is amended by adding at the end thereof the following new paragraph:

"(3) SPECIAL RULE FOR GENERATION-SKIPPING TRANSFERS.—For purposes of this section—

"(A) the tax imposed by section 2601 or any State inheritance tax described in section 2602(c)(5)(C) on any generation-skipping transfer shall be treated as a tax im-

posed by section 2001 on the estate of the deemed transferor (as defined in section 2612(a));

"(B) any property transferred in such a transfer shall be treated as if it were included in the gross estate of the deemed transferor at the value of such property taken into account for purposes of the tax imposed by section 2601; and

"(C) under regulations prescribed by the secretary, any item of gross income subject to the tax imposed under section 2601 shall be treated as income described in subsection (a) if such item is not properly includible in the gross income of the trust on or before the date of the generation-skipping transfer (within the meaning of section 2611 (a)) and if such transfer occurs at or after the death of the deemed transferor (as so defined)."

(4) SPECIAL RULES FOR GENERATION-SKIPPING TRANSFERS.—Section 303 is amended by adding at the end thereof the following new subsection:

"(d) SPECIAL RULES FOR GENERATION-SKIPPING TRANSFERS.—Under regulations prescribed by the Secretary, where stock in a corporation is subject to tax under section 2601 as a result of a generation-skipping transfer (within the meaning of section 2611 (a)), which occurs at or after the death of the deemed transferor (within the meaning of section 2612)—

"(1) the stock shall be deemed to be included in the gross estate of the deemed transferor;

"(2) taxes of the kind referred to in subsection (a)(1) which are imposed because of the generation-skipping transfer shall be treated as imposed because of the deemed transferor's death (and for this purpose the tax imposed by section 2601 shall be treated as an estate tax);

"(3) the period of distribution shall be measured from the date of the generation-skipping transfer; and

"(4) the relationship of stock to the decedent's estate shall be measured with reference solely to the amount of the generation-skipping transfer."

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to any generation-skipping transfer (within the meaning of section 2611(a) of the Internal Revenue Code of 1954) made after April 30, 1976.

(2) EXCEPTIONS.—The amendments made by this section shall not apply to any generation-skipping transfer—

(A) under a trust which was irrevocable on April 30, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after April 30, 1976, or

(B) in the case of a decedent dying before January 1, 1982, pursuant to a will (or revocable trust) which was in existence on April 30, 1976, and was not amended at any time after that date in any respect which will result in the creation of, or increasing the amount of, any generation-skipping transfer.

For purposes of subparagraph (B), if the decedent on April 30, 1976, was under a mental disability to change the disposition of his property, the period set forth in such subparagraph shall not expire before the date which is 2 years after the date on which he first regains his competence to dispose of such property.

(3) TRUST EQUIVALENTS.—For purposes of paragraph (2), in the case of a trust equivalent within the meaning of subsection (d) of section 2611 of the Internal Revenue Code of 1954, the provisions of such subsection (d) shall apply.

SEC. 2207. ORPHANS' EXCLUSION

(a) GENERAL RULE.—Part IV of subchapter A of chapter 11 (relating to taxable estate) is amended by adding at the end thereof the following new section:

"SEC. 2057. BEQUESTS, ETC., TO CERTAIN MINOR CHILDREN

"(a) ALLOWANCE OF DEDUCTION.—For purposes of the tax imposed by section 2001, if—

"(1) the decedent does not have a surviving spouse, and

"(2) the decedent is survived by a minor child who, immediately after the death of the decedent, has no known parent,

then the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to such child, but only to the extent that such interest is included in determining the value of the gross estate.

"(b) LIMITATION.—The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) with respect to interests in property passing to any minor child shall not exceed an amount equal to $5,000 multiplied by the excess of 21 over the age (in years) which such child has attained on the date of the decedent's death.

"(c) LIMITATION IN THE CASE OF LIFE ESTATE OR OTHER TERMINABLE INTEREST.—A deduction shall be allowed under this section with respect to any interest in property passing to a minor child only to the extent that a deduction would have been allowable under section 2056(b) if such interest had passed to a surviving spouse of the decedent. For purposes of this subsection, an interest shall not be treated as terminable solely because the property will pass to another person if the child dies before the youngest child of the decedent attains age 21.

"(d) DEFINITIONS.—For purposes of this section—

"(1) MINOR CHILD.—The term 'minor child' means any child of the decedent who has not attained the age of 21 before the date of the decedent's death.

"(2) ADOPTED CHILDREN.—A relationship by legal adoption shall be treated as replacing a relationship by blood.

"(3) PROPERTY PASSING FROM THE DECEDENT.—The determination of whether an interest in property passes from the decedent to any person shall be made in accordance with section 2056(d)."

(b) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter A of chapter 11 is amended by adding at the end thereof the following new item:

"Sec. 2057. Bequests, etc., to certain minor children."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the estates of decedents dying after December 31, 1976.

SEC. 2208. ADMINISTRATIVE CHANGES.

(a) FURNISHING OF STATEMENT EXPLAINING ESTATE OR GIFT VALUATION.—

(1) IN GENERAL.—Chapter 77 (relating to miscellaneous provisions) is amended by adding at the end thereof the following new section:

"SEC. 7517. FURNISHING ON REQUEST OF STATEMENT EXPLAINING ESTATE OR GIFT EVALUATION.

"(a) GENERAL RULE.—If the Secretary makes a determination or a proposed determination of the value of an item of property for purposes of the tax imposed under chapters 11, 12, or 13, he shall furnish, on the written request of the executor, donor, or the person required to make the return of the tax imposed by chapter 13 (as the case may be), to such executor, donor, or person a written statement containing the material required by subsection (b). Such statement shall be furnished not later than 45 days after the later of the date of such request or the date of such determination or proposed determination.

"(b) CONTENTS OF STATEMENT.—A statement required to be furnished under subsection (a) with respect to the value of an item of property shall—

"(1) explain the basis on which the valuation was determined or proposed,

"(2) set forth any computation used in arriving at such value, and

"(3) contain a copy of any expert appraisal made by or for the Secretary.

"(c) EFFECT OF STATEMENT.—Except to the extent otherwise provided by law, the value determined or proposed by the Secretary with respect to which a statement is furnished under this section, and the method used in arriving at such value, shall not be binding on the Secretary."

(2) CONFORMING AND CLERICAL AMENDMENTS.—

(A) Section 2031 (defining gross estate) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For executor's right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517."

(B) Section 2512 (relating to valuation of gifts) is amended by adding at the end thereof the following new subsection:

"(c) CROSS REFERENCE.—

"For individual's right to be furnished on request a statement regarding any valuation made by the Secretary of a gift by that individual, see section 7517."

(C) The table of sections for chapter 77 is amended by adding at the end thereof the following:

"SEC. 7517. Furnishing on request of statement explaining estate or gift valuation."

(b) SPECIAL RULE FOR FILING RETURNS WHERE GIFTS IN CALENDAR QUARTER TOTAL $25,000 OR LESS.—Subsection (b) of section 6075 (relating to gift tax returns) is amended to read as follows:

"(b) GIFT TAX RETURNS.—

"(1) GENERAL RULE.—Except as provided in paragraph (2), returns made under section 6019 (relating to gift taxes) shall be filed on or before the 15th day of the second month following the close of the calendar quarter.

"(2) SPECIAL RULE WHERE GIFTS IN A CALENDAR QUARTER TOTAL $25,000 OR LESS.—If the total amount of taxable gifts made by a person during a calendar quarter is $25,000 or less, the return under section 6019 for such quarter shall be filed on or before the 15th day of the second month after—

"(A) the close of the first subsequent calendar quarter in the calendar year in which the sum of—

"(i) the taxable gifts made during such subsequent quarter, plus

"(ii) all other taxable gifts made during the calendar year and for which a return has not yet been required to be filed under this subsection,

exceeds $25,000, or

"(B) if a return is not required to be filed under subparagraph (A), the close of the fourth calendar quarter of the calendar year.

"(3) NONRESIDENTS NOT CITIZENS OF THE UNITED STATES.—In the case of a nonresident not a citizen of the United States, paragraph (2) shall be applied by substituting '$12,500' for '$25,000' each place it appears."

(c) PUBLIC INDEX OF FILED TAX LIENS.—

(1) INITIAL FILING OF NOTICE.—

(A) Section 6323(f) (relating to filing of notice of lien) is amended by adding at the end thereof the following new paragraph:

"(4) INDEX.—The notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in a public index at the district office of the Internal Revenue Service for the district in which the property subject to the lien is situated."

(B) Paragraph (2) of section 6323(f) is amended by striking out "paragraph (1)"

and inserting in lieu thereof "paragraphs (1) and (4)".

(2) REFILING OF NOTICE.—Section 6323(g)(2)(A) (relating to refiling of notice of lien) is amended to read as follows:

"(A) if such notice of lien is refiled in the office in which the prior notice of lien was filed and the fact of refiling is entered and recorded in an index in accordance with subsection (f)(4); and".

(d) EFFECTIVE DATES.—

(1) The amendments made by subsection (a)—

(A) insofar as they relate to the tax imposed under chapter 11 of the Internal Revenue Code of 1954, shall apply to the estates of decedents dying after December 31, 1976, and

(B) insofar as they relate to the tax imposed under chapter 12 of such Code, shall apply to gifts made after December 31, 1976.

(2) The amendment made by subsection (b) shall apply to gifts made after December 31, 1976.

(3) The amendment made by subsection (c) shall take effect—

(A) in the case of liens filed before the date of the enactment of this Act, on the 270th day after such date of enactment, or

(B) in the case of liens filed on or after the date of enactment of this Act, on the 120th day after such date of enactment.

SEC. 2209. MISCELLANEOUS PROVISIONS.

(a) INCLUSION OF STOCK IN DECEDENT'S ESTATE WHERE DECEDENT RETAINED VOTING RIGHTS.—Subsection (a) of section 2036 (relating to transfer with retained life estate) is amended by adding at the end thereof the following new sentence:

"For purposes of paragraph (1), the retention of voting rights in retained stock shall be considered to be a retention of the enjoyment of such stock."

(b) DISCLAIMERS.—

(1) AMENDMENT OF GIFT TAX PROVISIONS.—Subchapter B of chapter 12 (relating to transfers for purposes of the gift tax) is amended by adding at the end thereof the following new section:

"SEC. 2518. DISCLAIMERS.

"(a) GENERAL RULE.—For purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

"(b) QUALIFIED DISCLAIMER DEFINED.—For purposes of subsection (a), the term 'qualified disclaimer' means an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

"(1) such refusal is in writing,

"(2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of—

"(A) the day on which the transfer creating the interest in such person is made, or

"(B) the day on which such person attains age 21,

"(3) such person has not accepted the interest or any of its benefits, and

"(4) as a result of such refusal, the interest passes to a person other than the person making the disclaimer (without any direction on the part of the person making the disclaimer).

"(c) OTHER RULES.—For purposes of subsection (a)—

"(1) DISCLAIMER OF UNDIVIDED PORTION OF INTEREST.—A disclaimer with respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

"(2) POWERS.—A power with respect to property shall be treated as an interest in such property."

(2) AMENDMENT OF ESTATE TAX PROVISIONS.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by adding at the end thereof the following new section:

"SEC. 2045. DISCLAIMERS.

"For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518."

(3) CLERICAL AMENDMENTS.—

(A) The table of sections for subchapter B of chapter 12 is amended by adding at the end thereof the following:

"Sec. 2518. Disclaimers."

(B) The table of sections for part III of subchapter A of chapter 11 is amended by adding at the end thereof the following:

"Sec. 2045. Disclaimers."

(4) TECHNICAL AND CONFORMING CHANGES.—

(A) Paragraph (2) of section 2041(a) (relating to release of general powers of appointment) is amended by striking out the second sentence thereof.

(B) The first sentence of subsection (a) of section 2055 (relating to transfers for public, charitable, and religious uses) is amended by striking out "(including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)".

(C) The second sentence of subsection (a) of section 2055 is amended—

(i) by striking out "an irrevocable" and inserting in lieu thereof "a qualified", and

(ii) by striking out "such irrevocable" and inserting in lieu thereof "such qualified".

(D) Section 2056 (relating to bequests, etc., to surviving spouse) is amended by striking out subsection (d) and by redesignating subsection (e) as subsection (d).

(E) Subsection (a) of section 2056 is amended by striking out "subsections (b), (c), and (d)" and inserting in lieu thereof "subsections (b) and (c)".

(F) Subsection (b) of section 2514 (relating to powers of appointment for purposes of the gift tax) is amended by striking out the second sentence thereof.

(c) CERTAIN RETIREMENT BENEFITS.—

(1) EXCLUSION FROM GROSS ESTATE OF INDIVIDUAL RETIREMENT ACCOUNTS, ETC.—Section 2039 (relating to annuities) is amended by adding at the end thereof the following new subsection:

"(e) EXCLUSION OF INDIVIDUAL RETIREMENT ACCOUNTS, ETC.—Notwithstanding the provisions of this section or of any other provision of law, there shall be excluded from the value of the gross estate the value of an annuity receivable by any beneficiary (other than the executor) under—

"(1) an individual retirement account described in section 408(a),

"(2) an individual retirement annuity described in section 408(b), or

"(3) a retirement bond described in section 409(a).

If any payment to an account described in paragraph (1) or for an annuity described in paragraph (2) or a bond described in paragraph (3) was not allowable as a deduction under section 219 and was not a rollover contribution described in section 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C), the preceding sentence shall not apply to that portion of the value of the amount receivable under such account, annuity, or bond (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account, annuity, or bond and which was not allowable as a deduction under section 219 and was not such a rollover contribution bears to the total amount paid to or for such account, annuity, or bond. For purposes of this subsection, the term 'annuity' means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the executor) for his life or over a period extending for at least 36 months after the date of the decedent's death."

(2) EXCLUSION FROM GROSS ESTATE OF SELF-EMPLOYED PLANS.—The fifth sentence of section 2039(c) (relating to exemption of annuities under certain trusts and plans) is amended to read as follows: "For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) shall, to the extent allowable as a deduction under section 404, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent."

(3) EXCLUSION INAPPLICABLE IN CASE OF LUMP SUM DISTRIBUTIONS.—The first sentence of subsection (c) of section 2039 (relating to exemption of annuities under certain trusts and plans) is amended by striking out "other payment receivable by any beneficiary" and inserting in lieu thereof "other payment (other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A)) receivable by any beneficiary)".

(4) GIFT TAX TREATMENT OF ELECTIONS UNDER CERTAIN RETIREMENT PLANS.—

(A) INDIVIDUAL RETIREMENT ACCOUNTS, ETC.—

(i) Subsection (a) of section 2517 (relating to certain annuities under qualified plans) is amended by striking out "or" at the end of paragraph (3), by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; or", and by inserting after paragraph (4) the following new paragraph:

"(5) an individual retirement account described in section 408(a), an individual retirement annuity described in section 408(b), or a retirement bond described in section 409(a)."

(ii) Subsection (b) of section 2517 (relating to transfers attributable to employee contributions) is amended by striking out "other than paragraph (4)" and inserting in lieu thereof "other than paragraphs (4) and (5)".

(iii) Subsection (c) of section 2517 (defining employee) is amended by adding at the end thereof the following new sentence: "In the case of a retirement plan described in paragraph (5) of subsection (a), such term means the individual for whose benefit the plan was established."

(B) SELF-EMPLOYED PLANS.—The last sentence of section 2517(b) (relating to transfers attributable to employee contributions) is amended to read as follows: "For purposes of this subsection, contributions or payments on behalf of an individual while he was an employee within the meaning of section 401(c)(1) made under a trust or plan described in paragraph (1) or (2) of subsection (a) shall, to the extent allowable as a deduction under section 404, be considered to be made by a person other than such individual and, to the extent not so allowable, shall be considered to be made by such individual."

(5) GIFT TAX TREATMENT OF CERTAIN COMMUNITY PROPERTY.—Section 2517 (relating to certain annuities under qualified plans) is amended by redesignating subsection (c) (as amended by paragraph (4)(A)(iii)) as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) EXEMPTION OF CERTAIN ANNUITY INTERESTS CREATED BY COMMUNITY PROPERTY LAWS.—Notwithstanding any other provision of law, in the case of an employee on whose behalf contributions or payments are made—

"(1) by his employer or former employer under a trust or plan described in paragraph

(1) or (2) of subsection (a), or toward the purchase of a contract described in paragraph (3) of subsection (a), which under subsection (b) are not considered as contributed by the employee, or

"(2) by the employee to a retirement plan described in paragraph (5) of subsection (a), a transfer of benefits attributable to such contributions or payments shall, for purposes of this chapter, not be considered as a transfer by the spouse of the employee to the extent that the value of any interest of such spouse in such contributions or payments or in such trust or plan or such contract—

"(A) is attributable to such contribution or payments, and

"(B) arises solely by reason of such spouse's interest in community income under the community property laws of the State."

(d) INCOME TAX TREATMENT OF CERTAIN EXPENSES OF ESTATE.—Section 642(g) (relating to disallowance of double deductions) is amended by inserting after "shall not be allowed as a deduction" the following: "(or as an offset against the sales price of property in determining gain or loss)".

(e) EFFECTIVE DATES.—

(1) FOR SUBSECTION (a).—The amendment made by subsection (a) shall apply to transfers made after June 22, 1976.

(2) FOR SUBSECTION (b).—The amendments made by subsection (b) shall apply with respect to transfers creating an interest in the person disclaiming made after December 31, 1976.

(3) FOR SUBSECTION (c).—

(A) The amendments made by paragraphs (1), (2), and (3) of subsection (c) shall apply to the estates of decedents dying after December 31, 1976.

(B) The amendments made by paragraphs (4) and (5) of subsection (c) shall apply to transfers made after December 31, 1976.

(4) FOR SUBSECTION (d).—The amendment made by subsection (d) shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 2210. CREDIT AGAINST CERTAIN ESTATE TAXES.

(a) IN GENERAL.—Subject to the provisions of subsections (b), (c), and (d), credit against the tax imposed by chapter 11 of the Internal Revenue Code of 1954 (relating to estate tax) with respect to the estate of LaVere Redfield shall be allowed by the Secretary of the Treasury or his delegate for the conveyance of real property located within the boundaries of the Toiyabe National Forest.

(b) AMOUNT OF CREDIT.—The amount treated as a credit shall be equal to the fair market value of the real property transferred as of the valuation date used for purposes of the tax imposed (and interest thereon) by chapter 11 of the Internal Revenue Code of 1954.

(c) DEED REQUIREMENTS.—The provisions of this section shall apply only if the executrixes of the estate execute a deed (in accordance with the laws of the State in which such real estate is situated) transferring title to the United States which is satisfactory to the Attorney General or his designee.

(d) ACCEPTANCE AS NATIONAL FOREST.—The provisions of this section shall apply only if the real property transferred is accepted by the Secretary of Agriculture and added to the Toiyabe National Forest. The lands shall be transferred to the Secretary of Agriculture without reimbursement or payment from the Department of Agriculture.

(e) INTEREST.—Unless the Secretary of Agriculture determines and certifies to the Secretary of the Treasury that there has been an expeditious transfer of the real property under this section, no interest payable with respect to the tax imposed by chapter 11 of the Internal Revenue Code of 1954 shall be deemed to be waived by reason of the provisions of this section for any period before the date of such transfer.

(f) EFFECTIVE DATE.—The provisions of this section shall be effective on the date of the enactment of this Act.

Mr. ULLMAN (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The SPEAKER. The Chair recognizes the gentleman from Oregon for 30 minutes.

Mr. ULLMAN. Mr. Speaker, I yield myself 7 minutes.

Mr. Speaker, let me first announce at this time that if I yield at this point, I will yield for debate only. But let me commend, first, the members of the Committee on Ways and Means.

Mr. Speaker, the Committee on Ways and Means has spent a great deal of time and effort this year in developing gift and estate tax reform for the Congress. In my judgment, this is one of the most important areas of needed reform in the code, and I venture to say that it may be one of the most important aspects of this whole legislation before us.

Let me then relate to what we have done in the conference report with respect to the gift and estate taxation.

I had not intended to attach gift and estate tax provisions to this bill, but it became obvious by the time the conference was grinding down that if we were to get a gift and estate tax reform package passed in this Congress, that was about our only avenue of doing it. So we began negotiating with the Senate conferees in an effort to arrive at a reasonable compromise. We spent considerable time in doing that.

I want to say that I am proud of the compromise package that we brought back to this Congress. It preserves most of the basic reform features contained in the House bill, H.R. 14844. It is a soundly balanced package. It offers relief in a very meaningful way to people who have to pay estate taxes. I think by and large it accomplishes the purposes of basic reform, and it is something that we can live with in this country for a long time to come.

If we should delete some parts of this, this could come back to haunt us and be up again before the Congress. If we can hold these compromises intact, I think we will have disposed of this matter for a long time to come.

Mr. Speaker, let us look then at the basic components. We should remember that in the details and in the minor aspects, the conference report does encompass most of the provisions of the House bill, the bill that the Committee on Ways and Means reported and which contained very carefully considered reforms.

As for the major aspects of this legislation, the No. 1 is the exemption issue. All of us, I believe, are very conscious of the fact that the $60,000 exemption which was put into effect over 30 years ago has created a very real burden on persons with estates, and in many instances it has forced people to sell businesses and farms in order to pay estate taxes. What we have done here in the exemption area is to raise that $60,000 in five steps to $175,625 in the form of a credit.

We think this is an excellent compromise. It is one that provides the kind of relief that we need to give to the people who are trying to hold their estates together in a situation brought about by a death.

Another area of this bill that has been involved in some controversy is the generation-skipping provision. In the original bill that I had introduced I had closed off all generation skipping. I think that is a very defensible posture. However, we have gyrated on this issue. It has been a point of some controversy. In the compromise that we bring back to the Members I believe that we have developed a reasonable compromise.

We have prohibited all skipping beyond one generation, and then only through a child to a grandchild. We have further limited it very severely to a maximum of $250,000 per child. This tightens the provision very greatly as compared with the bill that we passed out of the Committee on Ways and Means. I think it is a very excellent compromise provision.

Mr. Speaker, we now come to the provision on which a question has been raised by the gentleman from New York (Mr. CONABLE). This is the one that he is going to use to build a case for his previous question motion.

The compromise that we bring back to the Members on the "stepped-up" basis problem is, I think, the centerpiece of this legislation. This is the part of the package that will make this gift and estate tax reform bill stand up for a long time to come. I think this is the provision that will keep this problem from plaguing us again year after year on the capital gains at death issue, which I am sure all the Members have heard about. The conference amendment contains a compromise that will not hurt people. It is one that brings everybody up to a current basis; that is, fair market value as of December 31, 1976—for estate tax purposes if they should sell their property in the future.

Let us remember that what we are talking about in a stepped-up basis is only this: Under current law—and this has been the main criticism in all of the tax code—when a taxpayer dies, we allow the basis of property to be stepped up to current valuation. As a result if the property is sold in the future, that current valuation prevails.

In this bill what we say is this: Everybody comes under current valuation as of the end of this year for income tax purposes in the case of appreciated property passing through estates.

The SPEAKER. The time of the gentleman from Oregon (Mr. ULLMAN) has expired.

Mr. ULLMAN. Mr. Speaker, I yield myself 2 additional minutes.

Therefore, Mr. Speaker, if we have a situation where there is a death in 1977, the basis would automatically be stepped up to the valuation as of the end of this

year. Then, if the heirs sell the property, there will be very little income tax to pay on it because they only have to pay taxes on the difference between the valuation at the end of this year and the price at which the property is sold.

Mr. Speaker, this gives tremendous relief to those people who are objecting the most to the carryover basis, because this adjustment eases those situations where someone paid $10 an acre for a piece of property 50 years ago that is now worth $1,000 an acre. If that is the value now, that would be stepped up to $1,000 an acre, and that $1,000 would be passed through to the heirs. Then, if there were a sale subsequently, that $1,000 would be the basis used in determining the capital gains. Therefore, this does give basic relief to existing situations. I think it is the best kind of compromise to reach, and it resolves, once and for all, this key issue.

Mr. Speaker, it is an issue that most economists and tax experts say is probably the biggest loophole in the whole tax code. This takes care of the stepped-up basis at death in a compromise way that I think will resolve the issue once and for all and resolve it very equitably.

Mr. Speaker, I want to say that the gentleman from Arkansas (Mr. MILLS), who has been living with this problem for a long, long time, fully supports this solution to the problem. In yesterday's RECORD, at page 30546, we have a lengthy statement on his part which I think sets forth the issue very, very clearly.

The SPEAKER. The time of the gentleman from Oregon (Mr. ULLMAN) has expired.

Mr. ULLMAN. Mr. Speaker, I yield myself 1 additional minute.

Let me say, Mr. Speaker, that a lot of people have contributed greatly to this effort that we are making here. I could name a lot of people on the committee, but the gentlewoman from Kansas (Ms. KEYS), has probably been one of the most diligent people in working toward an adequate compromise on this issue. I commend her for it, and I commend all of the others who have worked so diligently on this piece of legislation.

Mr. Speaker, I strongly urge that we vote for the previous question and then for this motion. It is the best way in which we could get the long overdue gift and estate tax revisions into this legislation.

It seems to me, Mr. Speaker, that if we vote down the previous question, then we may very well set in motion a chain of events that could keep us from getting any gift and estate tax legislation this year at all.

I say, Mr. Speaker, that if we want gift and estate tax legislation, this compromise is the only sure way for us to get it.

The SPEAKER. The time of the gentleman from Oregon (Mr. ULLMAN) has again expired.

Mr. ULLMAN. Mr. Speaker, I yield myself 1 additional minute.

Mr. EVANS of Colorado. Mr. Speaker, will the gentleman yield?

Mr. ULLMAN. I yield to the gentleman from Colorado.

Mr. EVANS of Colorado. Mr. Speaker, I appreciate the gentleman's yielding.

If we were to accept the compromise which the gentleman suggests and someone were to die 10 years from now, would the property in that estate step up to its value as of December 31, 1976, or what would the circumstances be?

Mr. ULLMAN. That is exactly the situation. That property would step up to current value as of the end of this year, December 31, 1976. Then if it is subsequently sold, the fair market value on that date would be the basis for determining capital gain taxes.

Mr. EVANS of Colorado. Let us say that there is a death 10 years from now. Would the step-up be to the date of December 31, 1976?

Mr. ULLMAN. The answer is yes.

Mr. EVANS of Colorado. Even though the death is 10 years later, in 1986?

Mr. ULLMAN. The answer is "yes." We are establishing this date, December 31, 1976, as a stepped-up basis for everyone.

Mr. EVANS of Colorado. Mr. Speaker, I thank the gentleman.

The SPEAKER. The gentleman from New York (Mr. CONABLE) is recognized for 30 minutes.

Mr. CONABLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge the defeat of the previous question relative to the estate and gift tax changes which have been reported in technical disagreement. If the previous question is voted down, then I will offer a substitute which is at the desk and which embodies everything included in the chairman's motion to recede and concur with an amendment, but eliminates the compromise cost basis carryover only. While the conference amendment would seemingly be an improvement on the present estate and gift tax there is one provision, the carryover basis provision, which is objectionable and which, if enacted, will produce complex, costly, time-consuming litigation between the Government and the taxpayer and will complicate the duties of every administrator or executor of a decedent's estate. From a philosophical point of view the carryover basis provision will inhibit the free transfer of property and increase the capital outlay in the future.

The parliamentary situation is this:

An amendment accompanying the conference report has been reported in disagreement. The text of the amendment has been printed as an appendix to the conference report. The amendment is not itself subject to an amendment, however if the previous question is defeated, a substitute may be offered.

If the previous question is defeated, I will offer a substitute that would delete the carry over basis provision but which would in all other respects be identical to the amendment offered by the chairman, the gentleman from Oregon (Mr. ULLMAN).

I urge the Members to vote against the previous question so that the substitute may be offered.

As the chairman, the gentleman from Oregon (Mr. ULLMAN) has accurately described, under present law a beneficiary receives a step up in tax basis for inherited property. The basis is stepped up to its fair market value on the date of the decedent's death. As a result, each generation receives a new basis for purposes of capital gains taxes under the income tax laws for inherited property.

The amendment reported by the conferees would change the basis rule to provide that a beneficiary would take a decedent's basis for inherited property if purchased after the first of this next year, or take its value as of December 31, 1976, as its basis, if previously held. Eventually this will result in a straight cost basis carryover system, to which a majority of the House objected when the rule came up recently for a separate estate tax bill here in the House.

The lock-in effect of the carryover basis provisions will be very harsh. The after death lock-in effect will be overbearing. Low carryover tax basis property will obviously be held beyond the time when prudent investment sense would dictate so as to avoid the large capital gains taxes which would result from a sale.

Let me give the Members some examples on how the carryover basis provision will operate. These are at the desk on the minority side and any majority Members are welcome to these examples, a couple of examples that will show how this operates and why we still oppose this on philosophical grounds.

The first example is an illustration of why we oppose this measure.

Assume a husband owned a small store and a home. He dies and the surviving wife decides to sell both the store and the house so as to move into an apartment. The home, worth $25,000 in 1977, and the store worth $35,000, are worth $45,000 and $65,000, respectively, in 1988 when the husband dies and the properties are sold by the wife. Under the present law the wife would not be liable for any capital gains tax. With the carryover basis provision—that the chairman, the gentleman from Oregon (Mr. ULLMAN), seeks to have us adopt today—her capital gains income tax liability will be more than $7,000. She would have had no capital gains liability under previous law. law.

This is quite irrespective of any liability for estate taxes. In fact, then, we are providing a new tax on decedents with this carryover basis. Many of the people who will receive the impact of this tax will not have taxable estates, therefore will be among those very modestly affluent people. Thus we will in effect put a tax on those who would pay no estate tax.

In other words, we are hitting not the very wealthy; we are hitting, among others, those who are not very wealthy but who happen to own an appreciated home. I ask the Members to look at the example that is in the record of the Congressman who buys property right now and dies unexpectedly 5 years from now with only this home here in Washington as an asset of his estate. What happens to his wife if he does that, even though she would pay no estate tax? There is a new tax on middle-class Americans. It may well undermine the estate tax relief offered in other provisions

of the amendment. We are asked to approve a phase-in of the cost basis carryover, the very thing we objected to originally.

In my view, the carryover basis is ill-advised. The carryover basis provision would violate the reasonable proposition that property should be either held or sold for sound business or personal reasons, not for tax reasons.

We are all deeply concerned with actions that would tend to preserve the existence of family farms and small businesses in America. The impact of the carryover basis will fall most heavily on the small farm or family-owned business which has been handed down generation through generation. This is critically important to remember.

Estates composed largely of farm or small business assets all too frequently are illiquid and executors are forced to dispose of appreciated assets held in the estate in order to meet estate tax liabilities. Taxable capital gains will result under this proposal. Additional sales of appreciated assets may be necessary to help meet capital gains tax liability. Let me emphasize that this undesirable effect will have its greatest negative impact in the case of farms and small businesses which have been held from generation to generation.

The provision adopted by the conferees will not have any positive revenue impact for at least 5 years. In this light the only real issue before us relative to the carryover basis is a philosophical one. The carryover basis provision contained in H.R. 14844—the estate and gift tax reform bill reported by the Ways and Means Committee—could at least be arguably justified on the grounds that it raises additional revenue. One cannot even advance that argument in favor of the conference provision.

I urge you to vote down the previous question relative to the estate and gift tax provisions, and then to support the substitute proposal I will offer which is identical with those contained in the Chairman's motion except for the carryover basis item which I seek to delete; and finally to vote to adopt the estate and gift tax provisions of the conference report as modified.

Mr. LATTA. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Ohio.

Mr. LATTA. I thank the gentleman for yielding.

I wish to commend the gentleman for the statement he has just made. I think he points out one of the real shortcomings of this piece of legislation. It is a new provision inserted into this bill which has no place in it. The House has already objected to including it. I have reference to the capital gains provision which would attach to property acquired through estates when it is sold. It has been somewhat modified in the conference committee report, but the capital gains tax placing the value as of December 31, 1976, is still in the bill. I think this principle is bad. It is bad because once these people bent on redistributing the wealth in America get their feet in the door, they are going to say next year or the next year we ought to eliminate the December 31, 1976, date for purposes of valuation and use the value on the date of acquisition by the decedent for tax purposes. This is wrong and should be stricken from the bill.

Mr. CONABLE. I thank the gentleman for his contribution. With the conference compromise, we are adopting the principle in full, even though we are stripping out accumulated appreciation of assets already held or purchased by a potential decedent.

Mr. LATTA. I could not agree more with the gentleman that the principle is bad and should not be adopted.

Mr. CONABLE. I thank the gentleman for his contribution.

Mr. ALLEN. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Tennessee.

Mr. ALLEN. I thank the gentleman for yielding.

In order to clarify this in my mind, let me see if I understand the point the gentleman mentions. I will just make a personal illustration. My wife and I own a home which we have had for about 12 years. We own it by the entirety. We paid for it, let us say, in the neighborhood of $50,000. We signed our wills yesterday. If I should die and it should be valued as of the end of this year at $100,000, even though my estate may not be large enough to incur inheritance tax, would she have to pay a capital gains tax on her part of that house?

Mr. CONABLE. No. The answer is more complicated than that. Any past appreciation in this asset would be stripped out because the old value would be replaced by the value as of January 1, 1977, by an apportionment process which I may say is irrebuttable and which cannot be disproved by other value evidence. But it would be as to future appreciation that the cost basis would be carried over to one's heirs, if it is the gentleman's wife, or his children. This is so despite the fact that the estate assets would be valued for estate tax purposes at their full current value. In other words we have separated estate and capital gains tax. We have said that despite the fact the gentleman paid a full estate tax or despite the fact that it is valued for estate tax purposes as of the time of his death, the capital gains basis remains as of January 1, 1977, or whenever he bought it after that. He would pay capital gains tax in addition to the estate tax which is collected.

Mr. ALLEN. If the gentleman will yield further; in other words then, if I should die let us say 4 years from now and the home was valued at $100,000 as of January 1, 1977, but sold at that time at $150,000, she would be subject to long-term capital gains tax on $50,000?

Mr. CONABLE. That is right. She would pay estate tax on the $150,000 valuation at the time the gentleman died, assuming there were other assets to make it a taxable estate, but her cost basis would remain the cost basis as of January 1, 1977.

Mr. ALLEN. I thank the gentleman from New York for his explanation.

Mr. CORMAN. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from California.

Mr. CORMAN. The one little thing the gentleman left out was that the basis is increased by the estate tax paid.

Mr. CONABLE. That would help the very wealthy who pay an estate tax. It would not help the small middle-class person who paid no estate tax.

Mr. CORMAN. But who would pay an estate tax if we did not have this bill?

Mr. CONABLE. I acknowledge that the bill is an improvement. I am objecting to this provision of the bill and that is why I am making the effort against ordering the previous question.

Mr. ULLMAN. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. ROSTENKOWSKI).

Mr. ROSTENKOWSKI. Mr. Speaker, I take this time to make some comments and at the end of my comments I will ask the chairman of our committee some questions.

The compromise reached by the conferees on the estate and gift taxes is delicately balanced on competing interests. To upset it now would require us to return to conference and drop the issue. The only guaranteed way to get an estate and gift tax act this year is to vote up the previous question on the motion and then support the motion itself.

Under the compromise, we raise the estate and gift tax exemption from $60,000 to an equivalent of $175,000, almost a 300-percent increase.

In addition under the compromise the first $425,000 of any transfer at death to one's spouse will be tax free and 50 cents of every dollar left to the spouse above the $425,000 will also be exempt from every estate tax.

This in my opinion is indeed a good package.

Now if the chairman of the committee would answer some questions, I would like to ask:

In regard to the carryover basis provision, is it not true there are absolutely no gains attributable to periods before January 1, 1977, which will be subject to income tax when the decedent's heirs sell the property, providing in effect a fresh start for everyone?

Mr. ULLMAN. The gentleman is correct.

Mr. ROSTENKOWSKI. Is it not true that the carryover basis provision will not even apply to small estates since the basis will be the same as the estate value to the extent the $60,000 minimum basis rule applies?

Mr. ULLMAN. The gentleman is again correct.

Mr. ROSTENKOWSKI. Is it not true each estate can elect to exclude an additional $10,000 of personal or household assets from the carryover basis rules?

Mr. ULLMAN. That is correct.

Mr. ROSTENKOWSKI. Is it not true that not a penny of capital gains tax will have to be paid by any heir unless and until that heir elects to sell the property? The inherited property will only be affected by this provision when and if the property is eventually sold by the decedent's heirs. And remember, even then only the post-1976 gain will be taxed and then at the very favorable capital gain rates.

Mr. ULLMAN. That is a very important point and it is correct.

Mr. ROSTENKOWSKI. Mr. Speaker, is it not true that any estate tax paid on the appreciation in the property is also added to that property's basis for purposes of determining gain, further reducing the amount which would be subject to the capital gains tax when the property is eventually sold?

Mr. ULLMAN. Mr. Speaker, if the gentleman will yield further, that is correct.

Mr. ROSTENKOWSKI. Mr. Speaker, in my opinion, the overall compromise is quite a generous liberalization of the estate and gift tax law. In fact, as a representative of the interests of a center city, I was reluctant in conference to support such an expensive reduction of the estate tax base. I only supported this then, as I do now, in the spirit of compromise.

I feel, and I know there are many in the Senate who will agree, that this is as far as we can or should go, so I truly urge my colleagues to vote up the previous question and accept the package as the chairman has outlined.

Mr. KAZEN. Mr. Speaker, will the gentleman yield?

Mr. ROSTENKOWSKI. I yield to the gentleman from Texas.

Mr. KAZEN. Mr. Speaker, in the example which the gentleman from Illinois and the chairman were just talking about, where there has been an heir inheriting the property after January 1, 1977, that property is never sold by the heir, and then he dies and leaves it to his heir, then how much capital gains tax is paid?

Mr. ROSTENKOWSKI. No capital gains tax is paid until the property is sold.

Mr. CONABLE. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, let me say the cost basis remains the same from generation to generation.

Mr. Speaker, I yield 2 minutes to the distinguished ranking minority member of the committee, the gentleman from Pennsylvania (Mr. SCHNEEBELI).

Mr. SCHNEEBELI. Mr. Speaker, I thank the gentleman for yielding this time.

Mr. Speaker, I support the gentleman from New York (Mr. CONABLE) in his efforts to defeat the previous question on this amendment so that we may delete the carryover basis provision. If adopted, the carryover basis proposal will produce tremendously expensive litigation. It will complicate the administration of the decedent's estate and it will cancel out in many instances the estate and gift tax relief provided in other parts of this agreement.

Now, Mr. Speaker, one would think that Mr. CONABLE is seeking a big concession. All his substitute will provide is that the present tax law be continued. Present tax law states that valuation is the value of the property at the time of the decedent's death, not some artificial set date such as January 1, 1977. We are merely asking for a continuance of present law and this certainly is not creating a loophole. This has been the tax law for several decades.

Now, many of us received a "Dear Colleague" letter this morning indicating that we might jeopardize passage of estate and gift tax reform if we defeat the previous question. I would like to say, "poppycock." There is no validity to this position whatsoever.

The farmers and the many hundreds of thousands of small businessmen are going to be carefully watching our votes on this proposition, because all of them, as far as I know, certainly all of them who have written to me, have indicated they would like to have a continuance of the present tax law as it relates to this basis issue. It has served us well for many generations.

Mr. Speaker, I am very deeply disturbed by the carryover basis provision.

The carryover basis provision was adopted with insufficient regard for those significantly affected. Administrators and executors of estates will have to live with this provision; they will be forced to distribute property among beneficiaries not on the basis of their respective needs, but instead on the basis of attempting to keep each one's tax basis roughly equal to the basis of each other beneficiary. Administrators and executors will be subject to new perils as they wind their way through the administration of a decedent's estate.

Those who favor a carryover basis say it will make death a nontaxable event. However, the fact is that the tax consequences of death will become far more profound with this provision than under present law. The "lock-in" effect after death will be extremely strong. A beneficiary who receives property with a low carryover basis will obviously be encouraged to hold the property longer than prudent investment sense would dictate. The capital gain subject to tax would be too large to permit a sale. The longer an asset is held, the more generations it passes through, the larger its increase in value, the stronger the incentive to hold the property will be, the stronger the lock-in. This is poor tax policy.

I urge, therefore, a defeat of the previous question so that a substitute may be offered. The substitute will be identical with the provisions agreed to by the conferees with the exception that it will not contain a carryover basis provision.

As many of us know, President Ford's estate and gift tax reform proposals would have, among other things, increased the specific estate tax exemption available under current law from $60,000 to $150,000, over a 5-year period. The conference agreement would move in the same direction; it would provide a unified credit in lieu of specific exemptions to replace the present $60,000 estate tax exemption as well as the current $30,000 gift tax exemption. The unified credit would be phased in over a 5-year period. During the first year, 1977, the credit would be $30,000, or roughly the equivalent of an exemption of $120,600; in 1978, the credit would be $35,000 or roughly the equivalent of an exemption of $137,-300; in 1979, the credit would be increased to $40,000, or the equivalent of an exemption of $153,750; in 1980, the credit would be increased to $42,500, or the equivalent of an exemption of $161,-563; and in 1981, the credit would be permanently increased to $47,000, or the equivalent of an exemption of $175,625.

The present $30,000 gift tax exemption and the $60,000 estate tax exemption were enacted in 1942. Inflation since then has exceeded 249 percent, so you see these changes are long overdue.

The President's proposal would have provided for an unlimited marital deduction so that husbands and wives would be able to transfer their property to their spouses without estate and gift tax consequences. The conferees did not adopt the President's proposals in this regard, but, instead provided for some lesser relief. Under the conference agreement the marital deduction would be increased from its present 50 percent level to the greater of $250,000 on one-half of a decedent's adjusted gross estate. The gift tax marital deduction would also be amended to provide an unlimited deduction for transfers between spouses for the first $100,000 in gifts and, thereafter, the deduction would be 50 percent of gifts in excess of $200,000.

These provisions are a significant improvement over current law.

This increase in the marital deduction coupled with the increased credit would permit a spouse to will an estate of $425,-625 to a spouse tax free.

One other area touched on in President Ford's recommended legislation pertains to the liquidity problem. The President proposed that estates be granted a 5-year moratorium on estate tax liability followed by a 20-year payout period, with interest accruing after the fifth year at an annual 4 percent rate. His proposed legislation would have been limited to estate taxes attributable to an interest in closely held business or farm property worth up to $300,000. In the case of an interest valued between $300,000 and $600,000, there would have been, under President Ford's proposal, a dollar-for-dollar reduction in the value of the estate qualifying for the extended payment rules.

The conference provision does significantly improve the provisions of current law. An executor could elect to pay installments over a period of 15 years, with only interest due for the first 5 years. In order to qualify for these extended payment provisions, the value of the farm or the closely held business would have to constitute 65 percent of the decedent's estate. In addition, interest on the unpaid balance of the estate tax liability would accrue at the rate of 4 percent annually.

To reiterate, I hope that we will vote to defeat the previous question relative to the estate and gift tax provisions which have been reported in disagreement; that we will vote for the substitute proposals which will be identical with those in the amendment except for the carryover basis item; and that we will then vote to adopt the estate and gift tax provisions as modified.

Mr. CONABLE. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. STEIGER).

Mr. STEIGER of Wisconsin. Mr. Speaker, it is difficult, at best, to find myself opposing a position taken by the leadership on our side of the Committee

on Ways and Means; but I do so because I support the estate and gift tax provisions that were reported by the conference committee, including the carryover basis provision. From my standpoint, the issue comes down to one thing. How do we treat lifetime gifts as compared to those made at death. That, on balance, it seems to me is the whole concept that we as Members of this House and as people who are deeply concerned about what happens in this country are going to have to make our judgment on.

What we do now under the present system is to say, "If you give a gift during lifetime the value as of date of purchase is the basis." If I get a gift from my father during his lifetime, I carry my father's basis with me, but at the time of death if I receive a comparable gift, suddenly that basis is stepped up to the date of his death. So, there is an inequity, a basic inequity in tax policy which has nothing to do with economic decisions or anything else. It has only to do with the fact that we give an advantage, in my judgment, to what happens as the result of death in valuing property that is then carried forward to the heirs.

From every examination that the Committee on Ways and Means has ever made and that any rational person makes, that concept is a weakness in the present estate system. It is a weakness that can be corrected by the conference report. It will not, in my view, create further lock-in problems because all of us are aware and I think all of us know that there are now decisions that are made that have nothing to do with economics, they have only to do with the anticipation of death.

The SPEAKER. The time of the gentleman from Wisconsin has expired.

Mr. ULLMAN. Mr. Speaker, I yield 1 additional minute to the gentleman from Wisconsin.

Mr. STEIGER of Wisconsin. Mr. Speaker, I intend to vote "aye" on the previous question. Let me just clarify that last point. What we are doing now is having decisions made which are based, not on what is right or wrong economically, but rather what is the best for my heirs. How can I avoid their paying a tax if I keep my asset until my death. That, in my judgment, is not proper.

We skew the code; we skew the code in an improper fashion. Thus, I think the carryover basis provision in this compromise is a legitimate, honest effort to achieve far greater equities and insure the decisions are made, not on the basis of anticipation of death, but on the basis of what is economically correct. I urge that the motion be sustained.

Mr. Speaker, I support enactment of the estate and gift tax provisions reported by the conferees in disagreement.

I urge the adoption of the provisions not because they are perfect—but because they represent an outstandingly reasonable compromise between legitimate but competing points of view in our society.

It is my judgment that the bill as adopted by the conferees is balanced. It provides for significant tax relief and at the same time fairly and equitably elimates one of the most significant weaknesses in our present estate and gift tax system.

A particularly important provision of the proposal would permit an executor to elect to value farm and closely held business real property of a decedent, not at its highest and best use, but, instead, as a farm or closely held business. This provision will do a great deal to permit the continued operation of family farms and closely held businesses. Our present laws incorrectly increase land values for estate tax purposes to such an extraordinary degree that properties must frequently be sold in order to meet estate tax liabilities. This is wrong; it should be changed. We can and should rectify this injustice.

Many of the witnesses who testified before the Ways and Means Committee in connection with estate and gift tax matters earlier this year touched upon the provisions of present law relative to the marital deduction. Under present law a decedent may transfer tax-free up to 50 percent of his or her property to a spouse. A gift tax marital deduction of 50 percent is also allowable under present law of up to one-half the value of transferred property.

President Ford proposed, and I wholeheartedly support his proposal, to allow for unlimited tax-free transfers between husband and wife. The committee was unwilling to adopt the President's proposal but did adopt two important changes in this area.

Under the amendment offered in Chairman ULLMAN's motion, the maximum marital deduction would be $250,000 or one-half of the decedent's estate whichever is greater. This will provide some relief to smaller and moderate-sized estates. While this is an improvement over present law, philosophically I feel that husbands and wives ought to be able to transfer their property between one another without tax consequences.

A related provision will also be beneficial to husbands and wives; it would correct the grossest kind of injustice. Farms, small businesses, and other jointly held property would be treated for estate tax purposes as belonging half to each spouse, regardless of which spouse provided the consideration for the original purchase of the property.

Under current law a decedent's estate is taxed as if the full value of jointly held property was held by the decedent exclusively, except to the extent it can be shown that another joint owner contributed the consideration for the original purchase of the property. This proposition is referred to as the "consideration contributed" test. It frequently produces the harshest most undesirable tax consequences for husbands and wives who have worked side by side for a lifetime. When one of the spouses dies the entire value of the property is taxed in that individual's estate. This is grossly unfair to a surviving spouse.

The conference provisions would rectify this situation and provide a fractional interest rule for spouses. Under the rule if various criteria are met then the property would be treated as belonging equally to each spouse.

For real property the jointly held interest would have to be treated—that is, an election would be required—as a gift, and perhaps taxable, at the time of its creation. Personal property interests would be treated as completed gift transactions at their creation. This will ameliorate the unfair impact of our present estate tax laws.

As I said at the outset of my remarks, I will vote for the provisions relative to estate and gift taxes as agreed to by the conferees.

Mr. ULLMAN. Mr. Speaker, I yield 6 minutes to the gentleman from Ohio (Mr. VANIK).

Mr. VANIK. Mr. Speaker, I hope this House will vote the previous question. I hope the House will oppose the effort to strike from the estate tax provision the carryover basis on capital assets which is proposed by the gentleman from New York (Mr. CONABLE). If this effort succeeds, the Treasury will lose, in addition to present losses, $36 million additionally in 1979, $93 million in fiscal year 1980 and $162 million in 1981. In later years, the loss under the proposal made by my colleague from New York will approximate $1.1 billion per year. This is serious business.

In the discussions on the Federal estate tax which was revised in this so-called Tax Reform Act, it was argued that the $60,000 Federal estate tax exemption had not been changed since 1942, although the cost-of-living index has risen by 249 percent to the present. The tax bill is more than generous. In certain categories, the case of an estate being left to a spouse, the combination of marital deduction and one lifetime gift can exempt an estate of $525,625 from Federal estate taxation. The new exemption constitutes an increase in the tax exemption at a rate of 350 percent, considerably more than the increase in the cost of living since 1942.

We must make note of this tax advantage for less than 3 percent of our adult population, and take steps to bring other things into line. For example, the dependency exemption, which affects all the other almost 85 million taxpayers in America, affects every family in America. In 1941 the dependency allowance was $750. Today, the dependency allowance is $750. It has not increased one bit except for the temporary $35 tax credit which makes the exemption an equivalent of $860 per dependent.

If the dependency exemption were increased to reflect the cost of living since 1941, as we have in the estate tax, the dependency credit today would be $1,867 per dependent today. If the dependency exemption was increased to the same extent and in the same percentage as the estate tax in this bill, the exemption per dependent would be $2,625 per dependent.

I think it should be a matter of high priority in the new Congress to adjust the dependency exemption to the cost of living. It should be established at a more responsible relationship to the cost of supporting a dependent.

The farms and small businesses in America, which are continued through the same family ownership through relaxed estate tax laws are important. But it is even more important to preserve

family life and family responsibilities through a tax structure which recognizes the sacrifice of the individual taxpayer to support a dependent.

Mr. Speaker, the Treasury will lose by the bill in its present form, without the additional cost of the Conable amendment, approximately $4 to $5 billion by 1980. This bill will reduce estate tax filings on an annual basis from 157,000 every year to 45,000. We are indeed doing a great deal to relieve the estate tax burden of 3 percent of the adult population of America. It is time we should take care of the other 97 percent.

In his statement, the gentleman from New York (Mr. CONABLE) implied that his amendment, which we have opposed, would stimulate a lock-in. Its effect is exactly the opposite. It would decrease the lock-in, since there would be no point in holding estates until death in order to get the stepped-up basis, because it will not occur.

It was also suggested by my colleague, the gentleman from Pennsylvania (Mr. SCHNEEBELI), that the proposal in the present law is too complex, that it would be difficult to administer, that it would be hard to determine values.

I think the bill in its present form provides for a very proper basis for apportioning the value of property so that we can apportion value for holding before 1976 and pro rata valuation for the period after 1976. It can be readily and easily administered.

Mr. Speaker, I would like also to point out, that so far as ownership in public securities is concerned, the values would be readily ascertainable because the market gives us those values on a daily basis.

Mr. Speaker, I urge the Members to vote the previous question, and I hope that the House will vote down the proposal offered by the gentleman from New York.

Mr. CONABLE. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Mr. Speaker, the gentleman from Ohio and the gentleman from Wisconsin, for whom I have a great deal of respect and affection, are concerned variously that the Federal Government will lose money by the effort of the gentleman from New York (Mr. CONABLE), or that the Federal Government does not get its full bite of appreciated value of property. While I enjoy their company and like them, I think I will take my stand, rather than with the Federal Government, with the widows and orphans, because I am concerned about what happens to them in this situation.

Mr. Speaker, I rise in strong support of Mr. CONABLE's motion to defeat the previous question in order to delete the ill-conceived "carryover basis" provision of the estate and gift tax reforms contained in H.R. 10612. The inclusion of this provision in the estate and gift tax section of this legislation would eventually compound the problems already faced by the families of small businessmen and farmers at present.

Under this modification of the capital gains section, heirs ultimately will have to pay considerably more taxes than they now pay when they sell inherited property. Under current law, later sale capital gains on inherited property are based on the fair market value of the inherited at the time of the decedent's death.

Thus, the capital gain on the property while it was held by the decedent but never realized by him is washed out. One might argue that the inheritance tax is a substitute for that capital gain—as far as the Government is concerned. But for the heir, there is a tax on the inheritance, but no tax on the capital gain which neither he—the heir—nor the decedent realized. The value of the inheritance at the time the heir acquires it becomes the new basis for judging future capital gains or losses on which the heir would be taxed at the time of future sale.

This gives each generation a fresh start for capital gains purposes in the event that the heir ever desires to sell his newly acquired property.

However, proposed provision of the conference bill would change the present law by making the heir's basis in the inherited property the same as the decedent's; thus making the heir liable for a potentially much larger tax if and when the property is sold. Therefore, this carryover basis provision, designed to give the small businessmen and farmers the long overdue relief they deserve, will only serve to substantially increase their total tax liability in years to come.

If enacted, this carryover basis provision would be counterproductive to the desirable reforms contained in this bill. In the case of suburban-small city-rural districts, like my own, the capital gains tax liability could become so great that in time, little land, if any, would be for sale in America.

And in fear of death, property owners would try to remain as financially liquid as possible so that the inheritance tax can be paid without the necessity of selling property—because to sell would be to substantially increase the tax burden. This requirement to remain liquid discourages job formation investment or any other investments to stimulate the economy.

Estate tax laws should not discourage the accumulation of the investment capital necessary for more efficient food production on the farm, for instance.

Reasonable reform is necessary now if we want to save family farms. This lock-in effect, the reluctance of heirs to sell their highly appreciated property, coupled with the recordkeeping and liquidity problems, will only reduce the bill's tax relief in the long run.

I am in favor of the badly needed increase in the exemption in the estate tax of this legislation, but I cannot support the inclusion of the carryover basis provision which only negates the relief it proposes to offer by placing an increased tax burden on family farms, homes, businesses, and other personal investments. I urge prompt passage of the Conable substitute.

Mr. ULLMAN. Mr. Speaker, I yield 3 minutes to the gentlewoman from Kansas (Mrs. KEYS).

Mr. ULLMAN. Mr. Speaker, will the gentlewoman yield?

Mrs. KEYS. I yield to the committee chairman.

Mr. ULLMAN. Mr. Speaker, I simply wish to say that no Member has been more persistent than the gentlewoman from Kansas (Mrs. KEYS) in getting a constructive job done on this committee.

Mrs. KEYS. Mr. Speaker, I thank the chairman of my committee very much.

Mr. Speaker, no legislative issue in the 94th Congress is of more importance or interest to so many people on family farms and closely held businesses than the Estate and Gift Tax Reform Act of 1976. The committee work to prepare H.R. 14844 in the House has been lengthy, diligent, and much debated. The result was a good bill, one which brought much-needed relief to family farms and businesses. The result of the conference committee action to incorporate most elements of that bill in the conference report means that relief will be achieved this year, in spite of procedural difficulties on this House floor. It must be.

Three main elements of relief that have been needed for years are achieved by this legislation: First, an increase in the present exemption of $60,000, which was established in 1942 at a time when land values were vastly lower than they are now; second, a provision allowing for joint ownership under the estate tax law as well as a large increase in the marital deduction; and third, appraisal of farm estates on the basis of their value as farms rather than on their "fair market" value.

The $60,000 exemption was set a third of a century ago, and it bears no relation at all to land valuation today. The increase of this exemption is accomplished with a tax credit, which is more equitable than an exemption, as well as less costly. A credit, as opposed to an exemption, provides equal dollar relief to all estates regardless of value and therefore does not disturb the progressivity of the tax rates. It also simplifies the estate tax. The credit phases in over a 5-year period: $30,000 the first year equivalent to an exemption of $120,667; $34,000 the second year equivalent to an exemption of $134,000; $38,000 the third year equivalent to an exemption of $147,333; $42,500 the fourth year equivalent to an exemption of $161,563; and $47,000 the fifth year equivalent to an exemption of $175,-625. It will bring equal relief to an estate of $200,000 and to an estate of $2,000,000. An exemption would have given much greater relief to the $2,000,000 estate, resulting in a much greater revenue loss, but would not have solved the problem of survival of the small family farm or business.

Much of the tax code's discrimination against women has been alleviated by the committee bill. In the past, there was no way for joint ownership to be recognized for Federal estate tax purposes. This bill provides for joint tenancy. This joint tenancy may be created by a transfer of up to $3,000 annually, which is excluded from gift taxation, or by additional transfers subject to the gift tax. Unlike present law, under the bill this transferred property will be treated as belonging to each spouse. In addition, the bill increases the marital deduction to $250,000 or one-half, whichever is

greater. This means that in the smaller estates, where both spouses have equally contributed to the success of the estate, the estate tax law will automatically recognize the contribution of both. These changes are a tremendous step forward in equity for women.

The effect of the outdated estate tax exemption on family farms has been severe. But the fair market appraisal of land for estate tax purposes has been especially cruel, for speculation has been added to inflation to produce an estate valued upon the land's possibilities for development other than continued farm use. A family may be living on a farm whose value has multiplied many times, yet their annual income is probably no higher, and their indebtedness is probably much greater, due to the necessity of high-cost equipment and other production costs. Upon the farmer's death, his family is forced to pay an estate tax levied upon the speculative value of the land rather than upon its value as a farm. This bill will provide for differential valuation of farmland. I worked hard in committee to channel the expertise of the Kansas Livestock Association and other Kansas farm groups into the drafting of this section. The bill provides for an easily computed formula for valuation based upon rental value of comparable land in the area. The advantage of this formula is that it is precise, not subject to abuse, and not subject to litigation and the tying up of estates in courts. And in the event there is no available rental figure, there are alternative methods of use valuation from which to choose.

The bill provides, in addition to the accomplishment of these three specifically recognized needs, other fair and equitable reforms of the estate and gift tax codes. The bill unifies the rate schedules for estate and gift taxes, thus removing any artificial encouragement within the tax code in favor of lifetime over testamentary transfers. This change will also eliminate the complex litigation that has surrounded the present code's vague "contemplation of death" provision. The bill will also extend the time during which the estate tax may be paid. A qualifying estate will be allowed a 5-year period after death and then an additional 10-year period thereafter in which to pay the tax in equal installments with an interest rate of only 4 percent. The bill also limits taxpayers' ability to arrange transfers that skip several generations, thereby avoiding any estate tax.

One proposed change in the bill that has received particularly intense opposition is the requirement that executors of an estate carry over the decedent's basis in each asset. The conference-accepted provision removed the real problems with this provision by moving the date of basis for everyone up to December 31, 1976. It is important to remember that no new tax is imposed by this section and that it does not affect the estate tax at all. A tax will be paid only if and when the heirs decide to sell a particular asset, and then will be liable to pay a capital gains tax as under present law—the only difference between present law and the bill being the basis from which the appreciation is computed. Estates will never be affected by this section as long as they remain within the family.

I urge all Members of this body to support the previous question and Chairman ULLMAN's amendment. The problems of the survival of small economic units such as the family farm and small closely held businesses are real ones. The relief brought to these estates is also a fostering of our national interest to keep food production in the hands of individual owners and to foster the free enterprise of the small businessman—both so integral to American life. Back in the depression, there used to be many forced sales of small family farms and businesses. Recently, families have been forced to sell to pay a heavy tax liability on the death of the owner. This is our one chance to deliver to the American people relief from an estate tax as outdated and oppressive as depression itself.

Vote "yes" on the previous question and "yes" on Chairman ULLMAN's motion.

Mr. CONABLE. Mr. Speaker, I yield such time as he may consume to the gentleman from Kansas (Mr. SKUBITZ).

Mr. SKUBITZ. Mr. Speaker, I support the effort of the gentleman from New York to strike the carryover provision from this so-called tax reform bill.

I must admit that I am somewhat amazed at the Ways and Means Committee's end run and successful effort to circumvent the will of this body by incorporating estate tax provisions in this tax bill.

The matter should rightfully have been considered separately.

A number of Members of this body, myself included, had amendments which we had hoped to attach to the estate tax bill.

I intended to offer my amendment, as I know did many others, because I believed that we would genuinely improve upon the version reported out by the Ways and Means Committee.

Now that the conferees on the tax bill have met and have made their tradeoffs, one finds that essentially the estate tax bill—which the body had hoped to vote upon separately—is now incorporated within the tax bill.

This effort by the chairman and the other members of the committee to thwart this body's intentions no doubt will be ranked as a classic example of partisan power politics.

We are now faced with the option of accepting these estate tax measures, which the chairman and the conferees have forced upon us, or choosing to allow American taxpayers to pay more income taxes during 1977.

More equitable estate taxes or increased income taxes for our constituents—that is the choice the chairman and the conferees have presented to us.

Realistically speaking, if we are to keep income taxes down we will only be able to strike the most objectionable provision in the estate tax area from the conference report.

That, of course, is the carryover provision which would allow for capital gains taxes on estates. This provision is unfair, it is unjust, and it is unwarranted.

We give the beneficiaries of the estates a unified tax credit that puts them in a much better position than what they were on one hand, and in the other hand, we take away with the carryover provision.

The chairman and the conferees may think this sort of political gamesmanship will help continue the family farm and small family businesses, but in Kansas that is certainly not the case, and I cannot believe this is the case in the rest of the Nation.

I urge this body to vote down the previous question and then support the Conable proposal.

Mr. CONABLE. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. HAGEDORN).

Mr. HAGEDORN. Mr. Speaker, I want to join with my distinguished colleague from New York (Mr. CONABLE) in defeating the previous question.

Once again, we see illustration that the idea of tax reform to many Congressmen means simply that more dollars be transferred from the private sector to the public sector. They are not content merely with adjusting the basic estate tax exemption to compensate for the tolls of inflation exacted over the past 35 years. Instead, the estate tax provisions in the conference report on H.R. 10612 would insure that, over the course of several generations, the public sector will have more income at its disposal and the private sector less.

Specifically, I strongly urge elimination of the "carryover basis" provisions in this bill. These provisions amend the Income Tax Code to provide that heirs and successors to property assume the same basis for the property as was held by the decedent immediately prior to his death. In medium-size business and farm enterprises, where extremely high proportions of the estate normally consist of capital gains, the carryover of the basis will substantially increase the burden upon an estate.

Had this provision been in effect 5 years ago an average farm in my district valued at $500 per acre would today be valued at $2,000 per acre; if the farm is sold after the farmer's death, the spouse or children would have to pay a capital gains tax on $1,500 an acre whereas under current law or the tax bill without the carryover basis provision, no capital gains tax would have to be paid.

The basic appreciation exemption in this bill would hardly touch the amount of gains realized by even medium-sized farm estates. In the case of illiquid estates, where the executor is forced to dispose of appreciated assets, these liquidity sales will merely trigger the imposition of the appreciation tax which may in turn result in further forced sales. Especially in the case of farms which cannot be partitioned into economically viable subunits, the result of this sudden taxation will likely be to encourage their sale, the very evil that estate tax reform was ostensibly designed to curtail.

The introduction of the appreciation tax will also add substantially to the injustice that has been done estate owners

through maintenance, for 35 years, of the same basic exemption level. Much of the appreciation that will be taxed is attributable to inflation rather than to real growth in investment. In addition, so long as we fail to fully index the Tax Code, and adjust its provisions on a regular basis to reflect inflation, increasingly larger shares of the estate are going to go to the Government simply as a result of nominal, rather than real increases in the value of the estate.

Also worth considering is the fact that the "carryover basis" provisions effect a double taxation of capital—in conjunction with the estate tax itself—at a point in time when Federal fiscal and monetary policies have brought our economy to the brink of a serious capital shortage. We can talk until we are blue about full employment boards, countercyclical, antirecessionary assistance, and National Institutes of Full Employment, but until we make some funds available to private enterprise for investment and job creation, we are going to accomplish nothing.

Not only do the "carryover basis" provisions increase the weight of taxation upon potential capital, but they al ɔ insure that this capital is going to be far less mobile and available to new borrowers. Ironically, it is other small businesses and farms that are frequently most in need of new sources of capital. The carryover basis provisions provide economic disincentives to capital investment. As the result of inheriting property which has greatly appreciated over a long period of time, heirs will be deterred from transferring the property, realizing gains from the sale, and thus triggering imposition of the capital gains tax. The longer the property is held, and the more it appreciates, the more powerful will be this disincentive.

Some Members suggest we should just accept this bitter provision along with the sweet, and work for change in future years. In my opinion, if we do not have reform of this undesirable provision any faster than we have on the outdated exemption level established 35 years ago this will be a disaster. There is no question that without elimination of the carryover basis, we will be doing more harm than good to the very people we are supposed to be helping.

Mr. CONABLE. Mr. Speaker, I yield 5 minutes to the gentleman from Minnesota (Mr. FRENZEL).

Mr. FRENZEL. Mr. Speaker, I congratulate my distinguished colleague from New York on giving the House a chance to insure that revisions in the estate tax are really reform and not simply an exercise in taking away with one hand that which we have given with the other.

From the very beginning of the debate on reform of the estate tax, the original sponsor, the distinguished gentleman from Texas (Mr. BURLESON), and the gentleman from New York (Mr. CONABLE) have insisted that estate tax reform is a matter of equity rather than an exercise in accounting legerdemain which can somehow magically have no effect on Treasury revenues.

What is at stake here is whether we really gave reform and relief, or whether we gave some temporary relief and then take it way a few years down the road.

The committee language is not a compromise. It is simply a short, few-year deferral of a plan that will eventually take away through capital gains taxes the benefits we are offering today through increased estate tax exemptions.

The conference committee report will drastically change existing law concerning the payment of capital gains taxes on assets passed in estates. Right now, capital gains taxes are not assessed at all on these assets. Under the conference committee report they will be.

Because the cost basis will be carried forward to the date of January 1, 1977, proponents of the conference committee report would have us believe that this feature does not make very much difference. On the contrary, all it does is defer the terrible problems of inequity and administration against which nearly every witness heard by the committee on this matter strongly protested.

After a few years, even if we succeed in slowing down inflation, which now seems unlikely, the assets in many estates will show capital gains. Therefore, even though an estate may be too small to be taxed under the law we are passing today, the beneficiary of that estate—widows and orphans often of modest means—will be obliged to pay capital gains tax on that estate if some of the assets must be sold for cash needs. The example cited by the gentleman from New York of the widow who must sell an appreciated house ought to be a bad enough one. But, consider the case of the farmer 10 years from now. By then there will have been considerable appreciation in land values from January 1977. At that time when a decedent farmer's estate passes to his heirs, those heirs may find that even though they owe no estate tax, because of appreciation in the farm value and the need to raise some cash to continue the farming operation, they must pay considerable capital gains tax.

Now comes the worst irony of all. If those farm heirs had had to pay some estate tax, they would, under the deferral payout system, be able to phase in those payments over many years. In the case of the capital gains tax, the cruel difference will be that they will have to pay that tax immediately.

The effects of the committee bill are obvious. No. 1 is a glaring inequity, particularly on small estates which may not have to pay any estate tax other than this unfair, immediate tax. No. 2 is the administrative mess. No. 3 is that this feature will freeze assets within estates because heirs will not be able to afford to sell them. This, of course, will stifle capital movements and prevent the normal and necessary capital flows to the priority needs of the marketplace. No. 4 is that it will also mess up the application of State laws which, although they are very different, are mostly built around the current treatment of the basis of assets in estates.

I think this House ought to be more interested in equity than any other phase of this issue, but I think the matter of administration is also terribly important. Every witness who testified on this basis question indicated that it would be an administrative nightmare to try to retrieve cost records on assets in estates, particularly assets which had been purchased many years ago. Several witnesses indicated that the cost of trying to determine asset value would far exceed whatever government would be able to get in terms of taxes.

The administrative mess means more than just unnecessary redtape. It means enormous, and needless, expenses to heirs who in many cases cannot afford them. In addition the carryover basis will slow down settlement of estates probably creating hardships, especially when the continuation of a family farm or business is most necessary. We have created a great profit opportunity for lawyers, but, without the Conable amendment, we have placed a terrible burden on heirs.

The conference committee bill cures the retroactive problem, but leaves us the same problem for the future. In only a few years we will have all the administrative problems back in our lap again. As usual we have chosen a temporary solution that gives a preference to some taxpayers, but lays an unfair burden on taxpayers who die a few years in the future.

Another reason why the Conable amendment desperately is needed is that we are today levying a brandnew tax on American people This tax has never been collected before, is in some respects double taxation and will be particularly resented by the people that we claim we are trying to help by increasing estate tax exemption.

If we believe in what we say about preserving family farms and small businesses, the very best thing we can do is pass the Conable amendment. The very worst thing we can do is to pass the conference committee report with its false promise of reform, because it will eventually take away all benefits that we are claiming it will give because of this basis feature.

If we really are worried about the effect on the Treasury, we ought to take a look at our excessive, obsessive spending. If we want to bring our budget more in line, let us cut some of our foolish spending. Let us not dip into the pockets of defenseless widows and orphans in the false name of frugality.

Mr. Speaker, I urge passage of the Conable amendment, and I ask those who vote against it to try to explain to the farmers and small business people of this country what they have done.

Mr. CONABLE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to sum up the objections that we have to the cost basis carryover on this side of the aisle. First of all, this particular provision will increase the administrative difficulty for executors of estates. It will require the tracing of records back to earlier generations once we have put the date of 1977 behind us and this cost basis carryover is fully phased in.

It has been said that this is for the good of the family farms but my feeling

is that they have given the farmers a small grace period but after a few years they will be in worse shape than they would have been if we had not changed the provision in the first place.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. CONABLE. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. I thank the gentleman for yielding.

The gentleman spoke about the entanglement of the administrative part, and this and that, in trying to determine values. If this provision should pass as now in the bill, would it be advantageous for everyone to go out and have their real property and other personal property appraised on January 1?

Mr. CONABLE. If the gentleman would permit me to answer that, it would not be advantageous because the property is going to be valued according to a linear apportionment formula which may not have any basis at all in fact as to what the fluctuations in value for that property have been. It would be apportioned to January 1, 1977, and that is all. If I may now continue—I thought the gentleman might be going to ask me about administrative difficulty from the point of view of an executor. If he is distributing property in kind, which has a varying cost basis because it was purchased at different times, he has severe problems of equity as among various heirs to that property, and that becomes a serious administrative difficulty also. The lock-in, Mr. Speaker, is greater. We will make the IBM stock of the future a family heirloom in effect, because we will carry the cost basis of that from one generation to another. It will never be restated by death. The only way it can ever be upgraded is by its sale. There is no redeeming fiscal impact from this provision for the foreseeable future because the revenue impact for this next year of this carryover provision restated to January 1, 1977, is zero or virtually zero. If we assume that there will be no inflation in the future, then there would be no objection to this provision. However, we know very well the cost of land and the cost of scarce goods is going to continue to rise. Inflation has been the historical fact in this country, and, thus, we are phasing-in a lock-in there as well. There will be a pyramiding of taxes on illiquid estates inevitably, as people have to sell appreciated assets to pay estate taxes or for reasons related to the distribution of that property to the heirs. In fact, we are taxing a new class of taxpayer and not necessarily an affluent class at that.

Mr. Speaker, I ask that the previous question be voted down.

The SPEAKER. The time of the gentleman has expired.

Mr. ULLMAN. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. CORMAN).

Mr. MARTIN. Mr. Speaker, will the gentleman yield?

Mr. CORMAN. I yield to the gentleman from North Carolina.

Mr. MARTIN. I thank the gentleman from California for yielding.

Mr. Speaker, the conference provision for a cost basis carryover of inherited property is a delayed action time bomb. It will eventually eliminate the overdue relief benefits of the estate and gift tax section of this bill.

Many Members were persuaded that it was valid and equitable to adjust the estate tax exemption to relieve farm families and small family businesses from the inflation-induced tax burden. We came to recognize that it was unfair and against the character of America to impose a tax on small inherited farms and thus require the farm to be sold by the deceased farmer's children to pay the estate tax. In 1940, a $60,000 exemption was passed to allow for this, but since then it has been eroded by inflation. The 1940 $60,000 farm is now worth over $250,000—not because the farm is more valuable but because the dollar is less valuable. This bill allows an increase in that $60,000 exemption, which will help such families right away.

What the increased exemption gives to the farmer today, the cost-basis carryover will take away tomorrow. The family owning a small farm or business will thus have only a few years of grace for the relief they had sought. They will find out later that they will pay more tax on this new capital gains basis than they save under the estate tax exemption. The carryover basis is a time bomb, and ought to be defused.

Mr. CORMAN. Mr. Speaker, if we believe that some privileged among us should have substantial income that goes untaxed, then we really ought to support the position of the gentleman from New York and vote down the previous question and change that portion of the law which gives a carryover basis for capital gain because that is precisely the state of the law now, and it is what would be preserved.

I regret that the conferees were unable to agree to the House Ways and Means Committee provision because it would have given us immediate reform for the most scandalous loophole existing in the income tax law. That was not possible, and I must say to my colleagues who worked on the House side I think they did admirably by getting the Senate to go as far as they did. But at least by starting January 1, 1977, from that date forward we will bring into the tax structure people with vast sums of capital gains who would have otherwise escaped them.

The gentleman from New York talks about the effect of lock in and, of course, as the gentleman from Ohio (Mr. VANIK) pointed out, exactly the opposite of that is true. But let us take taxpayers A and B who buy a piece of property for $100,000 on January 1, 1977, and each holds it for 30 years, and so the properties appreciate substantially. If the man who bought it with his own money sells it at that time, he pays a substantial capital gains tax, and that is as it should be. The other gentleman has the good fortune to die 2 days before the sale, and his children or his nephews or his girl friend get it. They pay nothing. That is not fair between those two taxpayers, and it is what causes people in their older years to be saddled with kinds of property that they do not economically need, usually a very expensive house. But they have to keep it because if they keep it until they die, then their children will escape the tax. That is not fair.

The gentleman from Ohio (Mr. BROWN) is concerned about the widows and the orphans. Let me suggest to him that for most of the widows and the orphans that he and I will represent, the widow is going to have to go out and work because she is not going to be left enough money to take care of her children, and when she goes to work, if she makes $15,000 a year she is going to have to pay 20 percent of that in social security taxes and income taxes probably.

We are not talking about equity between the capital gains taxpayer and the Government. We are talking about equity among taxpayers. Why in the world should we separate out taxpayers whose income is based on substantial capital gains and say to them: "If you manage your property carefully you will never have to pay a dime, but if you go out and earn money by the sweat of your brow or the cleverness of your brain we we are going to tax you very substantially"?

Tax reform is attempting to get some degree of fairness among taxpayers. We all know we have had horrendous deficits over the past 8 years. We have had record deficits. We are not collecting too much money in this country. We are collecting too much money from the people who make modest wages and pay substantial income taxes, and we are collecting almost nothing from people who have vast sums of income primarily from capital gains.

The only significant reform in this bill so far as income tax is concerned is this provision, and it is the reason there is so much hue and cry from some who cry about how complex it is. It is no more complex to pay a modest capital gains tax on vast sums of wealth than it is for the wage earner who earns $200 or $300 a week to pay out 15 percent, or 20 percent, or 30 percent of his income in income taxes.

The gentleman has obviously loaded his case to try to come up with the worst possible fact situation. Even then, the effective rate of tax is only about 19 percent, or $9,500 on a capital gain of $50,000.

Now let me explain why the case is distorted. First of all, it assumes that the estate is at exactly the right level so that it would not be subject to estate tax under present law. If the estate in the gentleman's hypothetical case were only slightly larger, it would be subject to estate tax under present law. However, under the conference amendment, the estate left to the widow could be $425,000 instead of only $120,000, and still no estate tax would be payable. So there are not very many medium-sized estates that are not going to be substantially benefited under this legislation.

Now on the income tax side, the gentleman has assumed that there are no children to carry on the business and the widow decides not to carry on the business by herself. He also assumes that the widow is not yet age 65. If she were 65,

most of the gain on the house, $15,500, would be excluded, and she would pay only $5,350 of total tax. If she moved into a condominium, all of the capital gain on the house would be eligible for a tax-free rollover, she would pay $4,270 of tax on the sale of the store. Even if all of the facts were as stated in the gentleman's example, and the widow were advised to sell the business in 1 year and the house in a later year, this would reduce her tax bill to $6,360. If she rented her house instead of selling it, she would pay no capital gains tax on the house, and would be eligilbe for a retirement income credit for the rental income.

In short, I am afraid the gentleman has chosen a case where the widow receives no help from the estate tax relief provisions of the bill, which most will do, is not eligible for the tax benefits provided to the elderly, and plans her affairs so poorly as to maximize her income tax. Even then, as I have said, the effective tax rate on her gain is only about 19 percent.

As was the case in the first example, the gentleman has also loaded the facts in this example. First, he assumes that an individual with a house worth $76,500 has a total estate under $120,000 and thus would pay no estate tax under present law. The strong likelihood is that there will be an estate tax under present law, and that the changes made by this amendment will completely eliminate any estate tax.

Second, even if the assumptions in this example were true, there probably would be no tax since it is likely that the Washington, D.C. home is her principal place of residence and about half of the gain would be excluded if she were 65 years old. In addition, I would like to point out that even under the gentleman's facts, the total tax would only be about $1,400.

Mr. Speaker, I urge that the previous question be supported.

Mr. BROOMFIELD. Mr. Speaker, there has long been a clear and compelling need to reform our estate and gift tax system. Because of the combined effects of inflation and the present low estate tax exemption level, the Federal Government is engaged in nothing less than confiscation that penalizes the work and savings ethic, and threatens our free enterprise system.

For over three decades the Federal estate tax exemption has remained at $60,000 while inflation has raised the cost of almost everything else. This has subverted the original intent of the tax and has had a dramatic impact on medium-sized estates—particularly, small business and family farms.

In 1942, when the estate tax was enacted, it was a progressive attempt to prevent the excessive concentration of wealth. Only 1 percent of all estates were subject to the tax. With the effects of inflation, 8 percent of all estates are now being taxed with the burden falling more and more on moderate-income families and businesses.

In the 1940's and 1950's, and even into the early 1960's, a $60,000 exemption covered a reasonably moderate estate and allowed it to be passed on to the heirs tax free. However, since the $60,000 limit was set, inflation has increased property value by over 200 percent. For many small businesses and farming operations, this has meant that the market value was far in excess of their ability to generate income. Thus, all too often, the heirs of these small operations have been forced to sell the enterprise just to pay the taxes that resulted from this discrepancy.

Mr. Speaker, such a system provides no incentives to work hard and save, because people know that with their demise, estate taxes will put an added hardship on their heirs.

Neither does such a system help our economy. The small businesses and farms that have been an integral part of our economy since the Nation was founded are now being sold by the heirs to large corporations in order to pay the taxes. Thus, we are gradually losing this vital sector of our national economy.

The reform measures that we are considering today are a step in the right direction but I do not believe that they go far enough. The $175,600 equivalent exemption is not an adequate response to those who need relief the most—the medium-sized estates. With this level, many family farms and small businesses will still have to be sold to pay the taxes.

Early in the first session, I introduced a bill that called for a $200,000 exemption in estate taxes. I still believe this is a more appropriate figure. This amount simply reflects cost-of-living increases of the past 34 years on the existing $60,000 level. It also restores the original purposes to the tax.

Mr. Speaker, it is long past time for Congress to acknowledge the eroding effect that inflation has had on the $60,000 estate tax exemption.

The reforms being considered today are a step in the right direction, but only that. They must not be considered the last word in estate tax reform for three more decades. They must be recognized for what they are—a necessary start with much more to be done.

Mr. BEDELL. Mr. Speaker, today as we consider H.R. 10612, the Tax Reform Act of 1976, I would like to address one particularly significant aspect of this legislation which I believe establishes important reforms in the Federal estate tax code.

Such reform has been a long time coming. After 34 years, it is finally before us and while these estate tax provisions do not go nearly all the way in righting the terrible inequities created by our present Federal estate tax laws, they do go a considerable distance in bringing that part of the tax code more into line with contemporary economic realities.

In 1942, when the current estate tax exemption was set, $60,000 was a great deal of money. No more. The average family farmer, as a striking example, has watched the value of his land balloon with inflation and now finds himself land-rich though in most cases hard pressed for cash by rising costs of production and worrisome constraints upon his effective entry into the marketplace.

Unfortunately, the $175,000 provided by the tax credit system in this legislation, in my opinion, provides inadequate relief.

Nationally, the average farm is 385 acres. In Iowa, indeed in many States, the price for an acre of land has passed the $2,000 mark and it is not unusual for a family farm to exceed $700,000 in inflated land value alone.

The current $60,000 tax exemption is of small use to a farming family when there is little cash available to pay for the bulk of the tax on such property and the very land itself must be sold for what is owed.

While I believe that the $60,000 exemption is too low generally, my primary concern throughout the long struggle for estate tax reform has been for those heirs who would like to continue the businesses and farms they inherit.

In order to allow this continuity which benefits both these individuals and society, I am urging support for these reforms.

Further, I believe that passage of this legislation is necessary to stop an alarming trend now taking place, especially in agriculture, as farms become larger and fewer and the individual family farmer becomes more and more rare. It is estimated that 200,000 to 400,000 farms will be lost over the next 20 years. We could be reduced to 1 million units from a current level of 2.8 million by the turn of the century.

Today's consideration of the estate tax reforms is an opportunity for us, in the Congress, to look clearly at what is happening to an important part of our country—the individuals who farm and run small businesses. We must now consider what that disappearance is already coming to mean to the future quality and texture of all of our lives and then we must act accordingly.

A point of hard decisions has crystalized before us with consideration of this legislation. I believe that the family farmer and the small businessman should pay their fair share of tax on wealth and property, whether acquired by inheritance or during the hard work of their own lifetime. But, I do not believe that these families should be forced to pay an excessive estate tax which may well force the sacrifice of their very farms and businesses.

To not remedy this burden and at the same time fail to shift revenue base toward those who, with far more justice, can afford it and have largely managed to avoid doing so, would be to miss a crucial opportunity for the tax reform which the Congress has only promised the American people for too many years.

I urge my colleagues to support the estate tax reforms within this legislation.

Mr. McCOLLISTER. Mr. Speaker, I rise in support of the substitute for the estate and gift tax section of H.R. 10612, the Tax Reform Act of 1976. This proposed substitute will delete the carryover basis provision entirely from the final version of the bill.

While I support the increased credit of $47,000 approved by the conferees, I cannot accept the compromise decision on the carryover basis provision. This so-called compromise merely postpones

but does not eliminate the capital gains tax at death. If adopted, this provision will be a real burden to all farmers and small businesses—a burden that completely negates the relief provided in the other sections of the bill relating to estate tax.

I urge that the Members support this substitute to revise the Federal estate tax law to reflect today's current economic conditions.

The high cost of estate taxes, both Federal and State, is destroying not only small businesses but also small family farms throughout the country. From 1949 to 1969, the number of farms in the United States has declined by over 2 million. In the past 33 years, Nebraska alone has experienced a loss of 53,000 small family farms. Nearly 45 percent of the farms have disappeared. On the other hand, during the last 33 years, the value of an average farm in Nebraska has increased by $244,800. The average cost per acre of a Nebraska farm in 1942 was $24; the average cost of this same acre in 1975 was $289. An unbelievable 1,060 percent increase.

In 1942, when the present estate tax exemption was enacted, the average Nebraska farm was valued at $12,600. Today, the average Nebraska farm is worth $257,400. Besides inflation, speculation and rising productivity have contributed to this phenomenal increase in the value of land.

More importantly, in 1942, it was possible to operate an efficient farm or small business worth $60,000. Today, even small businesses require far greater capitalization. Small businesses and family farms are traditionally starved for capital and at a disadvantage in obtaining adequate and reasonably priced capital for expansion.

Despite these dramatically different circumstances facing small businesses and family farms, there has been no major change in our estate tax structure. The present $60,000 basic estate tax exemption and the 50-percent deduction are no longer adequate. Though the exemptions have remained unchanged prices have increased by 224 percent. As a result, families are forced into acquiring a second or third mortgage on their property, selling part of their land to pay the estate taxes or selling the farm outright; thereby losing their livelihood. Small businesses are frequently sold to pay the estate tax. When this occurs, unemployment rises and corporations, which are exempt from the estate tax law, often acquire these farms and small businesses.

It is obvious that these unfair estate taxes present a severe hardship to people who have struggled through the years to build a family-owned-and-operated enterprise.

It is time to reevaluate and reform our antiquated estate tax laws. We cannot afford to delay any longer.

Mr. SEBELIUS. Mr. Speaker, I appreciate this opportunity to discuss reform of our estate tax laws. I especially want to commend the conference committee for including estate tax reform in the general tax reform bill, H.R. 10612.

Estate tax reform is a reform whose time has not only come, but is long overdue. There is no section of the tax code more in need of reform than the section dealing with estate taxes. I know of no other issue that is of such great concern to virtually every farmer and business man and woman in my congressional district.

The last meaningful change we had in our estate tax laws was in 1942; over three decades ago. At that time, the estate tax exemption was set at $60,000. According to the Library of Congress, $60,000 in 1942 would be worth over $200,000 today. This tax bill contains a credit equivalent to a $175,000 exemption to be phased in over 5 years.

Mr. Speaker, while I support this section, I believe a more realistic proposal would be an immediate $200,000 exemption or an equivalent credit. Such an exemption has been proposed in legislation sponsored and cosponsored by many of my colleagues from rural areas.

I would like to point out the provision establishing use value assessment as the basis for valuing family farms and family-held small business property is a real reform breakthrough. This provision, as much as any other, will help preserve family farming and business operations and reduce the threat of corporate control. My colleague and good friend, the distinguished Senator from Kansas, BOB DOLE, is to be commended for authoring this section of the Senate bill; the section which served as the basis for the conference argument.

The provision which raises the estate tax marital deduction to $250,000 or half the estate whichever is greater, will spare many surviving spouses the economic threat that results from estate tax obligations. This problem has been especially difficult for farm families who face forced liquidation of a family unit while they are still grieving the loss of a loved one.

While I believe the above provisions are most welcome and will provide overdue relief, I am very concerned about the carryover provision that threatens an increase in capital gains tax. In some instances, this increase may more than offset the estate tax relief which is granted in the rest of the estate tax section of H.R. 10612. We are actually talking about a double tax because the value of the asset would be taxed in the estate and then a portion of the same value would be subject to a capital gains tax. This provision is most discriminatory for farmers. Owners of land, livestock, and grain would be especially hard hit by the provision. Farmers have experienced a precipitous decline in farm prices and are in no position to pay a heavier and discriminatory tax on inherited property. I would like to add that from an enforcement point of view, this provision could produce administrative nightmares. The goal of tax reform should be one of simplification.

I ask my colleagues to join me in protecting the farmers from discriminatory tax treatment and oppose the previous question and support the Conable substitute.

As I stressed earlier, I know of no reform that is more urgently needed. To illustrate my point and to dramatize the direct effect this bill has upon the livelihood of citizens throughout our rural areas, I would like to submit for the record the following brief comments from only four letters among literally thousands I have received in support of this reform effort:

After writing his will, my father-in-law frugally put into savings $30,000 so that his two heirs would have cash without selling the farm. The inheritance tax was $68,000 and it was a modest estate. We had to sell a quarter of our own land to pay the tax. Our sons were not able to keep this fourth generation farm in the family without selling a portion of the land.

I agree that our tax laws are badly out of date and any small businessman must have an investment substantially in excess of $60,000 to continue operating. A builder and I own this firm. Under the current tax laws, we would have a tax liability of some $60,000; if either of us should die, it would be somewhat doubtful that we could continue the business. We have 13 permanent employees and their welfare is likewise tied to the survival of our small business and estate tax reform.

My father has worked extremely hard all his life in order to own a 450-acre farm. Now he is worrying, to his detriment, because he realizes that due to inflation his children will not be able to retain ownership of a farm which has been in the family since 1874. It must be sold in order to afford to pay Federal taxes on inheritance.

My father passed away in January and it is going to cost my mother a fortune to keep what is already hers, or so we thought. She used to go out behind the combine and pick up the down milo heads so she could buy us kids something, a new coat which we needed or some other essential. Now the government lays claim to her property. It's too late for Mother, but maybe we can help someone else.

Mr. Speaker, the above comments are similar to those who have been petitioning Congress for estate tax reform not only during this session but throughout the last decade. It is time for action and that time is now.

Mr. RIEGLE. Mr. Speaker, I rise in support of the estate tax amendment and the adoption of the previous question and thank the gentlewoman from Kansas, Congresswoman KEYS for the vivid and thorough education she provided me on my recent visit to her district in Kansas. There is no question of the serious need of this revision to family farmers and small businessmen throughout the country. I also want to congratulate the gentlewoman from Kansas for the dedication and leadership she displayed in developing this important piece of legislation.

Mr. ALEXANDER. Mr. Speaker, with the exception of the carryover basis provision which I hope this House will delete from the conference report, the estate and gift tax revisions contained in the tax reform package will bring the necessary relief to this Nation's family farmers and small businessmen who in many cases have been forced to sell part of their assets just to pay the Federal taxes on inheritances from loved ones.

Federal estate and gift tax laws, unrevised in more than three decades, significantly increase the progressivity of our tax system and help prevent excessive concentrations of inherited wealth. In fiscal year 1977, it is expected that estate and gift taxes will raise $5.8 billion, all of which comes from the wealthiest 7 percent of the population.

These revisions will reduce the burden of estate taxes on middle-sized estates. Since enactment of the existing $60,000 estate tax exemption in 1942, the percentage of dependents whose estates are subject to tax has increased from 1 to 8 percent. This increase has resulted largely from inflation. It is our failure to adjust estate tax laws to inflation that has threatened the very existence of family farms and small businesses.

This bill increases the level of taxable estate over which the estate tax is imposed from $60,000 to $175,625 over a 5-year phase-in period. The initial increase in 1977 will be from $60,000 to $120,667. In addition, the bill changes the exemption to a tax credit in order to confer the maximum possible tax relief on medium-sized estates.

The bill also provides that real property used for farming or other closely held business purposes may be valued for estate tax purposes, when the estate remains in the family, on the basis of the actual use of the land as a farm or business, rather than on the basis of the speculative market value. This provision should cut down on the acute problem that has existed because of valuation of assets at their "highest and best use" whereby family members have been forced to sell farms and small businesses in order to pay the estate tax.

The bill also increases the time for payment for estate tax liability. Coupled with the above valuation provision, these reforms will aid in preserving the family farm and family business.

Other revisions in the bill include those which increase the marital deduction; tighten the loophole on generation-skipping trusts; unify the rate schedule for estate and gift taxes; and provide for an exclusion for orphans.

The one provision in the bill, however, which could potentially nullify the relief afforded by the other estate tax revisions, is the carryover basis provision.

Under present law a beneficiary's tax basis for inherited property is stepped up, generally to its fair market value on the date of the decedent's death. Under the provisions of this conference report, however, the step up in basis would be eliminated, with an exception, so that an heir would assume the decedent's original basis. The exception is for property acquired by a decedent before December 31, 1976, which would have a basis equal to its value on that date.

While the conference provision is far superior to the original committee proposal, it, in my estimation, is still unacceptable, amounts to a capital gains tax at death over and above estate tax liability, and undermines the effect of the relief provided farms and small businesses in other sections of the estate tax revision. In short, it reinstates the pressure to sell family farms or small business property to pay Federal taxes.

Mr. Speaker, as a Member who has sponsored and sought passage of estate tax reform legislation in the 91st, 92d, 93d, and 94th Congresses, I am pleased that this Congress has the opportunity to vote on such needed tax relief.

Tax laws are as important to family farms and small businesses as a good rain in a dry month and a good sale in the off-season.

I urge that my colleagues accept, with the exception of the carryover basis provision, the estate tax reform contained in this conference report.

Mr. JACOBS. Mr. Speaker, I would like to briefly comment on two examples that appeared in the CONGRESSIONAL RECORD yesterday at page 30539. In the first example, the author has assumed the worst possible fact situation. Even then, the effective rate of tax is only about 19 percent, or $9,600 on a capital gain of $50,000.

Now let me explain why the case is distorted. First of all, it assumes that the estate is at exactly the right level so that it would not be subject to estate tax under present law. If the estate in the gentleman's hypothetical case were only, slightly larger, it would be subject to estate tax under present law. However, under the conference amendment, the estate left to the widow could be $425,000 instead of only $120,000, and still no estate tax would be payable. So there are not very many medium-sized estates that are not going to be substantially benefited under this legislation.

Now on the income tax side, the gentleman has assumed that there are no children to carry on the business and the widow decides not to carry on the business by herself. He also assumes that the widow is not yet age 65. If she were 65, most of the gain on the house, $15,500, would be excluded, and she would pay only $5,350 of total tax. If she moved into a condominum, all of the capital gain on the house would be eligible for a tax-free rollover, she would pay $4,270 of tax on the sale of the store. Even if all the facts were as stated in the gentleman's example, and the widow were advised to sell the business in 1 year and the house in a later year, this would reduce her tax bill to $6,360. If she rented her house instead of selling it, she would pay no capital gains tax on the house, and would be eligible for a retirement income credit for the rental income.

In short, I am afraid the gentleman has chosen a case where the widow receives no help from the estate tax relief provisions of the bill, which most will do, is not eligible for the tax benefits provided to the elderly, and plans her affairs so poorly as to maximize her income tax. Even then, as I have said, the effective tax rate on her gain is only about 19 percent.

As the case in the first example, the facts in the second example are also loaded. First, it assumes that an individual with a house worth $76,500 is part of a total estate under $120,000 and thus would pay no estate tax under present law. The strong likelihood is that there will be an estate tax under present law, and that the changes made by this amendment will completely eliminate any estate tax.

Second, even if the assumptions in this example were true, there probably would be no tax since it is likely that the Washington, D.C., home is her principal place of residence and about one-half of the gain would be excluded if she were 65 years old. In addition, I would like to point out that even under the gentleman's facts, the total tax would only be about $1,400.

Mr. FRASER. Mr. Speaker, I would like to add my strong support for the conference report on the Tax Reform Act of 1976. When the Senate finished its work on the tax bill, I was doubtful that Chairman ULLMAN and his House colleagues on the conference committee could salvage much either in the way of revenue or reform. The measure we are voting on today does not go as far as I would like, but we can truly call this a tax reform bill and an important one.

I support Chairman ULLMAN's motion to recede and concur in the Senate's amendments on the gift and estate tax sections of the bill. The unification of the two taxes and replacement of the exemptions by a credit, along with the change to current use valuation and the extension of time for paying taxes on farms and small businesses, solves many of the problems our constituents faced with the estate tax. While I would have preferred an unlimited tax-free transfer of property between spouses, the increased marital deduction and the fractional interest rule for spouses will eliminate some of the financial hardships now encountered when a husband dies.

The carryover basis for capital gains on sale of inherited property in determining the tax is a true reform. Calculation of the gains from the basis as of December 31, 1976, is a good compromise which will eliminate many practical problems in implementing this provision. Any change in the estate and gift tax law which fails to make such a change is seriously weakened. It might be better to wait until the next Congress to work on the estate and gift tax rather than approve a change without this provision.

Again, I want to congratulate Chairman ULLMAN for his hard work. He has brought back to the House a creditable tax reform bill which I am pleased to support.

Mr. BAUCUS. Mr. Speaker, I would like to comment on the estate and gift tax provisions of the Tax Reform Act of 1976.

My congressional district is the western portion of Montana. My district is composed of farms, ranches, and small businesses, single families who own most of these. Family tradition is important to Montanans. Throughout Montana's history older generations have passed possessions to the younger ones. However, this strong family bond is threatened by the present estate tax laws.

Estate tax exemption levels have not changed since 1942, making the level too low for many of my constituents. A dreadful event occurs. Farmers and businessmen are forced to sell their land and possessions in order to pay the estate tax. Heirs can no longer afford to remain in the family business or keep their farms intact. Any more, the only bidder is often a giant corporation. Thus, present estate taxes, rather than keeping vast wealth from accumulating over the years, are instead forcing families out of business and promoting giant corporate growth.

Today's estate tax provisions rectify this situation. The bill provides relief to the beleagured farmer and businessman

by eliminating estate exemptions and replacing them with an expanded tax credit. The family businessman could now claim a tax credit equivalent to $175,000 tax exemption. That is a vast improvement over the present $60,000 exemption.

Another badly needed revision changes the method of property valuation for farms and small enterprises. Presently, property is valued at its most highly profitable use, forcing a farmer to value his land as if it were developed commercial land. The Tax Act enables farmers to value land on the basis of actual use. The point here is to keep our tax laws from forcing the suburbanization of precious farmland.

I am also pleased that the provisions allow a 15-year period for the payment of estate taxes instead of the present 10-year period.

I support these reforms because they provide aid to individuals most overburdened—farm families, ranch families, and families in business. Congress, by enacting a higher tax credit and revising the process of land valuation, can insure the continuance of Montana's family tradition.

Mr. HAMMERSCHMIDT. Mr. Speaker, in our consideration of the conference report accompanying H.R. 10612, the Tax Reform Act, which contained vital estate and gift tax reforms, I voted to defeat the previous question, so that I and my like-minded colleagues could consider and act affirmatively on an important substitute proposal to delete entirely the carryover basis item. I very much regret that this effort was defeated and we were unable to have a separate vote on this particular aspect of the conference report.

With the exception of this carryover basis feature, the legislation is probably a step in the right direction as it contains the first modification of estate tax laws in some 33 years. Hopefully we can reconsider eliminating the carryover provision and some other objectionable features in the next Congress.

The House had clearly expressed its will that special attention be given to specific aspects of estate and gift tax revision when we voted to bring such reform legislation to the House under an open rule, in consideration of H.R. 14844, the Estate and Gift Tax Reform Act. At that time, I am sure we were all well aware of the concerns of many citizens in our national constituency relative to section 6 of that bill, relating to the carryover basis.

Nationwide, family-owned and operated farms number around 3 million. In much of Arkansas, family farms are a way of life and the many difficulties of maintaining a productive and profitable farm are well known to farm families. Inflation has, of course, taken its obvious toll in raising costs of production while dampening the market value of farm goods. One of inflation's not so obvious effects become evident when a farm owner dies, passing along his estate to family heirs. I can tell you first-hand that failure to delete the carryover basis portion of the conference report on H.R. 10612 will adversely affect citizens in my State of Arkansas and, no doubt, throughout the Nation as well.

There are several worthwhile aspects of estate and gift tax reforms present in the conference report, as it was presented to us. I applaud these and the responsible actions of the conferees seeking to write such revisions into the Tax Reform Act. These include an increase in the estate tax exemption and the conference agreement allowing family farms and businesses to be assessed for tax purposes at their value for farming or business purposes, rather than at market value, which would open them up to future development for purposes other than farming. These are crucial areas of revision which I wholeheartedly support. However, I am concerned over the effect that the carryover basis item will have on my people in Arkansas.

Those of our citizens in rural areas should be heard. Unfortunately, sometimes their concerns seem to be overshadowed and the interests of the Nation's major urban areas are brought to the forefront. By deleting the carryover basis provision, however, we would have recognized the welfare not only of a single segment of the Nation, be it urban or otherwise; we would have acted decisively on a problem that affects a substantial majority of Americans.

While the carryover basis provision in the conference report does represent an improvement over that contained in the estate and gift tax reform bill (H.R. 14844), it was still unacceptable, in my view. My concern is that it will tend to negate tax relief that may be realized by enactment of other provisions.

I supported each of the estate and gift tax reforms contained in the conference report, with the exception of this item. I supported its deletion by this body. Such action was far preferable, to insure that this vital piece of legislation, which will have far-reaching implications in the years ahead, would have brought about the greatest degree of tax relief possible.

Mr. GILMAN. Mr. Speaker, I thank the gentleman for yielding and I rise to urge my colleagues to support the motion by the gentleman from New York (Mr. CONABLE), who seeks, first, to vote down the previous question on H.R. 10612, the Tax Reform Act of 1976, and second, to support his substitute proposal that deletes the conference "carryover" provisions on the sale of inherited real property and retains the present approach of basing the value of the tax on the fair market value of the real property at the date of the decedent's death.

Under present law, the capital gains tax on the sale of inherited real property is stepped up to the fair market value of the property at the time of the decedent's death. The conference version would require the beneficiary to assume the cost of the decedent's property, provided that the carryover cost does not exceed the fair market value of the property held by the decedent and sold by the beneficiary after January 1, 1977. Property acquired by the decedent and sold by the beneficiary after January 1, 1977, would receive a capital gains tax based on the cost of the property as of the date of sale after January 1, 1977, thereby eventually negating the fair market value approach of the present law and subjecting the heir to a capital gains tax based on the cost of the property, rather than its fair market value at the time of sale.

Aside from that reservation, Mr. Speaker, the conference report to accompany H.R. 10612 provides significant benefits to our small farmers and small businessmen who need this kind of assistance. Beginning in 1977, the $60,000 estate tax deduction, a deduction that has not been changed in 34 years, would be replaced by a 5-year phased-in tax credit of $30,000—or a tax exemption equivalent to approximately $120,000—that would be permanently increased to a tax credit of $47,000 in 1981—or a tax exemption equivalent to about $175,625. The marital deduction would be increased to $250,000 or one-half of the decedent's adjusted gross estate. These benefits are highly important to small farmers and business merchants whose tax exemptions have been eroded by inflation.

Mr. Speaker, in the interest of assisting the small, family-held farm and business, I urge my colleagues to support the substitute proposal and, among other benefits, to replace the inflation-eroded tax deduction system with a realistic system of estate tax credits.

GENERAL LEAVE

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this motion and on the report itself which was previously carried.

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

Mr. ULLMAN. Mr. Speaker, if we want gift and estate tax reform, the way to get it is to vote for the previous question and then to vote for this provision. It is sound. It is administrable. It is basic reform that will keep this problem off our backs for a long time to come.

I urge the Members to support the previous question and then to support the motion.

The SPEAKER. The question is on ordering the previous question on the motion.

Mr. CONABLE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 229, nays 181, not voting 20, as follows:

[Roll No. 740]

YEAS—229

Abzug	Biester	Clay
Adams	Bingham	Collins, Ill.
Addabbo	Blanchard	Conyers
Allen	Blouin	Corman
Ambro	Boland	Cornell
Andrews, N.C.	Bolling	Cotter
Annunzio	Bonker	D'Amours
Ashley	Brademas	Daniels, N.J.
Aspin	Breckinridge	Danielson
AuCoin	Brodhead	Davis
Badillo	Brown, Calif.	Delaney
Baucus	Burke, Calif.	Dellums
Beard, R.I.	Burke, Mass.	Dent
Bedell	Burlison, Mo.	Derrick
Bennett	Burton, John	Diggs
Bergland	Burton, Phillip	Dingell
Bevill	Byron	Dodd
Biaggi	Carney	Downey, N.Y.

Drinan
Duncan, Oreg.
du Pont
Early
Edgar
Edwards, Calif.
Eilberg
English
Evans, Colo.
Evans, Ind.
Evins, Tenn.
Fary
Fascell
Fisher
Fithian
Flood
Florio
Flowers
Foley
Ford, Mich.
Fountain
Fraser
Gaydos
Giaimo
Gibbons
Ginn
Green
Gude
Haley
Hall, Ill.
Hamilton
Hanley
Hannaford
Harkin
Harrington
Harris
Hawkins
Hayes, Ind.
Hechler, W. Va.
Hefner
Heinz
Henderson
Hicks
Holland
Holtzman
Howard
Hubbard
Hughes
Hungate
Ichord
Jacobs
Jenrette
Johnson, Calif.
Jones, N.C.
Jones, Okla.
Jordan
Karth
Kastenmeier
Keys
Koch
Krebs
LaFalce
Landrum
Leggett
Lehman
Lloyd, Calif.
Long, Md.
Lundine
McCormack
McFall
McHugh
Madden
Maguire
Mazzoli
Meeds
Meyner
Mezvinsky
Mikva
Miller, Calif.
Mills
Mineta
Minish
Mink
Mitchell, Md.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Morgan
Moss
Motti
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Pa.
Natcher
Neal
Nedzi
Nix
Nolan
Nowak
Oberstar
Obey
O'Hara
O'Neill
Ottinger
Patten, N.J.
Patterson, Calif.
Pattison, N.Y.
Pepper
Perkins
Peyser
Pike
Preyer
Price
Randall
Rangel
Rees
Reuss
Richmond
Riegle
Rinaldo
Rodino
Roe
Roncalio
Rose
Rosenthal
Rostenkowski
Roush
Roybal
Russo
Ryan
St Germain
Santini
Scheuer
Schroeder
Seiberling
Sharp
Simon
Slack
Smith, Iowa
Solarz
Staggers
Stanton, James V.
Stark
Steed
Steiger, Wis.
Stokes
Stratton
Stuckey
Studds
Sullivan
Symington
Taylor, N.C.
Teague
Thompson
Thornton
Tsongas
Udall
Ullman
Van Deerlin
Vander Veen
Vanik
Vigorito
Waxman
Weaver
Whalen
Wirth
Wolff
Wright
Yates
Yatron
Young, Ga.
Zablocki
Zeferetti

NAYS—181

Abdnor
Alexander
Anderson, Calif.
Anderson, Ill.
Andrews, N. Dak.
Archer
Armstrong
Ashbrook
Bafalis
Baldus
Bauman
Beard, Tenn.
Bell
Boggs
Bowen
Breaux
Brinkley
Brooks
Broomfield
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Carr
Cederberg
Chappell
Clancy
Clausen, Don H.
Clawson, Del
Cleveland
Cochran
Cohen
Collins, Tex.
Conable
Conlan
Conte
Coughlin
Crane
Daniel, Dan
Daniel, R. W.
de la Garza
Derwinski
Devine
Dickinson
Downing, Va.
Duncan, Tenn.
Edwards, Ala.
Emery
Erlenborn
Eshleman
Fenwick
Findley
Fish
Flynt
Forsythe
Frenzel
Frey
Fuqua
Gilman
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Guyer
Hagedorn
Hall, Tex.
Hammer-schmidt
Harsha
Hébert
Heckler, Mass.
Hightower
Hillis
Holt
Horton
Hutchinson
Hyde
Jarman
Jeffords
Johnson, Colo.
Jones, Ala.
Kasten
Kazen
Kemp
Ketchum
Kindness
Krueger
Lagomarsino
Latta
Lent
Levitas
Lloyd, Tenn.
Long, La.
Lott
Lujan
McClory
McCloskey
McCollister
McDade
McDonald
McEwen
McKay
McKinney
Madigan
Mahon
Mann
Martin
Mathis
Melcher
Michel
Milford
Miller, Ohio
Mitchell, N.Y.
Montgomery
Moore
Moorhead, Calif.
Mosher
Myers, Ind.
Nichols
O'Brien
Passman
Paul
Pettis
Pickle
Poage
Pressler
Pritchard
Quie
Quillen
Railsback
Regula
Rhodes
Roberts
Robinson
Rogers
Rooney
Rousselot
Runnels
Ruppe
Sarasin
Satterfield
Schneebeli
Schulze
Sebelius
Shipley
Shriver
Shuster
Sikes
Sisk
Skubitz
Smith, Nebr.
Snyder
Spence
Stanton, J. William
Steelman
Symms
Talcott
Taylor, Mo.
Thone
Traxler
Treen
Vander Jagt
Waggonner
Walsh
Wampler
White
Whitehurst
Whitten
Wiggins
Wilson, Bob
Wilson, Tex.
Winn
Wydler
Wylie
Young, Alaska
Young, Fla.
Young, Tex.

NOT VOTING—20

Carter
Chisholm
Eckhardt
Esch
Ford, Tenn.
Hansen
Helstoski
Hinshaw
Howe
Johnson, Pa.
Jones, Tenn.
Kelly
Matsunaga
Metcalfe
Risenhoover
Sarbanes
Spellman
Steiger, Ariz.
Stephens
Wilson, C. H.

The Clerk announced the following pairs:

On this vote:

Mrs. Chisholm for, with Mr. Kelly against.

Mr. Sarbanes for, with Mr. Steiger of Arizona against.

Mr. Charles H. Wilson of California for, with Mr. Johnson of Pennsylvania against.

Mr. Metcalfe for, with Mr. Hansen against.

Mr. Ford of Tennessee for, with Mr. Carter against.

Mr. Helstoski for, with Mr. Esch against.

Until further notice:

Mr. Jones of Tennessee with Mr. Howe.

Mr. Risenhoover with Mrs. Spellman.

Mr. Eckhardt with Mr. Stephens.

Messrs. DERWINSKI, LUJAN, McKAY, and BURKE of Florida changed their vote from "yea" to "nay."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the motion offered by the gentleman from Oregon (Mr. ULLMAN).

Mr. ULLMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 405, nays 2, not voting 23, as follows:

[Roll No. 741]

YEAS—405

Abdnor
Abzug
Adams
Addabbo
Alexander
Allen
Ambro
Anderson, Calif.
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Annunzio
Archer
Armstrong
Ashbrook
Ashley
Aspin
AuCoin
Badillo
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bell
Bennett
Bergland
Bevill
Biaggi
Biester
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Bowen
Brademas
Breaux
Breckinridge
Brinkley
Brodhead
Brooks
Broomfield
Brown, Calif.
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Calif.
Burke, Fla.
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Burton, John
Burton, Phillip
Butler
Byron
Carney
Carr
Cederberg
Chappell
Clancy
Clausen, Don H.
Clawson, Del
Clay
Cochran
Cohen
Collins, Ill.
Collins, Tex.
Conable
Conlan
Conte
Conyers
Corman
Cornell
Cotter
Coughlin
Crane
D'Amours
Daniel, Dan
Daniel, R. W.
Daniels, N.J.
Danielson
Davis
de la Garza
Delaney
Dellums
Dent
Derrick
Derwinski
Devine
Dickinson
Diggs
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Oreg.
Duncan, Tenn.
du Pont
Early
Edgar
Edwards, Ala.
Edwards, Calif.
Eilberg
Emery
English
Erlenborn
Eshleman
Evans, Colo.
Evans, Ind.
Evins, Tenn.
Fary
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flood
Florio
Flowers
Flynt
Foley
Ford, Mich.
Forsythe
Fountain
Fraser
Frenzel
Frey
Fuqua
Gaydos
Giaimo
Gibbons
Gilman
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Green
Gude
Guyer
Hagedorn
Haley
Hall, Ill.
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Hannaford
Harkin
Harrington
Harris
Harsha
Hawkins
Hayes, Ind.
Hébert
Hechler, W. Va.
Heckler, Mass.
Hefner
Heinz
Hicks
Hightower
Hillis
Holland
Holt
Holtzman
Horton
Howard
Hubbard
Hughes
Hungate
Hutchinson
Hyde
Ichord
Jacobs
Jarman
Jeffords
Jenrette
Johnson, Calif.
Johnson, Colo.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Jordan
Kasten
Kastenmeier
Kazen
Kemp
Ketchum
Keys
Kindness
Koch
Krebs
Krueger
LaFalce
Lagomarsino
Landrum
Latta
Leggett
Lehman
Lent
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Long, Md.
Lott
Lujan
Lundine
McClory
McCloskey
McCollister
McCormack
McDade
McDonald
McEwen
McFall
McHugh
McKay
McKinney
Madden
Madigan
Mahon
Mann
Martin
Mathis
Mazzoli
Meeds
Melcher
Meyner
Mezvinsky
Michel
Mikva
Milford
Miller, Calif.
Miller, Ohio
Mills
Mineta
Minish
Mink
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Montgomery
Moore
Moorhead, Calif.
Moorhead, Pa.
Morgan
Mosher
Moss
Motti
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
O'Hara
O'Neill
Ottinger
Passman
Patten, N.J.
Patterson, Calif.
Pattison, N.Y.
Paul
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Poage
Pressler
Preyer
Price
Pritchard
Quie
Quillen
Railsback
Randall
Rangel
Rees
Regula
Reuss
Rhodes
Richmond
Riegle
Rinaldo
Roberts
Robinson
Rodino
Roe
Rogers
Roncalio
Rooney
Rose
Rosenthal
Rostenkowski
Roush
Rousselot
Roybal
Runnels
Ruppe
Russo
Ryan
St Germain
Santini
Sarasin
Satterfield
Scheuer
Schneebeli
Schroeder
Schulze
Sebelius
Seiberling
Sharp
Shipley
Shriver
Shuster
Sikes
Simon
Sisk
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Solarz
Spence
Staggers
Stanton, J. William
Stanton, James V.
Steed
Steelman
Steiger, Wis.
Stokes
Stratton
Stuckey
Studds
Sullivan
Symington
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Teague
Thompson
Thone
Thornton
Traxler
Treen
Tsongas
Udall
Ullman
Van Deerlin
Vander Jagt
Vander Veen
Vanik
Vigorito
Waggonner
Walsh
Wampler
Waxman
Weaver
Whalen
White
Whitehurst
Whitten
Wiggins
Wilson, Bob
Wilson, Tex.
Winn
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Yatron
Young, Alaska
Young, Fla.
Young, Ga.
Young, Tex.
Zablocki
Zeferetti

NAYS—2

Maguire Stark

NOT VOTING—23

Carter	Henderson	Metcalfe
Chisholm	Hinshaw	Risenhoover
Cleveland	Howe	Sarbanes
Eckhardt	Johnson, Pa.	Spellman
Esch	Jones, Tenn.	Steiger, Ariz.
Ford, Tenn.	Karth	Stephens
Hansen	Kelly	Wilson, C. H.
Helstoski	Matsunaga	

The Clerk announced the following pairs:

Mrs. Chisholm with Mr. Henderson.

Mr. Jones of Tennessee with Mr. Matsunaga.

Mr. Metcalfe with Mr. Sarbanes.

Mr. Cleveland with Mr. Ford of Tennessee.

Mr. Johnson of Pennsylvania with Mr. Howe.

Mr. Carter with Mr. Steiger of Arizona.

Mr. Hansen with Mr. Esch.

Mr. Helstoski with Mrs. Spellman.

Mr. Eckhardt with Mr. Charles H. Wilson of California.

Mr. Risenhoover with Mr. Stephens.

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

TO CORRECT THE ENROLLMENT OF H.R. 10612

Mr. ULLMAN. Mr. Speaker, I ask unanimous consent for the immediate consideration of the concurrent resolution (H. Con. Res. 751) directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 10612.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 751

Concurrent resolution directing the Clerk of the House of Representatives to make corrections in the enrollment of H.R. 10612

Resolved by the House of Representatives (the Senate concurring), that in the enrollment of the bill (H.R. 10612) to reform the tax laws of the United States the Clerk of the House of Representatives shall make the following corrections:

(1) Redesignate the sections in accordance with the following table:

Section numbers in enrolled bill:	Section numbers in conference report:
101	101
102	102
201	103
202	201
203	201A
204	202
205	202A
206	203
207	204
208	205
209	206
210	207
211	208
212	209
213	210
214	211
301	301
302	302
401	401
402	402
501	501
502	502
503	503
504	504
505	505, 2501
506	506
507	507
508	508
601	601
602	602
603	603
604	604
605	605
701	701
801	801
802	802
803	803, 2701, 2711
804	804
805	805
806	806
807	807
901	901
902	1314, 2306, 2714
1011 to 1067	1011 to 1067
1101	1101
1201 to 1212	1201 to 1212
1301	2101
1302	2102
1303	2103
1304	2104
1305	2105
1306	2106
1307	2503
1308	2504
1309	2505
1310	2506
1311	2602
1312	2603
1313	2702
1401	1401
1402	1402
1403	1403
1404	2713
1501	1501
1502	1502
1503	1503, 2715
1504	1504
1505	1505
1506	1506
1507	1507
1508	1508
1509	1509
1510	2703
1511	2704
1512	2705
1601 to 1608	1601 to 1608
1701 to 1703	1701 to 1703
1801	2401
1802	1327
1901 to 1908	1901 to 1908
1951 to 1952	1951 to 1952
2001	2201
2002	2202
2003	2203
2004	2204
2005	2205
2006	2206
2007	2207
2008	2208
2009	2209
2010	2210
2101	1301
2102	1302
2103	1303
2104	1304
2105	1305
2106	1306
2107	1307
2108	1308
2109	1309
2110	1310
2111	1311
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2132	2502
2133	2507
2134	2601
2135	2604
2136	2706
2137	2707
2138	2708
2139	2710
2140	2712
2141	2716

(2) Redesignate the titles to conform to the changes made by paragraph (1).

(3) Conform the title headings, section headings, and other headings to the changes made under paragraphs (1) and (2).

(4) Correct spelling, punctuation, margins, section references, cross references, and headings.

(5) In section 189(a) of the Code (as added by section 201(a) of the bill), strike out "or" after "an individual" and insert in lieu thereof a comma, and insert after "section 1371 (b))" the following: ", or a personal holding company (within the meaning of section 542)".

(6) In section 465(a) of the Code (as added by section 204(a) of the bill), strike out "which is not" and insert in lieu thereof "which is neither", and strike out "section 1371(b)))" and insert in lieu thereof "section 1371(b)) nor a personal holding company (as defined in section 542))".

(7) In section 280(a) of the Code (as added by section 210(a) of the bill), strike out "section 1371(b))" and insert in lieu thereof "section 1371(b)) or a personal holding company (as defined in section 542))".

(8) In section 189(b) of the Code (as added by section 201 of the bill) strike out the line beginning with 1976 and insert:

1976	----	----	See subsection (f)
----	1978	1982	25

(9) In section 189(f) of the Code (as added by section 201 of the bill) strike out "such amount allowable" and insert "such amount allowable under this section".

(10) In section 465(b)(3) of the Code (as amended by section 204 of the bill) strike out "paragraph (2)(B)" and insert "paragraph (1)(B)".

(11) In section 204(c)(3)(A) of the bill strike out "465(c)(1)(C)" and insert "465 (c)(1)(B)".

(12) In section 464(e)(2)(A) of the Code (as inserted by section 207(a) of the bill) strike out "a partnership" and insert "as a limited partner".

(13) In section 464(c)(2) of the Code (as inserted by section 207(a) of the bill)—

(A) strike out "and" at the end of subparagraph (C), and redesignate subparagraph (D) as subparagraph (E),

(B) after subparagraph (C) insert the following new subparagraph:

"(D) in the case of an individual whose principal business activity involves active participation in the management of a trade or business of farming, any interest in any other trade or business of farming, and", and

(C) in subparagraph (E) (as so redesignated) strike out "or (C)" each place it appears and insert "(C), or (D)".

(14) In section 1056(a)(2) of the Code (as added by section 212 of the bill) strike out "transfer contract and insert "transfer of such contract".

(15) In section 1245(a)(4)(A) of the Code (as added by section 212 of the bill), strike out "the greater of" and insert in lieu thereof "the adjusted basis of such contracts increased by the greater of".

(16) In the last sentence of section 704 (d) of the Code (as added by section 213(e) of the bill) strike out "to which section 465" and insert "to the extent that section 465".

(17) In section 213(f)(2) of the bill strike out "in the case of partnership taxable years beginning after" and insert "to liabilities incurred after".

(18) In section 214(c) of the bill strike out "made by this Act" and insert "made by this section".

(19) In section 57(e)(3) of the Code (as added by section 301(c)(4)(C) of the bill) strike out "paragraph 1231(b)(2)" and insert "section 1231(b)(1)".

(20) In section 1348(b)(1)(B)(i) of the Code (as amended by section 302(a) of the bill) strike out "403(a)(2)(A)" and insert "403(a)(2)".

(21) In section 1348(b)(1)(B)(ii) of the Code (as amended by section 302(a) of the bill) strike out "any amount".

(22) In section 37(e)(4)(A)(i) of the Code (as amended by section 503(a) of the bill) strike out "which are exempt" and insert "which is exempt".

(23) in section 280A(g) of the Code (as added by section 601(a) of the bill) strike out "and other provision" and insert "any other provision".

(24) In the last sentence of section 274(h)(4) of the Code (as inserted by section 602 (a) of the bill) strike out "expenses of all" and insert "expenses for all".

(25) In section 644(a)(1)(B) of the Code (as added by section 701(e)(1) of the bill strike out "the basis" and insert "the adjusted basis".

(26) In section 644(b)(2) of the Code (as added by section 701(e) of the bill) strike out "the basis" and insert "the adjusted basis".

(27) In section 46(b)(1) of the Code (as amended by section 802(b) of the bill redesignate the second subparagraph (A) as subparagraph (C) and redesignate the second subparagraph (B) as subparagraph (D).

(28) In section 46(b)(1)(D) of the Code (as redesignated by the preceding paragraph) strike out "801(b)(2)" and insert "802(b)(2)".

(29) In section 301(d)(13)(B) of the Tax Reduction Act of 1975 (as amended by section 803(c) of the bill) strike out "by the employer".

(30) In section 301(d)(14)(B) of the Tax Reduction Act of 1975 (as amended by section 803 of the bill) is amended by striking out "the claim is made for credit under section 38" and insert "the credit under section 38 is allowed".

(31) In section 301(e)(3) of the Tax Reduction Act of 1975 (as added by section 803(d) of the bill), strike out "to transfer" and insert in lieu thereof "to transfer at the time described in subsection (d)(6)(B)".

(32) In section 46(g)(6) of the Code (as added by section 805(a) of the bill), strike out "this section" and insert in lieu thereof "this subsection".

(33) In subsection (a) of section 806 of the bill, insert before "is amended" the following: ", as amended by section 1606(b) of this Act,".

(34) In subsections (b)(2) and (c) of section 806 of the bill, insert before "is amended" the following: ", as amended by section 1901(a)(29) of this Act,".

(35) In the heading of section 382(a)(2) of the Code (as amended by section 806(e) of the bill), strike out "net operating loss" and insert in lieu thereof "net operating loss carryover".

(36) In section 382(b)(3)(B) of the Code (as amended by section 806(e) of the bill), strike out "fair market value" the second place it appears and insert in lieu thereof "total fair market value".

(37) In subsection (a) of section 908 of the Code (as added by section 1061(a) of the bill) strike out so much of such subsection as precedes paragraph (1) and insert the following:

"(a) IN GENERAL.—If a person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes such person, participates in or cooperates with an international boycott during the taxable year (within the meaning of section 999(b)), the amount of the credit allowable under section 901 to such person, or under section 902 or 960 to United States shareholders of such person, for foreign taxes paid during the taxable year shall be reduced by an amount equal to the product of—

(38) In section 908(b) of the Code (as added by section 1061(a) of the bill) strike out "section 275(a)(4) shall not apply" and insert "section 275(a)(4) and section 78 shall not apply".

(39) Section 999(a) of the Code (as added by section 1064(a) of the bill) is amended to read as follows:

"(a) INTERNATIONAL BOYCOTT REPORTS BY TAXPAYERS.—

"(1) REPORT REQUIRED.—If any person, or a member of a controlled group (within the meaning section 993(a)(3)) which includes that person, has operations in, or related to—

"(A) a country (or with the government, a company, or a national of a country) which is on the list maintained by the Secretary under paragraph (3), or

"(B) any other country (or with the government, a company, or a national of that country) in which such person or such member had operations during the taxable year if such person (or, if such person is a foreign corporation, any United States shareholder of that corporation) knows or has reason to know that participation in or cooperation with an international boycott is required as a condition of doing business within such country or with such government, company, or national,

that person or shareholder (within the meaning of section 951(b)) shall report such operations to the Secretary at such time and in such manner as the Secretary prescribes, except that in the case of a foreign corporation such report shall be required only of a United States shareholder (within the meaning of such section) of such corporation.

"(2) PARTICIPATION AND COOPERATION; REQUEST THEREFOR.—A taxpayer shall report whether he, a foreign corporation of which he is a United States shareholder, or any member of a controlled group which includes the taxpayer or such foreign corporation has participated in or cooperated with an international boycott at any time during the taxable year, or has been requested to participate in or cooperate with such a boycott, and, if so, the nature of any operation in connection with which there was participation in or cooperation with such boycott (or there was a request to participate or cooperate).

"(3) LIST TO BE MAINTAINED.—The Secretary shall maintain and publish not less frequently than quarterly a current list of countries which require or may require participation in or cooperation with an international boycott (within the meaning of subsection (b)(3)).

(40) In section 999(b) of the Code (as added by section 1064(a) of the bill)—

(A) in paragraph (1), strike out "the taxpayer" each place it appears and insert "the person",

(B) in paragraph (1), strike out "he did not participate in or cooperate with" and insert "there was no participation in or cooperation with", and

(C) in paragraph (4), strike out "a taxpayer" and insert "a person".

(41) In section 999(c)(2) of the Code (as added by section 1064(a) of the bill)—

(A) strike out "by the taxpayer",

(B) strike out "with respect to his worldwide operations",

(C) strike out "amounts" and insert "amount", and

(D) strike out "the taxpayer participated in or cooperated with" and insert "there was participation in or cooperation with".

(42) In section 999(d) of the Code as added by section 1064(a) of the bill)—

(A) strike out "the taxpayer" the second time it appears and insert "a person", and

(B) strike out "the taxpayer" the third time it appears and insert "that person".

(43) In section 999 of the Code (as added by section 1064(a) of the bill) strike out subsection (e) and insert the following:

"(e) PATRICIPATION OR COOPERATION BY RELATED PERSONS.—If a person controls (within the meaning of section 304(c)) a corporation—

"(1) participation in or cooperation with an international boycott by such corporation shall be presumed to be such participation or cooperation by such person, and

"(2) participation in or cooperation with such a boycott by such person shall be presumed to be such participation or cooperation by such corporation.

(44) In section 6110(f)(6) of the Code (as inserted by section 1201(a) of the bill) strike out "under this subsection" and insert "under this section".

(45) In section 6110(i)(2) of the Code (as inserted by section 1201(a) of the bill) strike out "that such employee" and insert "that an employee".

(46) In section 6103(h)(3)(B) of the Code (as inserted by section 1202(a) of the bill) strike out "the information" and insert "the return or return information".

(47) In section 6103(l)(1) of the Code (as inserted by section 1202(a) of the bill) strike out "may disclose" and insert "may, upon written request, disclose".

(48) In section 6103(l)(2) of the Code (as inserted by section 1202(a) of the bill) strike out "may furnish" and insert "may, upon written request, furnish".

(49) In section 6103(p)(3)(A) of the Code (as inserted by section 1202(a) of the bill) strike out "(l)(1) or (4)(B)" and insert "(l)(1), (4)(B), or (5)".

(50) In section 6103(p)(3)(C) of the Code (as inserted by section 1202(a) of the bill) strike out "records and accountings" and insert "records or accountings".

(51) In section 6103(p)(3)(C)(i) of the Code (as inserted by section 1202(a) of the bill) strike out "(5)" and insert "(6)".

(52) In section 6103(p)(8)(B) of the Code (as inserted by section 1202(a) of the bill) strike out "nothing in this section" and insert "nothing in subparagraph (A)".

(53) In section 6696(b) of the Code (as added by section 1202(f) of the bill) strike out "chapter 42 taxes" and insert "certain excise taxes".

(54) In section 1210(d) of the bill strike out "subsection (a) or (b)" and insert "subsection (a) or (c)".

(55) At the end of section 1303 of the bill, add the following new subsection:

(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of income tax resulting from an election made under this section is prevented on the date of the enactment of this Act, or at any time within one year after such date, by the operation of any law or rule of law, refund or credit of such overpayment (to the extent attributable to such election) may, nevertheless, be made or allowed if claim therefor is filed within one year after such date. If the taxpayer makes an election under this section and if assessment of any deficiency for any taxable year resulting from such election is prevented on

the date of the enactment of this Act, or at any time within one year after such date, by the operation of any law or rule of law, such assessment (to the extent attributable to such election) may, nevertheless, be made if made within one year after such date.

(56) In section 271(c) of the Code (as added by section 1304(a) of the bill) strike out "a taxpayer's" and insert "the taxpayer's".

(57) In section 613A(c)(9)(B)(iii) of the Code (as added by section 1316(b)(1) of the bill) strike out "lineal descendant of the grantor" and insert "lineal descendant of the settlor".

(58) In section 1402(b)(1)(C) of the bill insert before the period at the end thereof the following: "and subparagraph (L) of paragraph (4) of section 402(e) (relating to election to treat pre-1974 participation as post-1973 participation)".

(59) In section 4973(b)(2) of the Code (as added by section 1501(b) of the bill)—

(A) strike out "all taxable years" and insert in lieu thereof "all prior taxable years", and

(B) insert "or $1,750, if applicable," after "excess of $1,500".

(60) In subsection (b) of section 1501 of the bill, after paragraph (9) insert the following:

(10) Paragraph (1) of section 408(d) (relating to tax treatment of distributions) is amended by striking out the second sentence and inserting in lieu thereof the following: "Notwithstanding any other provision of this title (including chapters 11 and 12), the basis any person in such an account or annuity is zero."

(61) In subparagraph (A) of section 1504 (c)(2) of the Code (as added by section 1507(a) of the bill) strike out all after "subsection (a)" and insert in lieu thereof the following: "except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed".

(62) In section 1901(d) of the bill, add at the end thereof the following new sentence: "The amendments made by subsections (a)(29) and (b)(10) shall apply with respect to taxable years ending after the date of the enactment of this Act."

(63) In section 6323(b) (as amended by section 1906(a)(29)(A) of the bill), strike out "with in claim" and insert "with the claim".

(64) In section 1033(g)(3)(D) of the Code (as added by section 2301(a) of the bill)—

(A) strike out "section" and insert in lieu thereof "subsection",

(B) insert "(and treated by the taxpayer as real property)" after "subparagraph (C)", and

(C) strike out "similar or related in service or use to" and insert in lieu thereof "of a like kind as".

(65) In section 2303(b) of the bill, strike out "before that date" and insert in lieu thereof "on or before that date".

(66) In section 2601(e)(2) of the bill, strike out "described" and insert in lieu thereof "prescribed".

(67) In section 1372(e)(1)(A) of the Code (as added by section 2714(c) of the bill) strike out "60th day after" and insert in lieu thereof "60th day after the day on".

(68) In subsection (b) of section 1606 of the bill, strike out "is amended by adding at the end" and insert ", as amended by section 1901(a)(29)(A)(i), is amended by inserting after subparagraph (D)", and strike out "(I)" in the amendment made by such subsection and insert "(E)".

(69) In section 1606(d) of the bill, strike out paragraph (1) and redesignate paragraph (2) as subsection (d).

(70) In paragraph (2) of section 1608(d) of the bill, strike out "paragraph (3)" and insert "subparagraph (C)".

(71) In the heading for section 185(e)(3) of the Code (as added by section 1702(a) of the bill) strike out "March 1, 1969" and insert in lieu thereof "March 1, 1913".

(72) In section 1901(a)(29)(A) of the bill, strike out clauses (ii) and (iii) and redesignate clause (iv) as clause (ii).

(73) In section 1901(a)(99) of the bill, insert ", other than the last sentence thereof, as added by section 806(d)(1)(A) of this Act," before "is amended".

(74) In section 1901(b)(8)(A) of the bill, strike out "(B), and 117(b)(2)(B)".

(75) In section 1503(c) of the Code (as added by section 1507(a)(3) of the bill) strike out paragraph (2) and insert in lieu thereof the following:

"(2) LOSSES OF RECENT NONLIFE AFFILIATES.—Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 802 shall not be taken into account in determining the taxable income of a member taxed under section 802 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504(b)(2))."

(76) In section 1507 (b)(1) of the bill, insert ", as amended by section 1901(a)(104)(C) of this Act," after "applies)", and strike out "(e)", "(f)", and "(g)" each place they appear and insert in lieu thereof "(d)", "(e)", and "(f)", respectively.

(77) In subparagraph (A) of section 1507 (c)(2) of the bill, strike out "January 1, 1982, and losses of credits" and insert in lieu thereof the following: "January 1, 1981, and losses or credits".

(78) Amend the table of contents to reflect the text of the bill, as amended by both Houses of the Congress (including this resolution).

The SPEAKER. Is there objection to the request of the gentleman from Oregon?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON S. 2981, AUTHORIZING APPROPRIATIONS FOR INDIAN CLAIMS COMMISSION

Mr. HALEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2981) to authorize appropriations for the Indian Claims Commission for fiscal year 1977, and for other purposes, with a House amendment thereto, insist on the House amendment, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Florida? The Chair hears none, and appoints the following conferees: Messrs. HALEY, TAYLOR of North Carolina, MEEDS, STEPHENS, RISENHOOVER, YOUNG of Alaska, and JOHNSON of Colorado.

PERMISSION FOR COMMITTEE ON GOVERNMENT OPERATIONS TO FILE REPORTS

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Committee on Government Operations have until midnight tonight to file three reports.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 13367 EXTENDING AND AMENDING THE STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 13367) to extend and amend the State and Local Fiscal Assistance Act of 1972, with the Senate amendment thereto, disagree to the Senate amendment and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Texas? The Chair hears none, and appoints the following conferees: Messrs. BROOKS, FOUNTAIN, FUQUA, MEZVINSKY, Miss JORDAN, Messrs. JOHN L. BURTON, DRINAN, HORTON, WYDLER, and BROWN of Ohio.

PERMISSION FOR JOINT COMMITTEE ON ATOMIC ENERGY TO HAVE UNTIL MIDNIGHT SATURDAY, SEPTEMBER 18, 1976, TO FILE A REPORT ON H.R. 15419

Mr. PRICE. Mr. Speaker, I ask unanimous consent that the Joint Committee on Atomic Energy have until midnight Saturday, September 18, 1976, to file a report on H.R. 15419, as amended, a bill to provide for more efficient and effective control over the proliferation of nuclear explosives by amendments to the Atomic Energy Act of 1954 as amended.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

APPOINTMENT OF CONFEREES ON S. 2212, OMNIBUS CRIME CONTROL AND SAFE STREETS ACT AMENDMENTS

Mr. RODINO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 2212) to amend the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and for other purposes, with a House amendment thereto, insist on the House amendment, and agree to a conference requested by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey? The Chair hears none, and appoints the following conferees: Messrs. RODINO, EDWARDS of California, CONYERS, MANN, and DANIELSON, Ms. JORDAN, Ms. HOLTZMAN, and Messrs. MAZZOLI, HUGHES, HUTCHINSON, MCCLORY, WIGGINS, and BUTLER.

SENATE AMENDMENT TO S. 522, IMPROVING SERVICES AND FACILITIES OF FEDERAL INDIAN HEALTH PROGRAMS

Mr. MEEDS. Mr. Speaker, I ask unanimous consent to take from the

Speaker's desk the bill (S. 522) to implement the Federal responsibility for the care and education of the Indian people by improving the services and facilities of Federal Indian health programs and encouraging maximum participation of Indians in such programs, and for other purposes, with a Senate amendment to the House amendment thereto, and concur in the Senate amendment to the House amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment, as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment, insert:

That this Act may be cited as the "Indian Health Care Improvement Act".

FINDINGS

SEC. 2. The Congress finds that—

(a) Federal health services to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people.

(b) A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians to be raised to the highest possible level and to encourage the maximum participation of Indians in the planning and management of those services.

(c) Federal health services to Indians have resulted in a reduction in the prevalence and incidence of preventable illnesses among, and unnecessary and premature death of, Indians.

(d) Despite such services, the unmet health needs of the American Indian people are severe and the health status of the Indians is far below that of the general population of the United States. For example, for Indians compared to all Americans in 1971, the tuberculosis death rate was over four and one-half times greater, the influenza and pneumonia death rate over one and one-half times greater, and the infant death rate approximately 20 per centum greater.

(e) All other Federal services and programs in fulfillment of the Federal responsibility to Indians are jeopardized by the low health status of the American Indian people.

(f) Further improvement in Indian health is imperiled by—

(1) inadequate, outdated, inefficient, and undermanned facilities. For example, only twenty-four of fifty-one Indian Health Service hospitals are accredited by the Joint Commission on Accreditation of Hospitals; only thirty-one meet national fire and safety codes; and fifty-two locations with Indian populations have been identified as requiring either new or replacement health centers and stations, or clinics remodeled for improved or additional service;

(2) shortage of personnel. For example, about one-half of the Service hospitals, four-fifths of the Service hospital outpatient clinics, and one-half of the Service health clinics meet only 80 per centum of staffing standards for their respective services;

(3) insufficient services in such areas as laboratory, hospital inpatient and outpatient, eye care and mental health services, and services available through contracts with private physicians, clinics, and agencies. For example, about 90 per centum of the surgical operations needed for otitis media have not been performed, over 57 per centum of required dental services remain to be provided, and about 98 per centum of hearing aid requirements are unmet;

(4) unrelated support factors. For example, over seven hundred housing units are needed for staff at remote Service facilities;

(5) lack of access of Indians to health services due to remote residences, undeveloped or underdeveloped communication and transportation systems, and difficult, sometimes severe, climate conditions; and

(6) lack of safe water and sanitary waste disposal services. For example, over thirty-seven thousand four hundred existing and forty-eight thousand nine hundred and sixty planned replacement and renovated Indian housing units need new or upgraded water and sanitation facilities.

(g) The Indian people's growth of confidence in Federal Indian health services is revealed by their increasingly heavy use of such services. Progress toward the goal of better Indian health is dependent on this continued growth of confidence. Both such progress and such confidence are dependent on improved Federal Indian health services.

DECLARATION OF POLICY

SEC. 3. The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to meet the national goal of providing the highest possible health status to Indians and to provide existing Indian health services with all resources necessary to effect that policy.

DEFINITIONS

SEC. 4. For purposes of this Act—

(a) "Secretary", unless otherwise designated, means the Secretary of Health, Education, and Welfare.

(b) "Service" means the Indian Health Service.

(c) "Indians" or "Indian", unless otherwise designated, means any person who is a member of an Indian tribe, as defined in subsection (d) hereof, except that, for the purpose of sections 102, 103, and 201(c)(5), such terms shall mean any individual who (1), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(d) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) "Tribal organization" means the elected governing body of any Indian tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies (or elected by the Indian population to be served by such organization) and which includes the maximum participation of Indians in all phases of its activities.

(f) "Urban Indian" means any individual who resides in an urban center, as defined in subsection (g) hereof, and who meets one or more of the four criteria in subsection (c)(1) through (4) of this section.

(g) "Urban center" means any community which has a sufficient urban Indian population with unmet health needs to warrant assistance under title V, as determined by the Secretary.

(h) "Urban Indian organization" means a nonprofit corporate body situated in an urban center, composed of urban Indians, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a).

TITLE I—INDIAN HEALTH MANPOWER

PURPOSE

SEC. 101. The purpose of this title is to augment the inadequate number of health professionals serving Indians and remove the multiple barriers to the entrance of health professionals into the Service and private practice among Indians.

HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS

SEC. 102. (a) The Secretary, acting through the Service, shall make grants to public or nonprofit private health or educational entities or Indian tribes or tribal organizations to assist such entities in meeting the costs of—

(1) identifying Indians with a potential for education or training in the health professions and encouraging and assisting them (A) to enroll in schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, nursing, or allied health professions; or (B), if they are not qualified to enroll in any school, to undertake such postsecondary education or training as may be required to qualify them for enrollment;

(2) publicizing existing sources of financial aid available to Indians enrolled in any school referred to in clause (1)(A) of this subsection or who are undertaking training necessary to qualify them to enroll in any such school; or

(3) establishing other programs which the Secretary determines will enhance and facilitate the enrollment of Indians, and the subsequent pursuit and completion by them of courses of study, in any school referred to in clause (1)(A) of this subsection.

(b)(1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe: *Provided*, That the Secretary shall give a preference to applications submitted by Indian tribes or tribal organizations.

(2) The amount of any grant under this section shall be determined by the Secretary. Payments pursuant to grants under this section may be made in advance or by way of reimbursement, and at such intervals and on such conditions as the Secretary finds necessary.

(c) For the purpose of making payments pursuant to grants under this section, there are authorized to be appropriated $900,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, and $1,800,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984 there are authorized to be appropriated for such payments such sums as may be specifically authorized by an Act enacted after this Act.

HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM FOR INDIANS

SEC. 103. (a) The Secretary, acting through the Service, shall make scholarship grants to Indians who—

(1) have successfully completed their high school education or high school equivalency; and

(2) have demonstrated the capability to successfully complete courses of study in schools of medicine, osteopathy, dentistry, veterinary medicine, optometery, podiatry, pharmacy, public health, nursing, or allied health professions.

(b) Each scholarship grant made under this section shall be for a period not to exceed two academic years, which years shall be for compensatory preprofessional education of any grantee.

(c) Scholarship grants made under this

section may cover costs of tuition, books, transportation, board, and other necessary related expenses.

(d) There are authorized to be appropriated for the purpose of this section: $800,000 for fiscal year 1978, $1,000,000 for fiscal year 1979, and $1,300,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984 there are authorized to be appropriated for the purpose of this section such sums as may be specifically authorized by an Act enacted after this Act.

HEALTH PROFESSIONS SCHOLARSHIP PROGRAM

SEC. 104. Section 225(i) of the Public Health Service Act (42 U.S.C. 234(i)) is amended (1) by inserting "(1)" after "(i)", and (2) by adding at the end the following:

"(2)(A) In addition to the sums authorized to be appropriated under paragraph (1) to carry out the Program, there are authorized to be appropriated for the fiscal year ending September 30, 1978, $5,450,000; for the fiscal year ending September 30, 1979, $6,300,000; for the fiscal year ending September 30, 1980, $7,200,000; and for fiscal years 1981, 1982, 1983, and 1984 such sums as may be specifically authorized by an Act enacted after the Indian Health Care Improvement Act, to provide scholarships under the Program to provide physicians, osteopaths, dentists, veterinarians, nurses, optometrists, podiatrists, pharmacists, public health personnel, and allied health professionals to provide services to Indians. Such scholarships shall be designated Indian Health Scholarships and shall be made in accordance with this section except as provided in subparagraph (B).

"(B)(i) The Secretary, acting through the Indian Health Service, shall determine the individuals who receive the Indian Health Scholarships, shall accord priority to applicants who are Indians, and shall determine the distribution of the scholarships on the basis of the relative needs of Indians for additional service in specific health professions.

"(ii) The active duty service obligation prescribed by subsection (e) shall be met by the recipient of an Indian Health Scholarship by service in the Indian Health Service, in a program assisted under title V of the Indian Health Care Improvement Act, or in the private practice of his profession if, as determined by the Secretary in accordance with guidelines promulgated by him, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

"(C) For purposes of this paragraph, the term 'Indians' has the same meaning given that term by subsection (c) of section 4 of the Indian Health Care Improvement Act and includes individuals described in clauses (1) through (4) of that subsection.".

INDIAN HEALTH SERVICE EXTERN PROGRAMS

SEC. 105. (a) Any individual who receives a scholarship grant pursuant to section 104 shall be entitled to employment in the Service during any nonacademic period of the year. Periods of employment pursuant to this subsection shall not be counted in determining the fulfillment of the service obligation incurred as a condition of the scholarship grant.

(b) Any individual enrolled in a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy public health, nursing, or allied health professions may be employed by the Service during any nonacademic period of the year. Any such employment shall not exceed one hundred and twenty days during any calendar year.

(c) Any employment pursuant to this section shall be made without regard to any competitive personnel system or agency personnel limitation and to a position which will enable the individual so employed to receive practical experience in the health profession in which he or she is engaged in study. Any individual so employed shall receive payment for his or her services comparable to the salary he or she would receive if he or she were employed in the competitive system. Any individual so employed shall not be counted against any employment ceiling affecting the Service or the Department of Health, Education, and Welfare.

(d) There are authorized to be appropriated for the purpose of this section: $600,000 for fiscal year 1978, $800,000 for fiscal year 1979, and $1,000,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984 there are authorized to be appropriated for the purpose of this section such sums as may be specifically authorized by an Act enacted after this Act.

CONTINUING EDUCATION ALLOWANCES

SEC. 106. (a) In order to encourage physicians, dentists, and other health professionals to join or continue in the Service and to provide their services in the rural and remote areas where a significant portion of the Indian people resides, the Secretary, acting through the Service, may provide allowances to health professionals employed in the Service to enable them for a period of time each year prescribed by regulation of the Secretary to take leave of their duty stations for professional consultation and refresher training courses.

(b) There are authorized to be appropriated for the purpose of this section: $100,000 for fiscal year 1978, $200,000 for fiscal year 1979, and $250,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984 there are authorized to be appropriated for the purpose of this section such sums as may be specifically authorized by an Act enacted after this Act.

TITLE II—HEALTH SERVICES

HEALTH SERVICES

SEC. 201. (a) For the purpose of eliminating backlogs in Indian health care services and to supply known, unmet medical, surgical, dental, optometrical, and other Indian health needs, the Secretary is authorized to expend, through the Service, over the seven-fiscal-year period beginning after the date of the enactment of this Act the amounts authorized to be appropriated by subsection (c). Funds appropriated pursuant to this section for each fiscal year shall not be used to offset or limit the appropriations required by the Service under other Federal laws to continue to serve the health needs of Indians during and subsequent to such seven-fiscal-year period, but shall be in addition to the level of appropriations provided to the Service under this Act and such other Federal laws in the preceding fiscal year plus an amount equal to the amount required to cover pay increases and employee benefits for personnel employed under this Act and such laws and increases in the costs of serving the health needs of Indians under this Act and such laws, which increases are caused by inflation.

(b) The Secretary, acting through the Service, is authorized to employ persons to implement the provisions of this section during the seven-fiscal-year period in accordance with the schedule provided in subsection (c). Such positions authorized each fiscal year pursuant to this section shall not be considered as offsetting or limiting the personnel required by the Service to serve the health needs of Indians during and subsequent to such seven-fiscal-year period but shall be in addition to the positions authorized in the previous fiscal year.

(c) The following amounts and positions are authorized, in accordance with the provisions of subsections (a) and (b), for the specific purposes noted:

(1) Patient care (direct and indirect): sums and positions as provided in subsection (e) for fiscal year 1978, $8,500,000 and two hundred and twenty-five positions for fiscal year 1979, and $16,200,000 and three hundred positions for fiscal year 1980.

(2) Field health, excluding dental care (direct and indirect): sums and positions as provided in subsection (e) for fiscal year 1978, $3,350,000 and eighty-five positions for fiscal year 1979, and $5,550,000 and one hundred and thirteen positions for fiscal year 1980.

(3) Dental care (direct and indirect): sums and positions as provided in subsection (e) for fiscal year 1978, $1,500,000 and eighty positions for fiscal year 1979, and $1,500,000 and fifty positions for fiscal year 1980.

(4) Mental health: (A) Community mental health services: sums and positions as provided in subsection (e) for fiscal year 1978, $1,300,000 and thirty positions for fiscal year 1979, and $2,000,000 and thirty positions for fiscal year 1980.

(B) Inpatient mental health services: sums and positions as provided in subsection (e) for fiscal year 1978, $400,000 and fifteen positions for fiscal year 1979, and $600,000 and fifteen positions for fiscal year 1980.

(C) Model dormitory mental health services: sums and positions as provided in subsection (e) for fiscal year 1978, $1,250,000 and fifty positions for fiscal year 1979, and $1,875,000 and fifty positions for fiscal year 1980.

(D) Therapeutic and residential treatment centers: sums and positions as provided in subsection (e) for fiscal year 1978, $300,000 and ten positions for fiscal year 1979, and $400,000 and five positions for fiscal year 1980.

(E) Training of traditional Indian practitioners in mental health: sums as provided in subsection (e) for fiscal year 1978, $150,000 for fiscal year 1979, and $200,000 for fiscal year 1980.

(5) Treatment and control of alcoholism among Indians: $4,000,000 for fiscal year 1978 $9,000,000 for fiscal year 1979, and $9,200,000 for fiscal year 1980.

(6) Maintenance and repair (direct and indirect): sums and positions as provided in subsection (e) for fiscal year 1978, $3,000,000 and twenty positions for fiscal year 1979, and $4,000,000 and thirty positions for fiscal year 1980.

(7) For fiscal years 1981, 1982, 1983, and 1984 there are authorized to be appropriated for the items referred to in the preceding paragraphs such sums as may be specifically authorized by an Act enacted after this Act. For such fiscal years, positions are authorized for such items (other than the items referred to in paragraphs (4)(E) and (5)) as may be specified in an Act enacted after the date of the enactment of this Act.

(d) The Secretary, acting through the Service, shall expend directly or by contract not less than 1 per centum of the funds appropriated under the authorizations in each of the clauses (1) through (5) of subsection (c) for research in each of the areas of Indian health care for which such funds are authorized to be appropriated.

(e) For fiscal year 1978, the Secretary is authorized to apportion not to exceed a total of $10,025,000 and 425 positions for the programs enumerated in clauses (c) (1) through (4) and (c)(6) of this section.

TITLE III—HEALTH FACILITIES

CONSTRUCTION AND RENOVATION OF SERVICE FACILITIES

SEC. 301. (a) The Secretary, acting through the Service, is authorized to expend over the seven-fiscal-year period beginning after the date of the enactment of this Act the sums authorized by subsection (b) for the construction and renovation of hospitals, health centers, health stations, and other facilities of the Service.

(b) The following amounts are authorized to be appropriated for purposes of subsection (a):

(1) Hospitals: $67,180,000 for fiscal year 1978, $73,256,000 for fiscal year 1979, and $49,742,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated for hospitals such sums as may be specifically authorized by an Act enacted after this Act.

(2) Health centers and health stations: $6,960,000 for fiscal year 1978, $6,226,000 for fiscal year 1979, and $3,720,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated for health centers and health stations such sums as may be specifically authorized by an Act enacted after this Act.

(3) Staff housing: "$1,242,000 for fiscal year 1978, $21,725,000 for fiscal year 1979, and $4,116,000 for fiscal year 1980. For fiscal years 1981, 1982, 1983, and 1984, there are authorized to be appropriated for staff housing such sums as may be specifically authorized by an Act enacted after this Act.

(c) Prior to the expenditure of, or the making of any firm commitment to expend, any funds authorized in subsection (a), the Secretary, acting through the Service, shall—

(1) consult with an Indian tribe to be significantly affected by any such expenditure for the purpose of determining and, wherever practicable, honoring tribal preferences concerning the size, location, type, and other characteristics of any facility on which such expenditure is to be made; and

(2) be assured that, wherever practicable, such facility, not later than one year after its construction or renovation, shall meet the standards of the Joint Committee on Accreditation of Hospitals.

CONSTRUCTION OF SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES

SEC. 302. (a) During the seven-fiscal-year period beginning after the date of the enactment of this Act, the Secretary is authorized to expend under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the sums authorized under subsection (b) to supply unmet needs for safe water and sanitary waste disposal facilities in existing and new Indian homes and communities.

(b) For expenditures of the Secretary authorized by subsection (a) for facilities in existing Indian homes and communities there are authorized to be appropriated $43,000,000 for fiscal year 1978, $30,000,000 for fiscal year 1979, and $30,000,000 for fiscal year 1980. For expenditures of the Secretary authorized by subsection (a) for facilities in new Indian homes and communities there are authorized to be appropriated such sums as may be necessary for fiscal years 1978, 1979, and 1980. For fiscal years 1981, 1982, 1983, and 1984 for expenditures authorized by subsection (a) there are authorized to be appropriated such sums as may be specifically authorized in an Act enacted after this Act.

(c) Former and currently federally recognized Indian tribes in the State of New York shall be eligible for assistance under this section.

PREFERENCE TO INDIANS AND INDIAN FIRMS

SEC. 303. (a) The Secretary, acting through the Service, may utilize the negotiating authority of the Act of June 25, 1910 (25 U.S.C. 47), to give preference to any Indian or to any enterprise, partnership, corporation, or other types of business organization owned and controlled by an Indian or Indians including former or currently federally recognized Indian tribes in the State of New York (hereinafter referred to as an "Indian firm") in the construction and renovation of Service facilities pursuant to section 301 and in the construction of safe water and sanitary waste disposal facilities pursuant to section 302. Such preference may be accorded by the Secretary unless he finds, pursuant to rules and regulations promulgated by him, that the project or function to be contracted for will not be satisfactory or such project or function cannot be properly completed or maintained under the proposed contract. The Secretary, in arriving at his finding, shall consider whether the Indian or Indian firm will be deficient with respect to (1) ownership and control by Indians, (2) equipment, (3) bookkeeping and accounting procedures, (4) substantive knowledge of the project or function to be contracted for, (5) adequately trained personnel, or (6) other necessary components of contract performance.

(b) For the purpose of implementing the provisions of this title, the Secretary shall assure that the rates of pay for personnel engaged in the construction or renovation of facilities constructed or renovated in whole or in part by funds made available pursuant to this title are not less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1931 (40 U.S.C. 276a–276a–5, known as the Davis-Bacon Act).

SOBOBA SANITATION FACILITIES

SEC. 304. The Act of December 17, 1970 (84 Stat. 1465), is hereby amended by adding the following new section 9 at the end thereof:

SEC. 9. Nothing in this Act shall preclude the Soboba Band of Mission Indians and the Soboba Indian Reservation from being provided with sanitation facilities and services under the authority of section 7 of the Act of August 5, 1954 (68 Stat. 674), as amended by the Act of July 31, 1959 (73 Stat. 267).".

TITLE IV—ACCESS TO HEALTH SERVICES

ELIGIBILITY OF INDIAN HEALTH SERVICE FACILITIES UNDER MEDICARE PROGRAM

SEC. 401. (a) Sections 1814(c) and 1835(d) of the Social Security Act are each amended by striking out "No payment" and inserting in lieu thereof "Subject to section 1880, no payment".

(b) Part C of title XVIII of such Act is amended by adding at the end thereof the following new section:

"INDIAN HEALTH SERVICE FACILITIES

"SEC. 1880. (a) A hospital or skilled nursing facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act), shall be eligible for payments under this title, notwithstanding sections 1814(c) and 1835(d), if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this title.

"(b) Notwithstanding subsection (a), a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the conditions and requirements of this title which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after the date of the enactment of this section an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this title), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted

"(c) Notwithstanding any other provision of this title, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this title. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

"(d) The annual report of the Secretary which is required by section 701 of the Indian Health Care Improvement Act shall include (along with the matters specified in section 403 of such Act) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this title and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) and otherwise) toward the achievement of such compliance.".

(c) Any payments received for services provided to beneficiaries hereunder shall not be considered in determining appropriations for health care and services to Indians.

(d) Nothing herein authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.

SERVICE PROVIDED TO MEDICAID ELIGIBLE INDIANS

SEC. 402. (a) Title XIX of the Social Security Act is amended by adding at the end thereof the following new section:

"INDIAN HEALTH SERVICE FACILITIES

"SEC. 1911. (a) A facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this title.

"(b) Notwithstanding subsection (a), a facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility) which does not meet all of the conditions and requirements of this title which are applicable generally to such facility, but which submits to the Secretary within six months after the date of the enactment of this section an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this title), without regard to the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.".

(b) The Secretary is authorized to enter into agreements with the appropriate State agency for the purpose of reimbursing such agency for health care and services provided in Service facilities to Indians who are eligible for medical assistance under title XIX of the Social Security Act, as amended.

(c) Notwithstanding any other provision of law, payments to which any facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility) is entitled under a State plan approved under title XIX of the Social Security Act by reason of section 1911 of such Act shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of such title. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the health

facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) Any payments received for services provided recipients hereunder shall not be considered in determining appropriations for the provision of health care and services to Indians.

(e) Section 1905(b) of the Social Security Act is amended by inserting at the end thereof the following: "Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).".

REPORT

SEC. 403. The Secretary shall include in his annual report required by section 701 an accounting on the amount and use of funds made available to the Service pursuant to this title as a result of reimbursements through title XVIII and XIX of the Social Security Act, as amended.

TITLE V—HEALTH SERVICES FOR URBAN INDIANS

PURPOSE

SEC. 501. The purpose of this title is to encourage the establishment of programs in urban areas to make health services more accessible to the urban Indian population.

CONTRACTS WITH URBAN INDIAN ORGANIZATIONS

SEC. 502. The Secretary, acting through the Service, shall enter into contracts with urban Indian organizations to assist such organizations to establish and administer, in the urban centers in which such organizations are situated, programs which meet the requirements set forth in sections 503 and 504.

CONTRACT ELIGIBILITY

SEC. 503. (a) The Secretary, acting through the Service, shall place such conditions as he deems necessary to effect the purpose of this title in any contract which he makes with any urban Indian organization pursuant to this title. Such conditions shall include, but are not limited to, requirements that the organization successfully undertake the following activities:

(1) determine the population of urban Indians which are or could be recipients of health referral or care services;

(2) identify all public and private health service resources within the urban center in which the organization is situated which are or may be available to urban Indians;

(3) assist such resources in providing service to such urban Indians;

(4) assist such urban Indians in becoming familiar with and utilizing such resources;

(5) provide basic health education to such urban Indians;

(6) establish and implement manpower training programs to accomplish the referral and education tasks set forth in clauses (3) through (5) of this subsection;

(7) identify gaps between unmet health needs of urban Indians and the resources available to meet such needs;

(8) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

(9) where necessary, provide or contract for health care services to urban Indians.

(b) The Secretary, acting through the Service, shall by regulation prescribe the criteria for selecting urban Indian organizations with which to contract pursuant to this title. Such criteria shall, among other factors, take into consideration:

(1) the extent of the unmet health care needs of urban Indians in the urban center involved;

(2) the size of the urban Indian population which is to receive assistance;

(3) the relative accessibility which such population has to health care services in such urban center;

(4) the extent, if any, to which the activities set forth in subsection (a) would duplicate any previous or current public or private health services project funded by another source in such urban center;

(5) the appropriateness and likely effectiveness of the activities set forth in subsection (a) in such urban center;

(6) the existence of an urban Indian organization capable of performing the activities set forth in subsection (a) and of entering into a contract with the Secretary pursuant to this title; and

(7) the extent of existing or likely future participation in the activities set forth in subsection (a) by approprate health and health-related Federal, State, local, and other resource agencies.

OTHER CONTRACT REQUIREMENTS

SEC. 504. (a) Contracts with urban Indian organizations pursuant to this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935 (48 Stat. 793), as amended.

(b) Payments under any contracts pursuant to this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this title.

(c) Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract made by him with such organization pursuant to this title as necessary to carry out the purposes of this title: *Provided, however,* That whenever an urban Indian organization requests retrocession of the Secretary for any contract entered into pursuant to this title, such retrocession shall become effective upon a date specified by the Secretary not more than one hundred and twenty days from the date of the request by the organization or at such later date as may be mutually agreed to by the Secretary and the organization.

(d) In connection with any contract made pursuant to this title, the Secretary may permit an urban Indian organization to utilize, in carrying out such contract, existing facilities owned by the Federal Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(e) Contracts with urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts by such organizations.

REPORTS AND RECORDS

SEC. 505. For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract under this title, such organization shall submit to the Secretary a report including information gathered pursuant to section 503(a) (7) and (8), information on activities conducted by the organization pursuant to the contract, an accounting of the amounts and purposes for which Federal funds were expended, and such other information as the Secretary may request. The reports and records of the urban Indian organization with respect to such contract shall be subject to audit by the Secretary and the Comptroller General of the United States.

AUTHORIZATIONS

SEC. 506. There are authorized to be appropriated for the purpose of this title: $5,000,000 for fiscal year 1978; $10,000,000 for fiscal year 1979; and $15,000,000 for fiscal year 1980.

REVIEW OF PROGRAM

SEC. 507. Within six months after the end of fiscal year 1979, the Secretary, acting through the Service and with the assistance of the urban Indian organizations which have entered into contracts pursuant to this title, shall review the program established under this title and submit to the Congress his assessment thereof and recommendations for any further legislative efforts he deems necessary to meet the purpose of this title.

RURAL HEALTH PROJECTS

SEC. 508. Not to exceed 1 per centum of the amounts authorized by section 506 shall be available for not to exceed two pilot projects providing outreach services to eligible Indians residing in rural communities near Indian reservations.

TITLE VI—AMERICAN INDIAN SCHOOL OF MEDICINE; FEASIBILITY STUDY

FEASIBILITY STUDY

SEC. 601. The Secretary, in consultation with Indian tribes and appropriate Indian organizations, shall conduct a study to determine the need for, and the feasibility of, establishing a school of medicine to train Indians to provide health services for Indians. Within one year of the date of the enactment of this Act the Secretary shall complete such study and shall report to the Congress findings and recommendations based on such study.

TITLE VII—MISCELLANEOUS

REPORTS

SEC. 701. The Secretary shall report annually to the President and the Congress on progress made in effecting the purposes of this Act. Within three months after the end of fiscal year 1979, the Secretary shall review expenditures and progress made under this Act and make recommendations to the Congress concerning any additional authorizations for fiscal years 1981 through 1984 for programs authorized under this Act which he deems appropriate. In the event the Congress enacts legislation authorizing appropriations for programs under this Act for fiscal years 1981 through 1984, within three months after the end of fiscal year 1983, the Secretary shall review programs established or assisted pursuant to this Act and shall submit to the Congress his assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and insure a health status for Indians, which are at a parity with the health services available to, and the health status, of the general population.

REGULATIONS

SEC. 702. (a)(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this Act.

(2) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(3) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this Act.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to this Act: *Provided,* That, prior to any revision of or amendment to such rules or regulations, the Secretary shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revision or amendment in the Federal Register not less than sixty days prior to the effective

date of such revision or amendment in order to provide adequate notice to, and receive comments from, other interested parties.

PLAN OF IMPLEMENTATION

SEC. 703. Within two hundred and forty days after enactment of this Act, a plan will be prepared by the Secretary and will be submitted to the Congress. The plan will explain the manner and schedule (including a schedule of appropriation requests), by title and section, by which the Secretary will implement the provisions of this Act.

LEASES WITH INDIAN TRIBES

SEC. 704. Notwithstanding any other provision of law, the Secretary is authorized, in carrying out the purposes of this Act, to enter into leases with Indian tribes for periods not in excess of twenty years.

AVAILABILITY OF FUNDS

SEC. 705. The funds appropriated pursuant to this Act shall remain available until expended.

Mr. MEEDS (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. MEEDS. Mr. Speaker, on July 30, the full House, by a vote of 310 to 9, passed the Indian Health Care Improvement Act. The purpose of that bill is to bring the health status of Indians up to par with the rest of our Nation's population. The bill attempts to achieve this by providing: Broadened scholarship assistance to those interested in serving in the Indian Health Service with priority to Indian applicants; funds for additional health services and for construction of new health facilities; funds for urban Indian health centers; a feasibility study for an American Indian School of Medicine, and by allowing Indian citizens to take full advantage of their medicare and medicaid eligibility. The total cost of the House bill was around $470 million over 3 fiscal years.

The Senate had passed a much more liberal bill calling for the expenditure of $1.8 billion over 7 fiscal years. By a vote of 78 to 0, the Senate has decided to accept the House amendments, with 19 further amendments. Sixteen of those amendments are purely technical and/or clarifying. Three of the amendments are more substantive. The first amendment amends the definition of Indian tribe as it relates to Alaska Natives so that the definition will be in line with that used in the Indian Self-Determination and Educational Assistance Act of 1974. The second major amendment makes certain that osteopaths and veterinarian students are included in the scholarship provision of the bill. The third amendment increases the funding level for programs in title II to $10 million for fiscal 1978, rather than the $5 million limitation established by the House bill.

All of these amendments have been cleared with the three House committees which worked on this bill, and I know of no congressional opposition to their adoption.

Mr. RHODES. Mr. Speaker, I rise to support House acceptance of amendments made by the Senate to S. 522, in amending the House-passed amendments.

The chairman of the Subcommittee on Indian Affairs has explained them in detail to the House. He has pointed out that most are minor and technical. I would like to remind my colleagues of the major changes made by the House in the original Senate bill.

When the bill was referred to the House, it provided for a grand total of $1,609,987,000 for 7 fiscal years beginning in fiscal year 1977. These funds were for several different programs contained in the six titles: Indian health manpower; Indian health services; Indian health facilities instruction; Indian medicare-medicaid; urban Indian health; and miscellaneous provisions.

Three committees of the House, Interior and Insular Affairs, Ways and Means, and Interstate and Foreign Commerce, had an opportunity to consider the bill and recommend changes. When these committees had all reported to the House, the bill was much more acceptable to all concerned.

The major amendments of the House to the bill were:

First. Reduction of the 7-year, $1.6 billion authorization to a 3-year, $475 million authorization. This represents a reduction, by the House, of $1,134,987,000 from the Senate bill. The House amendment further provided that funds for the 4 additional years of the programs of the bill would be subject to further authorizing legislation.

Second. The funds allocated in the bill for construction of Indian health service hospitals were redistributed to permit a more realistic implementation of that activity.

Third. The implementation date for the programs in the bill was changed from fiscal year 1977 to fiscal year 1978.

Fourth. The program providing for scholarships for Indian health professionals was changed significantly at the recommendation of the Interstate and Foreign Commerce Committee to make that program more realistic.

Many other amendments were adopted which have made the bill and its programs more acceptable to a broad range of interests.

H.R. 2525 passed the House by a vote of 310 to 9 on July 30, 1976. This is solid proof of the broad support of the bill. I urge that the House concur in the amendments of the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MEEDS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendment to the House amendment to S. 522.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

SENATE AMENDMENT TO H.R. 14846, MILITARY CONSTRUCTION AUTHORIZATION

Mr. ICHORD. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 14846) to authorize certain construction at military installations, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 42, after line 7, insert:

BASE REALIGNMENTS

SEC. 612. (a) Notwithstanding any other provision of law, no funds authorized to be appropriated in this Act may be used to effect or implement—

(1) the closure of any military installation;

(2) any reduction in the authorized level of civilian personnel at any military installation by more than one thousand civilian personnel or 50 per centum of the level of such personnel authorized as of March 1, 1976, or the end of the fiscal year immediately preceding the fiscal year in which the Secretary of Defense or the Secretary of the military department concerned notifies the Congress that such installation is a candidate for closure or significant reduction, whichever occurs later; or

(3) any construction, conversion, or rehabilitation at any other military installation (whether or not such installation is a military installation as defined in subsection (b)) which will or may be required as a result of the relocation of civilian personnel to such other installation by reason of any closure or reduction to which this section applies;

unless—

(A) the Secretary of Defense or the Secretary of the military department concerned notifies the Congress in writing that such military installation is a candidate for closure or significant reduction; and then

(B) the Secretary of Defense or the Secretary of the military department concerned complies with all terms, conditions and requirements of the National Environmental Policy Act; and then

(C) the Secretary of Defense or the Secretary of the military department concerned submits to the Committees on Armed Services of the House of Representatives and the Senate his final decision to close or significantly reduce such installation and a detailed justification for his decision, together with the estimated fiscal, local economic, budgetary, environmental, strategic, and operational consequences of the proposed closure or reduction; and then

(D) a period of at least sixty days expires following the date on which the justification referred to in clause (C) has been submitted to such committees, during which period the Secretary of Defense or the Secretary of the military departments concerned may take no irrevocable action to implement the decision.

(b) For purposes of this section, the term "military installation" means any camp, post, station, base, yard, or other facility under the authority of the Department of Defense—

(1) which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam; and

(2) at which not less than five hundred civilian personnel are authorized to be employed.

(c) For purposes of this section, the term "civilian personnel" means direct-hire permanent civilian employees of the Department of Defense.

(d) This section shall not apply to any closure or reduction if the President certifies to Congress that such closure or reduction must be implemented for reasons of any military emergency or national security or if such closure or reduction was publicly announced prior to January 1, 1976.

Page 42, line 9, strike out "SEC. 612." and insert: "SEC. 613."

Page 42, line 17, strike out "SEC. 613." and insert: "SEC. 614."

Page 43, line 4, strike out "SEC. 614." and insert: "SEC. 615."

Mr. ICHORD (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments be considered as read and printed in the RECORD at this point.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

Mr. BAUMAN. Mr. Speaker, reserving the right to object to the main request, could the gentleman from Missouri give us some explanation of this matter.

Mr. ICHORD. If the gentleman will yield, I would state to the gentleman from Maryland that this is the military construction bill for 1977. The Senate acted upon H.R. 14846 and adopted the one major amendment I now ask the House to concur in. The gentleman will remember the House passed this bill on August 24, after the President had vetoed the previous bill. The Senate has apparently come up with an amendment that they agreed on overwhelmingly, and the vote in fact was 82 to 2.

The Senate adopted a new section 612, which differs from the previous version in this respect. The new Senate provision is applicable for 1 year instead of 5 years, as was provided in section 612 in H.R. 12384. The new Senate amendment would require the Department of Defense to withhold taking any irrevocable action on a base closure or major realinement for 60 days after the decision is announced, instead of having to wait for 1 year as was provided in H.R. 12384. That is the difference between the original provision in section 612 in H.R. 12384 and section 612 now before us, adopted by the Senate.

Mr. BAUMAN. Further reserving the right to object Mr. Speaker, this is a substantial reduction in the time the Defense Department would be required to wait before final action on base closings or consolidations. Taken together with the National Environmental Policy Act, how much time will elapse after an announcement before these bases can be closed?

Mr. ICHORD. The gentleman is correct. The original bill required a waiting period of 12 months. This bill requires only 60 days, but I would point out in most cases I would expect by the time they comply with the National Environmental Policy Act and they provide the information to the Congress, that a year would be required.

Mr. COHEN. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Maine.

Mr. COHEN. Mr. Speaker, is it not true under the amendment passed by the Senate, that in essence the Defense Department would have to supply the very information we sought to have given us in section 612 adopted by the House, giving complete justification from the military point of view and the economic point of view?

Mr. ICHORD. Mr. Speaker, the gentleman is correct. They would be required to furnish a detailed justification, together with an estimate of the fiscal, local and economic, budgetary, environmental, strategic, and operational consequences of the proposed closure or reduction.

Mr. COHEN. Mr. Speaker, if the gentleman will yield further, this will go beyond that specified in the NEPA Act?

Mr. ICHORD. That is correct.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

A motion to reconsider was laid upon the table.

AMENDING THE CLAYTON ACT

Mr. RODINO. Mr. Speaker, I move to take from the Speaker's desk the bill (H.R. 8532) to amend the Clayton Act to permit State attorneys general to bring certain antitrust actions, and for other purposes, with a Senate amendment to the House amendment to the Senate amendments thereto, and concur in the Senate amendment to the House amendment to the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendment to the House amendment to the Senate amendments, as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment to the Senate engrossed amendments, insert; That this Act may be cited as the "Hart-Scott-Rodino Antitrust Improvements Act of 1976".

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TITLE I—ANTITRUST CIVIL PROCESS ACT AMENDMENTS

DEFINITIONS

SEC. 101. Section 2 of the Antitrust Civil Process Act (15 U.S.C. 1311) is amended—

(1) in subsection (a)—

(A) by inserting "and" after the semicolon at the end of paragraph (1);

(B) by striking out paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(C) by striking out "(A)" and ", or (B) any unfair trade practice in or affecting such commerce" in paragraph (2) (as redesignated subparagraph (B)).

(2) by amending subsection (c) to read as follows:

"(c) The term 'antitrust investigation' means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust violation or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation;".

(3) by amending subsection (f) to read as follows:

"(f) The term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law;".

(4) by amending subsection (h) to read as follows:

"(h) The term 'custodian' means the custodian or any deputy custodian designated under section 4(a) of this Act.".

CIVIL INVESTIGATIVE DEMANDS

SEC. 102. Section 3 of the Antitrust Civil Process Act (15 U.S.C. 1312) is amended to read as follows:

"CIVIL INVESTIGATIVE DEMANDS

"SEC. 3. (a) Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

"(b) Each such demand shall—

"(1) state the nature of—

"(A) the conduct constituting the alleged antitrust violation, or

"(B) the activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation,

which are under investigation and the provision of law applicable thereto;

"(2) if it is a demand for production of documentary material—

"(A) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified; and

"(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

"(C) identify the custodian to whom such material shall be made available; or

"(3) if it is a demand for answers to written interrogatories—

"(A) propound with definiteness and certainty the written interrogatories to be answered; and

"(B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and

"(C) identify the custodian to whom such answers shall be submitted; or

"(4) if it is a demand for the giving of oral testimony—

"(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(B) identify an antitrust investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

"(c) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers, or testimony would be protected from disclosure under—

"(1) the standards applicable to subpenas or subpenas duces tecum issued by a court of the United States in aid of a grand jury investigation, or

"(2) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this Act.

"(d)(1) Any such demand may be served by any antitrust investigator, or by any United States marshal or deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) Any such demand or any petition filed under section 5 of this Act may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this Act by such person that such court would have if such person were personally within the jurisdiction of such court.

"(e)(1) Service of any such demand or of any petition filed under section 5 of this Act may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity to be served; or

"(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) Service of any such demand or of any petition filed under section 5 of this Act may be made upon any natural person by—

"(A) delivering a duly executed copy thereof to the person to be served; or

"(B) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

"(f) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(g) The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

"(h) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

"(i)(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

"(2) The antitrust investigator or investigators conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken, and any stenographer taking such testimony. The provisions of the Act of March 3, 1913 (Ch. 114, 37 Stat. 731; 15 U.S.C. 30), shall not apply to such examinations.

"(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the antitrust investigator conducting the examination and such person.

"(4) When the testimony is fully transcribed, the antitrust investigator or the officer shall afford the witness (who may be accompanied by counsel a reasonable opportunity to examine the transcript; and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the antitrust investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days of his being afforded a reasonable opportunity to examine it, the officer or the antitrust investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

"(5) The officer shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or antitrust investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

"(6) Upon payment of reasonable charges therefor, the antitrust investigator shall furnish a copy of the transcript to the witness only, except that the Assistant Attorney General in charge of the Antitrust Division may for good cause limit such witness to inspection of the official transcript of his testimony.

"(7)(A) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the antitrust investigator conducting the examination may petition the district court of the United States pursuant to section 5 of this Act for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18, United States Code.

"(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.".

CUSTODIAN OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS

SEC. 103. Section 4 of such Act is amended to read as follows:

"CUSTODIAN OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS

"SEC. 4. (a) The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice shall designate an antitrust investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this Act, and such additional antitrust investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

"(b) Any person, upon whom any demand under section 3 of this Act for the production of documentary material has been duly served, shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to section 5(d) of this Act) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

"(c)(1) The custodian to whom any documentary material, answers to interrogatories, or transcripts of oral testimony are delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return of documentary material, pursuant to this Act.

"(2) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any duly authorized official or employee of the Department of Justice under regulations which shall be promulgated by the Attorney General. Notwithstanding paragraph (3) of this subsection, such material, answers, and transcripts may be used by any such official or employee in connection with the taking of oral testimony pursuant to this Act.

"(3) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent of the person who produced such material, answers, or transcripts, by any individual other that a duly authorized official or employee of the Department of Justice. Nothing in this section is intended to prevent disclosure to either body of the Congress or to any authorized committee or subcommittee thereof.

"(4) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe, (A) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by any duly authorized representative of such person, and (B) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or his counsel.

"(d)(1) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts of official use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

"(2) The custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to the Federal Trade Commission, in response to a written request, copies of such material, answers, or transcripts for use in connection with an investigation or proceeding under the Commission's jurisdiction. Such material, answers, or transcripts may only be used by the Commission in such manner and subject to such conditions as apply to the Department of Justice under this Act.

"(e) If any documentary material has been produced in the course of any antitrust investigation by any person pursuant to a demand under this Act and—

"(1) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal administrative or regulatory agency involving such material, has been completed, or

"(2) no case or proceeding, in which such material may be used, has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) which has not passed into the control of any court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

"(f) In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced under any demand issued pursuant to this Act, or the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian of such material, answers, or transcripts, and (2) transmit in writing to the person who produced such material, answers, or testimony notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have with regard to such material, answers, or transcripts all duties and responsibilities imposed by this Act upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.".

JUDICIAL PROCEEDINGS

SEC. 104. (a) Secton 5(a) of such Act is amended by striking out ", except that if" and all that follows down through the end of the sentence and inserting in lieu thereof a period.

(b) The first sentence of subsection (b) of section 5 of such Act is amended to read as follows: "Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as many be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such antitrust investigator a petition for an order of such court modifying or setting aside such demand.".

(c) The second sentence of subsection (b) of section 5 is amended by striking out the period at the end thereof and by inserting in lieu thereof: ", except that such person shall comply with any portions of the demand not sought to be modified or set aside.".

(d) Subsection (c) of section 5 is amended by striking out "delivered" and inserting in lieu thereof "or answers to interrogatories delivered, or transcripts of oral testimony given".

(e) Section 5 is further amended by adding at the end thereof the following:

"(f) Any documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to any demand issued under this Act shall be exempt from disclosure under section 552 of title 5, United States Code.".

CRIMINAL PENALTY

SEC. 105. The third paragraph of section 1505 of title 18, United States Code, is amended to read as follows:

"Whoever, with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act, willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or".

EFFECTIVE DATE

SEC. 106. The amendments to the Antitrust Civil Process Act and to section 1505 of title 18, United States Code, made by this title shall take effect on the date of enactment of this Act, except section 3(i)(8) of the Antitrust Civil Process Act (as amended by this Act) shall take effect on the later of (1) the date of enactment of this Act, or (2) October 1, 1976. Any such amendment which provides for the production of documentary material, answers to interrogatories, or oral testimony shall apply to any act or practice without regard to the date on which it occurred.

TITLE II—PREMERGER NOTIFICATION

NOTIFICATION AND WAITING PERIOD

SEC. 201. The Clayton Act (15 U.S.C. 12 et seq.) is amended by inserting immediately after section 7 of such Act the following new section:

"SEC. 7A. (a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

"(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

"(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more;

"(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more; or

"(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

"(3) as a result of such acquisition, the acquiring person would hold—

"(A) 15 per centum or more of the voting securities or assets of the acquired person, or

"(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

"(b)(1) The waiting period required under subsection (a) shall—

"(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the 'Assistant Attorney General') of—

"(i) the completed notification required under subsection (a), or

"(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance, from both persons, or, in the case of a tender offer, the acquiring person; and

"(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

"(2) The Federal Trade Commission and the Assistant Attorney General may, in in-

dividual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Reigster a notice that neither intends to take any action within such period with respect to such acquisition.

"(3) As used in this section—

"(A) The term 'voting securities' means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

"(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

"(c) The following classes of transactions are exempt from the requirements of this section—

"(1) acquisitions of goods or realty transferred in the ordinary course of business;

"(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

"(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition,

"(4) transfers to or from a Federal agency or a State or political subdivision thereof;

"(5) transactions specifically exempted from the antitrust laws by Federal statute;

"(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

"(7) transactions which require agency approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842);

"(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), section 403 or 408(e) of the National Housing Act (12 U.S.C. 1726 and 1730a), or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

"(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

"(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer; and

"(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, or (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

"(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

"(d) The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, United States Code, consistent with the purposes of this section—

"(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the atitrust laws; and

"(2) may—

"(A) define the terms used in this section;

"(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

"(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

"(e)(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

"(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2).

"(f) If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 7 of this Act or section 5 of the Federal Trade Commission Act, or an action is filed by the United States, alleging that a proposed acquisition violates such section 7 or section 1 or 2 of the Sherman Act, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies to the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection—

"(A) upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes; and

"(B) the motion for a preliminary injunction shall be set down for hearing by the district judge so designated at the earliest practicable time, shall take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, United States Code, and shall be in every way expedited.

"(g)(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

"(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) and as may be extended under subsection (e)(2), the United States district court—

"(A) may order compliance;

"(B) shall extend the waiting period specified in subsection (b)(1) and as may have been extended under subsection (e)(2) until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

"(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

"(h) Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

"(i)(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

"(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act, the Federal Trade Commission Act, or any other provision of law.

"(j) Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.".

EFFECTIVE DATES

SEC. 202. (a) The amendment made by section 201 of this Act shall take effect 150 days after the date of enactment of this Act, except that subsection (d) of section 7A of the Clayton Act (as added by section 201 of this Act) shall take effect on the date of enactment of this Act.

TITLE III—PARENS PATRIAE

PARENS PATRIAE ACTIONS BY STATE ATTORNEYS GENERAL

SEC. 301. The Clayton Act is amended by inserting immediately following section 4B the following new sections:

"ACTIONS BY STATE ATTORNEYS GENERAL

"SEC. 4C. (a)(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of the Sherman Act. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

"(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee.

"(b)(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

"(2) Any person on whose behalf an action is brought under subsection (a)(1) may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

"(3) The final judgment in an action under subsection (a)(1) shall be res judicata as to any claim under section 4 of this Act by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

"(c) An action under subsection (a)(1) shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

"(d) In any action under subsection (a)—

"(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

"(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

"MEASUREMENT OF DAMAGES

"SEC. 4D. In any action under section 4C (a)(1), in which there has been a determination that a defendant agreed to fix prices in violation of the Sherman Act, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

"DISTRIBUTION OF DAMAGES

"SEC. 4E. Monetary relief recovered in an action under section 4C(a)(1) shall—

"(1) be distributed in such manner as the district court in its discretion may authorize; or

"(2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

"ACTIONS BY ATTORNEY GENERAL OF THE UNITED STATES

"SEC. 4F. (a) Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

"(b) To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

"DEFINITIONS

"SEC. 4G. For the purposes of sections 4C, 4D, 4E, and 4F of this Act:

"(1) The term 'State attorney general' means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 4C of this Act, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

"(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

"(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney's fee to a prevailing plaintiff is determined by the court under section 4C (d)(1).

"(2) The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

"(3) The term 'natural persons' does not include proprietorships or partnerships.

"APPLICABILITY OF PARENS PATRIAE ACTIONS

"SEC. 4H. Sections 4C, 4D, 4E, 4F, and 4G shall apply in any State, unless such State provides by law for its nonapplicability in such State.".

CONFORMING AMENDMENTS

SEC. 302. The Clayton Act (15 U.S.C. 12 et seq.), is amended—

(1) in section 4B (15 U.S.C. 15b), by striking out "sections 4 or 4A" and inserting in lieu thereof "section 4, 4A, or 4C";

(2) in section 5(1) (15 U.S.C. 16(1)), by striking out "private right of action" and inserting in lieu thereof "private or State right of action"; and by striking out "section 4" and inserting in lieu thereof "section 4 or 4C"; and

(3) by adding at the end of section 16 (15 U.S.C. 26) the following: "In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.".

CONSOLIDATION

SEC. 303. Section 1407 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"(h) Notwithstanding the provisions of section 1404 or subsection (f) of this section, the judicial panel on multidistrict litigation may consolidate and transfer with or without the consent of the parties, for both pretrial purposes and for trial, any action brought under section 4C of the Clayton Act.

EFFECTIVE DATE

SEC. 304. The amendments to the Clayton Act made by section 301 of this Act shall not apply to any injury sustained prior to the date of enactment of this Act.

SHORT TITLES FOR CERTAIN ANTITRUST LAWS

SEC. 305. (a) The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), is amended by adding immediately after the enacting clause the following: "That this Act may be cited as the 'Sherman Act'.".

(b) The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), is amended by—

(1) inserting "(a)" after "That" in the first section; and

(2) adding at the end of the first section the following new subsection:

"(b) This Act may be cited as the 'Clayton Act'.".

(c) The Act entitled "An Act to promote export trade, and for other purposes", approved April 10, 1918 (40 Stat. 516; 15 U.S.C. 61 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 6. This Act may be cited as the 'Webb-Pomerene Act'.".

(d) The Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (28 Stat. 509; 15 U.S.C. 8 et seq.), is amended by adding at the end thereof the following new section:

"SEC. 78. Sections 73, 74, 75, 76, and 77 of this Act may be cited as the 'Wilson Tariff Act'.".

Mr. RODINO (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the Senate amendment be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

PARLIAMENTARY INQUIRIES

Mr. McCLORY. Mr. Speaker, I have several parlimentary inquiries.

The SPEAKER. The gentleman will state them.

Mr. McCLORY. Mr. Speaker, is the motion of the gentleman from New Jersey privileged because the stage of disagreement has been reached?

The SPEAKER. The gentleman is correct.

Mr. McCLORY. Mr. Speaker, my next parliamentary inquiry is, was the stage of disagreement reached when the House insisted on its amendment to the first Senate amendment and requested a conference thereon, even though the Senate had not previously or has not subsequently voted its disagreement?

The SPEAKER. That is correct.

Mr. McCLORY. Mr. Speaker, my third parliamentary inquiry is this: Is the House still in disagreement even though it has not acted upon the Senate amendment now before the House?

The SPEAKER. The stage of disagreement is still in effect.

Mr. McCLORY. I thank the Speaker.

The SPEAKER. Is there objection to

the request of the gentleman from New Jersey?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, the gentleman from Maryland recalls several weeks ago there was a request made to combine for the purpose of conference consideration a number of bills in the area of parens patriae and other related legislation.

Does the motion before us, offered by the gentleman from New Jersey, indicate there will be no conference and the only chance we will have to act is by an acceptance or rejection of the other body's action in a highly complicated legal area?

Mr. RODINO. Mr. Speaker, if the gentleman will yield, that is essentially correct at this point. But the differences are minimal and the action that was taken was action to facilitate House participation. After the House had initially consolidated this measure and sought a conference, the House then informally tried—after no conference was forthcoming—to reconcile some of the differences that existed and we have reached this posture now where there is this agreement. In an effort to try to move this legislation, that is the motion that has been made by the gentleman from New Jersey.

Mr. McCLORY. Mr. Speaker, will the gentleman from Maryland yield on his reservation of objection?

Mr. BAUMAN. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, the gentleman may recall that I suggested in the Committee on Rules and on the floor, although it went through without debate, that we agree to combine the three pieces of legislation into one and then since the Senate was not able to get a conference, I acquiesced with the gentleman from New Jersey (Mr. RODINO) to convene this sort of private unofficial conference. We never did get together with the Members of the other body. We did meet, however, as Members of the House and we did put together what we thought reflected the House position. But there are two matters with which the Members did not agree and the Members on the other side asserted that there was agreement and we tried to put the record straight and establish that there was no agreement on two key issues. This is not a compromise, and in due course I would hope we can correct this measure and put it in the form that the House Members will agree to and which reflects the original action of the House with respect to parens patriae.

Mr. BAUMAN. Mr. Speaker, further reserving the right to object, it seems to me this is a very poor procedure. The least the House could expect is to have conferees appointed and have the matter considered in due course by the House, so that we are not put in the position of accepting all or nothing in the form of the motion the gentleman from New Jersey has offered.

Mr. RODINO. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from New Jersey.

Mr. RODINO. Mr. Speaker, I might point out to the gentleman that the House has always been ready to proceed in that manner. Conferees were in fact appointed. Unfortunately, there were efforts on the other side to filibuster the consideration of the move to go to conference, and as a result it became impossible to do other than what we have done. Remember, this measure already has been before the House in a consolidated version. The parens patriae came up alone. The CID bill, which is strongly supported by the administration, has been before us. The pre-merger notification bill, which is included in this bill, has already been supported by the administration.

I might say that with regard to the parens patriae title, where there did occur some differences, I think we will be able to convincingly show during the course of discussion on this matter that the House has prevailed in 90 percent of the areas where there might have been some kind of difference.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Illinois.

Mr. McCLORY I would like to point this out: That the purpose of this private arrangement was to circumvent a filibuster that was being carried on in the other body. I have the written assurance from the Senator from Alabama, Senator ALLEN, who staged the filibuster, as well as Senator HRUSKA and Senator THURMOND, that after the House works its will by putting the measure back in the form in which the House acted upon the parens patriae section of this measure, they will then not object and they will urge an immediate or early vote on the matter over there.

So, there would not be any delay as a result of our carrying out what is the will of the House with respect to these two issues, one of which relates to contingency fees and the other treble damages.

Mr. BAUMAN. I thank both the gentlemen for their explanations. I would say, however, that in circumventing the political difficulties on this legislation, we are also circumventing the rights of the Members of the House to consider in an orderly manner the separate pieces of legislation on their own merits. To that degree I am still disappointed—as I am often disappointed with things which happen here—but more so in this instance.

Mr. McCLORY. If the previous question is voted down on the privileged motion of the gentleman from New Jersey, the House will then have a full opportunity to vote on the subject of these two amendments.

Mr. BAUMAN. I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. RODINO moves that the House concur in the Senate amendment to the House amendment to the Senate amendments.

The SPEAKER. The gentleman from New Jersey is recognized.

Mr. RODINO. Mr. Speaker, I allot myself such time as I may consume.

Mr. Speaker, I would like to point out that the measure that we consider today is a measure that comes up under a privileged motion—it is an important measure. It is an antitrust measure, a law enforcement measure that I believe the House has already expressed its will on, in certain respects, four different times. Four times in 1976 parens patriae or CID or premerger legislation has reached the floor, and each time the House has passed these bills.

The parliamentary situation that we are confronted with, however, is such that the House, unless it takes this action and supports the motion on the previous question, will in effect realistically kill this legislation. And this, my friends, is legislation sorely needed if we are to enforce our antitrust laws. It is no secret that the President of the United States, in his state of the Union message and in further messages to the Congress of the United States, has told repeatedly of the need to enforce our antitrust laws.

The President also recommended certain legislation.

Certain tools which are needed by the Justice Department are included in this measure: the CID bill, which provides necessary tools for the Justice Department to be able to do their investigative work so that they might better be able to enforce the antitrust laws; and there is included the premerger notification bill.

The administration has spoken strongly in support of this. The Assistant Attorney General, who served this administration with distinction, Mr. Thomas Kauper, appeared on behalf of the administration when we first considered the parens patriae bill, and strongly recommended parens patriae as a tool to effectively deter those who might violate the antitrust laws. He stated it would help deter those who would enrich themselves at the expense of the consumers, at the expense of the citizens who would be unable to proceed against the great corporate interests that might violate the antitrust laws, corporations that enrich themselves to the tune of hundreds of of millions of dollars.

Let me address some specifics regarding the bill.

I would like to briefly state that title I is the Antitrust Civil Process Act amendments, which gives the Justice Department's Antitrust Division the same investigative powers that more than 40 other Federal law enforcement agencies currently enjoy.

Right now the Antitrust Division can only get documents from corporations that are suspected violators. It cannot get oral testimony from natural persons. It cannot even get evidence from the victims of possible violations, and it cannot get anything in a premerger investigation.

This bill gives the Antitrust Division the long-needed investigative tools.

But I might point out that it also sets careful safeguards, a full right to counsel and judicial review, to protect the persons being investigated.

Title II of the bill is the Premerger Notification Act. It covers very large mergers that might illegally wipe out competitors and create monopolies. All of us have expressed ourselves against monopolies. It gives the Government 30 to 50 days to investigate and challenge these mergers before they are consummated, before the firms are hopelessly and irrevocably scrambled together.

So the bill actually avoids these long and costly and generally futile attempts to unscramble the illegal mergers after the damage has been done. That is why it is so necessary.

I might state also that the administration supports this measure.

Title III, the Parens Patriae Act permits State attorneys general to recover damages on behalf of consumers injured by Sherman Act violations. In price fixing cases, damages can be proved in the aggregate.

The bill would compensate the victims of antitrust violations, and prevent what we consider to be and what all of us must agree is unjust enrichment. And it deters, hopefully, future violations.

Let me emphasize one thing. This bill creates no new antitrust liability. It merely provides for an effective procedural mechanism for enforcing our existing antitrust laws. And moreover, the parens patriae bill is prospective only, in operation. It covers violations occurring after the date of enactment and does not reach injuries that occurred in the past.

Let me point out to the House the areas where the House prevailed. I am not going to go into every single area, but as I stated initially, the House prevailed in 90 percent of the areas that might have shown some differences. There were more than 40 significant differences between the Senate bill and the House bill, and the simple fact is that the House view is now reflected in more than 90 percent of these issues. That is an overwhelming preponderance in favor of the House.

Therefore, I feel, as one who wants to support the House position, and as one who wants to assure that this House will be able to provide the kind of legislation for the signature of the President so that the antitrust laws may be effectively enforced, that we ought to adopt this measure. Unless we do so at this time, we are abandoning the responsibility that is ours, and we are certainly not giving the President the legislation that he believed was necessary. We feel that those provisions that he suggested are, with only some minor differences, included in this measure.

I would like to point out, Mr. Speaker, that H.R. 8532 is free enterprise legislation. It seeks to maintain vigorous competition throughout our entire national economy.

I believe H.R. 8532 is also States rights legislation, and I think it can be considered as that. It recognizes that the States are closer to the people, and it returns power to the States by delegating antitrust enforcement power to the State attorneys general.

H.R. 8532 is law enforcement legislation. It will enable both the Federal Government and the State governments to crack down on violators of the existing antitrust laws, especially those who fix prices. Companies that are violating these laws are just as much a menace to society as criminals who rob and take money at the point of a gun.

H.R. 8532 is small business legislation. It means that the Antitrust Division of the Department of Justice and the Federal Trade Commission will have a better chance to stop corporate mergers that swallow up small, independent competitors.

Finally, Mr. Speaker, H.R. 8532 is consumer legislation. It will directly bring about lower consumer prices. It will reduce prices that are artificially and illegally inflated by pricefixing, it will help to prevent further inflation, and it will help to compensate the millions of consumers who at present pay the steep prices that are caused by these violations.

For that reason, Mr. Speaker, I believe that this measure should be sustained by the House. I believe that this is a reasonable means of bringing together the legislation the Senate provided us with and the legislation the House insisted on, and effectively doing the job of enforcing our antitrust laws.

Mr. McCLORY. Mr. Speaker, will the gentleman yield to me for purposes of debate?

Mr. RODINO. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. McCLORY) for purposes of debate. I will yield more time to the gentleman later.

Mr. McCLORY. Mr. Speaker, I really need about 7 minutes for my presentation.

Mr. RODINO. I will yield 2 minutes to the gentleman for the present.

Mr. McCLORY. Mr. Speaker, this matter has come to the House under rather unique circumstances. Under our rules the House could never itself have combined these three bills in one package. This was done in the other body. It now has come back to us, and we are proceeding here under a procedure that limits debate—and could preclude any amendments no matter how essential.

The first two titles of the bill, the CID and the premerger provisions, are not really controversial, and I believe they are supported by the overwhelming majority of the Members of this body and of the other body as well.

The third title, the parens patriae provisions, was a controversial subject here, and we did debate that thoroughly. The President expressed his concern about it and presented certain objections. In the House I personally undertook to try to put the bill in a form which would be approved by the President and which would include some amendments that would overcome those objections.

Mr. Speaker, that is the form it was in when we sent it over to the other body.

Mr. Speaker, there has been a great deal of discussion whether this body or the other body won or lost more if the motion to concur is approved. On paper, if one merely counts the number of differences between House and Senate versions, it will appear that the House was quite successful. But in reality the House captured all the pawns while the Senate captured the queen and the king. Graciously, the Senate has consoled us by complimenting us on the number of pieces we hold.

Moreover, it should be noted that the House piled up its points by correcting mistakes made in drafting by the other body in the CID and premerger notification titles. For example, under the Senate version, a $10 sale of stock would have triggered the reporting requirements, cash tender offer transactions would have been severely curtailed, the Government would have been given the unilateral power to bar a merger forever, there would have been no objective way to determine whether the waiting period had begun or had ended and no way to determine when it was legal to consummate the merger. In avoiding these pitfalls by adhering to the House version, the Senate yielded nothing but its own embarrassment. It is on points like these that the House has been given its "victories."

But, on parens patriae, the Senate amendment, if it is accepted today under duress, is a serious reversal of the House position.

When the House first passed the parens patriae bill, so great was the concern as to its breadth that almost simultaneously two amendments were adopted. One by Mr. FLOWERS would have provided zero damages if the defendant had acted in good faith, or as he put it, not willfully in violation of the antitrust laws. The other amendment, offered by me, would have provided single damages if the defendant acted in good faith.

Well, the Senate substitute would impose upon the "good faith" violator—not single or zero damages—but treble damages. Now, it cannot be overemphasized that on the floor last March not a single Member of the House supported the position being thrust upon you today—not one. Last March we all knew that it was possible to fix prices in good faith believing that the law permitted it, because of prior administrative or judicial guidelines, and then be found liable for treble damages because of factual mistake or a shift in judicial thinking. In the calm of the spring with months ahead on the legislative calendar, we all knew that. Now in the exigencies of the moment the common understanding of the law and the recognized need for the House amendments are undergoing substantial revision.

Today businessmen will hear good news. Today, by colloquy on the floor, the Sherman Act will be amended so that good faith violations are no longer reachable. Suddenly, after all these months of study and debate in both bodies we will hear for the first time that good faith violators do not have to pay any damages.

The question that must be answered is this: If the law has always provided that good faith violators are to pay no damages, why did the chairman, the floor manager, and everyone else in this body vote to increase zero damages to single damages?

The other serious reversal, if agreed to, comes on the question of contingency

fees. In committee, the bill was amended to bar contingency fees absolutely. On the floor a further amendment was offered which would have made the ban inapplicable in any case where the court determined the amount of the fee. Since in the context of class actions courts normally exercise supervisory power to prohibit overreaching, the proposed amendment would have permitted contingency fees subject to judicial oversight. In other words, the proposed exception would have gutted the ban. It would have returned to current law. It would have permitted contingency fees.

This body understood and it defeated that attempt to gut the ban by 50 votes, 217 to 167. The so-called Senate compromise is exactly the same proposal to gut the ban with a very minor exception. That exception arises only if the case goes to trial and judgment. I think we all realize the cases will almost always be settled. But, if a case does go to judgment, the exception is merely that the court cannot approve the attorney's fee based on a "percentage" of the award. But, since the court is otherwise obligated to "determine" the fee in any event, this exception is almost meaningless.

So the Senate substitute does kick up some dust, but when the dust settles, it is all the same. The Senate substitute permits contingency fees subject to court supervision.

Since over the years courts have been approving astronomical contingency fees, the House rejected such a proposal last March. It is my hope that the House will once again have the opportunity to vote on that issue.

Under the circumstances the House can vindicate its position only by voting to refer the Senate amendment to the Committee on Rules for an appropriate rule. In order to do this, we will have to vote "no" on the previous question. A "no" vote will be a vote to insist on the House position. A "yes" vote will be a vote to punish those who act in good faith and a vote to permit what one Member has called "a Roman holiday for lawyers."

Finally, one important point must be made. I am not—and have never been—an opponent of this legislation. I will vote for the legislation if the two House amendments are retained. It should be pointed out that while there was no recorded vote on title III, the Republicans on the subcommittee voted unanimously in favor of title I and title II when they passed the House as separate bills.

I do not address you as an "opponent" asking you to "kill the bill" as the majority's "Dear Colleague" letter would have you believe. I have supported this legislation, and because I continue to support it in the form which has passed the House I am described as an opponent by many who, in fact, disagreed with the House position.

I stand for the House position. There is time to vindicate the House position. I urge you to take the necessary steps to support the House position. After the appropriate amendments are made, most, if not all, can vote for the bill.

I supported this legislation. I supported expediting this legislation. I supported putting the CID and the premerger provisions in it. I supported putting it on the suspension calendar, notwithstanding the fact that I had amendments I wanted to offer.

Mr. Speaker, I have done everything I can to help expedite this legislation, and if we cannot now put this in proper form because of the pressures of the hour, it seems to me that it will be a great disservice and a great rebuff to someone who has supported and worked hard to get this legislation to this point.

Mr. Speaker, I am including the letter received from Senator ALLEN, HRUSKA, and THURMOND which should give assurance that adoption of these two amendments to the bill would in no way prevent early final passage of this measure:

U.S. SENATE,
Washington, D.C., September 14, 1976.

Re H.R. 8532, the antitrust amendments bill.

Hon. ROBERT MCCLORY,
House of Representatives,
Washington, D.C.

DEAR MR. MCCLORY: We are hopeful that the House will amend the Senate Amendment to the House Amendment to the Senate Amendment to H.R. 8532, the Antitrust Amendments Bill, by striking out the Senate Amendment's provisions on treble damages in parens patriae proceedings and on contingency fees and inserting in lieu thereof the provisions contained in the bill as passed by the House, allowing only single damages where the defendant acted in good faith and using the House language on contingency fees.

From statements which you and Mr. Railsback made in the House, the Members of the House who consulted with Senate Members on a so-called compromise insisted that any compromise reached should contain these provisions as passed by the House. Since the Senate Amendment to the House Amendment to the Senate Amendment did not contain the House language on these two points it is understandable that the House would not wish to accept the provisions of the bill which is now before the House for action.

In an effort to shape the bill in a manner to correspond with the House position on these two points, we wish to assure you that if the House does strike the Senate language at these two points and inserts the House language and sends the bill back to the Senate, so amended, we will not debate the matter further and will urge the Senate to bring the bill to a vote as finally amended by the House in the manner set forth above.

It is our judgment that the bill, amended as suggested, would encounter no further difficulty in coming to a vote in the Senate and we would work in good faith to see that such result ensues.

Respectfully submitted,
ROMAN L. HRUSKA,
STROM THURMOND,
JAMES B. ALLEN,
U.S. Senators.

Mr. RODINO. Mr. Speaker, may I inquire how much time we have consumed?

The SPEAKER. The Chair will state that the gentleman has 43½ minutes remaining.

Mr. RODINO. I thank the Speaker.

Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there are a number of differences between H.R. 8532 as passed by the Senate on September 8, and H.R. 8532, H.R. 13489, and H.R. 14580, as originally passed by the House. With repect to those portions of these three House-passed bills that are incorporated in the Senate amendment of September 8, the intention and effect is the same as is set forth in the House report accompanying each bill; namely, House Report No. 94–499, House Report No. 94–1343, and House Report No. 94–1373.

In addition, the following legislative intention is appropriate and let me add, that except on the single issue of the "good faith" defense in the parens bill—on which we have our differences—all the minority members of the Monopolies Subcommittee agree with my assessment of the meaning and purpose of this compromise bill, which is as follows:

TITLE I—ANTITRUST CIVIL PROCESS ACT AMENDMENTS

First. The Senate bill eliminated the Justice Department's existing authority under subsections 2(a)(2) and (2)(a)(3)(B), to conduct CID investigations of "unfair trade practices" violative of the FTC Act. The House bill did not. On this point, the compromise bill follows the Senate language, because the FTC can already maintain its own "CID" investigations of "unfair trade practices," and it would be inappropriate for the Justice Department to use this authority.

Second. The Senate bill permitted investigations of "any activity which may lead to any antitrust violation." Under the House bill, the scope of investigations into incipient violations is less broad and open ended: The substitution of the word "consummated" for the word "completed" is the only change and is not intended to alter the limited scope of the House provisions.

Third. The House bill permitted investigations of "any person." The Senate bill permitted investigations of "any person," including those "acting under color of State law." The compromise bill adopts the Senate language, but in any event does not change the complex substantive antitrust law governing the "state action" antitrust exemption. If any "state action" exemption is raised, its validity may not be determined without considerable investigation. But if, upon development of the facts underlying the claim of immunity, it then appears that the exemption is clear and well-founded, the Justice Department will consequently have no jurisdiction to continue its investigation, for no "antitrust violation" within the meaning of section 2(c) can be made out.

Fourth. The House-passed bill required that each CID "state in appropriate detail the nature of the conduct or the activities under investigation." The compromise bill requires each CID to "state the nature of the conduct or the activities under investigation." The phrase "in appropriate detail" was deleted solely because it is superfluous; existing case law under the 1962 act already requires "appropriate detail." See *Petition of Gold Bond Stamp Co.*, 211 F. Supp. 391 (D. Minn. 1963), and *Hyster* v. *U.S.*, 338 F.2d 183 (9th Cir. 1964). The intention of the compromise bill is thus to carry forward exactly this standard, as it has evolved under the existing Act.

Fifth. The Senate bill permitted CID witnesses to "clarify equivocal answers" in the course of reviewing their trans-

cript. The House bill permitted CID witnesses to make "any changes in form or substance" that they desire. The House version, adopted by the compromise, avoids pointless disputes over what constitutes an "equivocal" answer; and in any event, under the compromise bill, the witness' original testimony remains on the record, and a statement of the reasons for any changes must be given by the witness.

Sixth. The Senate bill limited the CID witness to the same access to his transcript that a grand jury witness has: If the witness demonstrates a "compelling" or "particularized" need, he may inspect his transcript. Generally, however, counsel to the grand jury witness cannot accompany him and also inspect the transcript of his testimony. In re Braniff, 1975 CCH Trade cases, ¶ 60,239 (W.D. Tex.). The compromise adopts the provisions of the House bill, which in every instance permits the witness and his counsel to inspect the transcripts. In addition, under the "good cause" test set forth in the compromise bill, the witness will generally have access to a copy of his transcript, upon payment of reasonable charges. If the Assistant Attorney General denies the witness access to his transcript on the basis of "good cause"—such as a possibility of perjury, or witness intimidation, or the circulation of the copy to coconspirators seeking to orchestrate testimony—the Assistant Attorney General's determination is reviewable by a court, under section 5(c).

Seven. The compromise bill adopts the provisions of the House bill governing court review of CID disputes. Like the House bill, the compromise bill, therefore, incorporates all the existing procedures for judicial review set forth in the 1962 act.

Eighth. Under the Senate bill, if a CID recipient moves to quash the CID, his duty to comply with the demand is suspended as long as the dispute is under adjudication, but only if the recipient promptly complies with unobjectionable portions of the CID. The House bill contained no comparable provision. The compromise adopts the Senate provision because the intention of the House, throughout its consideration of this measure, was simply to require the CID recipient to object specifically to portions of a demand rather than to use such objections as an excuse for general noncompliance.

Ninth. The Senate bill provided that whenever a CID recipient files a petition to quash a CID, any objection not therein specified in the petition shall be deemed waived, unless good cause is shown for the failure to assert it in such a petition. The House bill had no comparable provision, nor does the compromise. The reason is that a CID recipient's petition to quash is an original proceeding in district court. It is therefore a civil complaint, and F.R.Civ.P. 15(a), governing amendments to pleading, consequently applies. That rule provides that—

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or . . . at any time within 20 days after it is served. Otherwise, the party may amend his pleading only by leave of court . . . and leave shall be freely given when justice so requires. . . .

Because the Senate bill's "waiver" provision necessarily conflicts with rule 15(a), it has been deleted.

TITLE II—PREMERGER NOTIFICATION AND WAITING

First. Then Senate bill covered acquisitions made by "persons." The House bill only covered acquisitions by "corporations," because only corporations are subject to the provisions of section 7 of the Clayton Act. However, section 5 of the FTC Act prohibits certain noncorporate mergers; that is, acquisitions by partnerships; and a Sherman Act merger challenge is in no way limited by the legal structure of the merging entities.

Because the anticompetitive nature of a merger is not dependent upon the legal form of the acquiring entity, the compromise covers "persons."

Second. Under the House bill, both parties to the merger were required to notify and wait. However, in the case of tender offers, the House bill placed the notification and waiting obligations only upon the acquiring firm. That is because the "target" of a tender offer—the firm that is to be acquired—is often hostile to the offer, and may, by a variety of means, seek to thwart or delay the planned takeover. This may be the case whether or not the tendered consideration is cash or securities—though, by and large, cash tender offers are hostile, and securities tender offers are unopposed, or "friendly." Thus, were the notification and waiting requirements to be imposed upon the target firm, it might easily frustrate the offer, should it choose to do so, simply by refusing to comply with the bill's requirements. In that event, the waiting period would never commence, and the takeover could never be accomplished. The target firm would thereby profit from its own wrong. Moreover, many tender offers, especially cash tender offers, are prearranged in secret, and commenced by a public announcement that generally comes as a distinct surprise to the target company. In these cases, even if the target chose to comply with the notification requirements, it would be hard-pressed to do so in a short period of time. Unlike the parties to an amicably negotiated merger, it will not already have undertaken, on its own, to analyze the legality of the proposed merger. It will not have even begun to fill out the notification form, nor will it have compiled much of the data relevant to the merger's legality which, in all probability, will be requested by the Justice Department and the FTC. The bill's rationale—that the premerger data sought by the Government can be compiled rapidly, and that premerger "discovery" can be satisfactorily compressed into a few weeks' time because the merging companies will have already compiled, prepared, and analyzed this very data well in advance of the planned consummation date—consequently will not hold true in the case of a "surprise" tender offer.

Nevertheless, the target of a tender offer will often have considerable data relevant to its own operations, and thus, relevant as well to the planned merger's legality. Often, this data will not be available to the acquiring company, but will, nevertheless, be necessary to a reasoned analysis of the merger. The compromise bill, unlike the House bill, thus imposes the notification and waiting obligations upon the target in a tender offer, but further provides that the target's failure to comply with these requirements will not operate to extend the waiting period—which could effectively frustrate the takeover. Instead, the court may, under subsection (g)(2), order the target to comply, and may impose sanctions if the target refuses.

Three. The "minimum threshold" test set by the House bill provided that no stock or asset acquisition involving $100 million and $10 million companies is subject to this bill unless that acquisition gives the acquiring firm 25 percent or more of the acquired firm's voting securities or assets, or at least $20 million of the acquired firm's voting securities and assets. The Senate bill provided no comparable "threshold " and thus would have covered any nonexempt capital transaction. The compromise bill reduces the House bill's "minimum threshold" to 15 percent or $15 million. These alternative standards will, in some cases, override the 10 percent limitation specified in the exemption set forth in subsection (c)(9). Thus, an acquisition under subsection (c)(9) would be exempt from this bill, even if, for example, 14 percent of the outstanding voting securities of the issuer are acquired solely for the purpose of investment—so long as the aggregate value of these voting securities does not exceed $15 million.

Four. Like the House bill, the compromise bill does not require absolute and complete compliance with either the required premerger notification form or any subsequent request for additional information, before the waiting period or the extension period begins to run. Premerger discovery is a complex process in the best of circumstances, and compressing the entire process into a few weeks time will not make it less complex. Therefore, in a manner that is somewhat analogous to the procedures set forth in the CID bill, the compromise version of the premerger bill provides that the waiting and extension periods will commence running upon receipt by the FTC and the Justice Department of the completed notification or a partially completed notification, together with a specific statement of the reasons for the partial noncompliance. Similarly, the extension period will commence immediately upon the receipt of all the additional information that is requested, or, if any of the requested information is omitted, upon receipt of all the submitted data together with a statement of the reasons for the failure to include the omitted data. The rationale of the compromise bill is, in this respect, exactly that of the House bill: If the omitted data is withheld by the parties for frivolous, unjustifiable, or improper reasons, the Justice Department or the FTC may seek a court order, under subsection (g)(2), extending the premerger waiting period until there has been "substantial compliance"—that is, until the notification form has been sub-

stantially completed, or until there has been substantial compliance with the request for additional data.

A broad and liberal interpretation of the doctrine of "substantial compliance" should protect the rights of the Government as well as the parties to the proposed merger. Thus, a company would not fail to "substantially comply" if it withheld information, for example, that was subject to a legitimate privilege. And plainly, Government requests for additional information must be reasonable. The House conferees contemplate that, in most cases, the Government will be requesting the very data that is already available to the merging parties, and has already been assembled and analyzed by them. If the merging parties are prepared to rely on it, all of it should be available to the Government. But lengthy delays and extended searches should consequently be rare. It was, after all, the prospect of protracted delays of many months—which might effectively "kill" most mergers—which led to the deletion, by the Senate and the House Monopolies Subcommittee, of the "automatic stay" provisions originally contained in both bills. To interpret the requirement of substantial compliance so as to reverse this clear legislative determination would clearly constitute a misinterpretation of this bill.

In sum, a government request for material of dubious or marginal relevance, or a request for data that could not be compiled or reduced to writing in a relatively short period of time, might well be unreasonable. In these cases, a failure to comply with such unreasonable portions of a request would not constitute a failure to "substantially comply" with the bill's requirements. All the equities of the particular situation should be considered in determining what constitutes "substantial compliance."

Fifth. In the case of cash tender offers, more so than in other mergers, the equities include time and the danger of undue delay. This bill in no way intends to repeal or reverse the congressional purpose underlying the 1968 Williams Act, or the 1970 amendments to that act. Therefore, under the House bill, a special shortened 21-day waiting period applied to cash tender offers. This 21-day waiting period could not be extended by the FTC or the Justice Department. There was general agreement that this 21-day waiting period would not unduly delay the consummation of cash tenders, and thus "tip the balance" to the incumbent management of the target firm. The House-passed bill was, therefore, consonant with the underlying purposes of the Williams Act. However, the House conferees recognize that this nonextendable waiting period could present difficult dilemmas for the FTC and the Justice Department: If, for example, the Government requested additional data on the 14th day of the waiting period, the acquiring firm might delay its submission of the additional data until the 20th day. In that event, the Government might well have only a few hours to analyze that crucial data. To avoid this dilemma, the House conferees agreed to "split up" the premerger period into an initial period of 15 days, followed by a discretionary 10-day extension—in a manner similar to that provided for ordinary mergers. The House conferees contemplate that this means, at most, waiting periods of approximately 25 days. Such a waiting period should be the rule—and not the exception. Lengthier delays will give the target firm plenty of time to defeat the offer, by abolishing cumulative voting, arranging a speedy defensive merger, quickly incorporating in a State with an antitakeover statute, or negotiating costly lifetime employment contracts for incumbent management. And the longer the waiting period, the more the target's stock may be bid up in the market, making the offer more costly—and less successful. Should this happen, it will mean that shareholders of the target firm will be effectively deprived of the choice that cash tenders give to them: Either accept the offer and thereby gain the tendered premium, or reject the offer. Generally, the courts have construed the Williams Act so as to maintain these two options for the target company's shareholders, and the House conferees contemplate that the courts will continue to do so.

Six. The Senate bill permitted the FTC, with the participation of the Department of Justice, to promulgate rules subjecting "small" mergers—involving companies with less than $100 million and $10 million in sales or assets—to the notification and waiting requirements provided by this bill. The House bill completely deleted this provision, and so does the compromise bill. In the view of the House conferees, the coverage of this bill should be decided by Congress—not the FTC and the Justice Department. In particular, the Senate provision was rejected because it was completely "open-ended." It set no qualifications, standards, or conditions upon the rulemaking authority. It may in future years appear that additional coverage is desirable; for example, in industries that are "highly concentrated" or "rapidly concentrating," or with respect to a large firm that makes a series of acquisitions of firms below this bill's $10 million size limits. But surely this decision would be more wisely made in light of the experience stemming from the application of this bill.

Seven. The House bill required an annual report from the Federal Trade Commission and the Justice Department, detailing the operation and effects of this bill, as well as explanations by the Government agencies in cases in which they took "no action" pursuant to this bill. The Senate bill contained no such provision. The compromise bill adopts the House provisions requiring an annual report from the Government antitrust agencies, but deletes the requirement that these agencies explain why they "took no action" whenever they fail to challenge a merger under this bill. This deletion was premised upon concern that such a "no action" explanation might well prejudice the rights of private parties who may subsequently challenge the merger, and might, as well, prejudice the Government agencies in the event they subsequently decide to mount a challenge to the merger. Moreover, the requirement of such an explanation might well disclose confidential premerger data, or at least conclusions based on such data.

Eight. The House applied the same two confidentiality safeguards to premerger data that both the House and Senate bills applied to CID files compiled pursuant to title I of the compromise bill. These two safeguards provide that, first, the premerger data is exempt from the Freedom of Information Act, so that the Government cannot be forced to disclose it to the public, and second, the Government agencies themselves cannot discretionarily release premerger data to anyone, but can disclose it only in "judicial or administrative proceedings." In contrast, the Senate bill made the premerger data "subject" to the Freedom of Information Act—not exempt from it. The compromise bill adopts the House provisions, because premerger data compiled pursuant to title II of the compromise bill will, in essence, contain the same kind of information as a CID file compiled in a premerger investigation pursuant to title I of the compromise bill. The House conferees see no reason why this data should be exempt from the Freedom of Information Act in the one case, and subject to the act in the other.

Ninth. The House bill covered acquisitions of assets and "voting securities"—any debt or equity instrument entitling the holder to elect directors of a corporation. Nonvoting securities were completely exempt from the House-passed bill. However, nonvoting securities that can be converted into voting securities were covered "upon conversion," and compliance with the bill's notification and waiting requirements would thus have been required prior to conversion. In contrast, the Senate bill covered acquisitions of assets; voting securities; nonvoting but convertible securities; and, apparently, nonvoting, nonconvertible equity securities. Nonvoting, nonconvertible debt securities were completely exempt from the Senate bill under subsection (b)(4)(B)(ii). The compromise bill completely exempts acquisitions of nonvoting, nonconvertible debt or equity securities. Further, the compromise bill covers nonvoting but convertible securities upon acquisition, not conversion. Finally, the compromise bill covers acquisitions of voting securities in all instances, except in the case of de minimus "solely for purpose of investment" acquisitions expressly exempted by the bill.

Tenth. The House conferees felt that exemption set forth in subsection (c)(11) of the House bill should be retained in the compromise, provided that the phrase "or other entity," appearing in the second line of that subsection, was deleted. By thus limiting this exemption solely to acquisitions by bank trust departments or trust companies, the House conferees felt that this exemption would not be unreasonably broad or prone to abuse. While the compromise bill deletes this exemption, the House conferees continue to believe that it would serve a desirable purpose, and should be considered by the Federal Trade Commission, pursuant to the Commission's power to exempt various acquisitions under subsection (c)(12) of the House bill, which has been adopted by the compromise bill.

Eleventh. The $10,000/day penalty

provision of both the House and the Senate bills applied only to an acquiring corporation that "holds" stock or assets "in violation of" the bill. The compromise bill slightly alters the wording of this monetary penalty provision, but only because it was felt that the acquired as well as the acquiring company should be subject to this penalty. However, this sanction should be imposed upon an acquired company only if it voluntarily acquiesces in the merger—which will not be the case in, for example, a hostile cash tender offer. And, obviously, if the acquired firm is completely "swallowed up" in the course of the merger, it will cease to exist, and it will thus be impossible to impose any penalty upon it. In addition, the House conferees stress that the monetary and injunctive sanctions provided in subsections (g)(1) and (g)(2) are, to a considerable extent, mutually exclusive. For example, if the merging companies fail to comply substantially with the notification data or additional information requirements, a court injunction pursuant to subsection (g)(2) would ordinarily be the proper remedy for the Government. In contrast, complete compliance, not substantial compliance, is the test set by the waiting requirements. The firms must wait the full 30 days—not just 27 or 28 days. And there may well be cases in which the merging companies act in bad faith, or conceal relevant data from the Government for frivolous or unjustifiable reasons, or otherwise "orchestrate" the submission of requested data so that the Government agencies have no realistic opportunity to seek injunctive relief pursuant to subsection (g)(2). If they do so, they act at their peril, and would properly be subject to sanctions under subsection (g)(1), which, on its face, applies to violations of "any" provision of this act. But while "good faith" has never been a defense to a civil penalty action by the Government, it is one factor in assessing the size of the penalty. This factor, together with the traditional broad discretion held by the court in a civil penalty action, should prevent any miscarriage of justice that might arise from an overly literal reading of subsection (g)(1).

TITLE III—PARENS PATRIAE AMENDMENTS

First. Neither the House nor the Senate bills create any new substantive liability with the parens patriae action. No new antitrust violations are created. But the claim for relief created by the House bill was in some respects, procedurally narrower than that established in section 4 of the Clayton Act. For example, Clayton section 4 authorizes recoveries by "any person." But the House bill was limited to "natural persons." Again, Clayton section 4 authorizes recoveries based upon any violation of the "antitrust laws." But the House bill authorized parens recoveries only for violations of the Sherman Act. Most importantly, in order to avoid the creation of expansive new treble-damage liability, the House bill exactly paralleled the traditional requirements for recovery set forth in Clayton section 4; namely, that recoveries be limited to natural persons injured in their business or property by reason of anything forbidden in the Sherman Act.

The original Senate bill, however, would have eliminated two of these crucial requirements for recovery set forth in section 4 of the Clayton Act, and followed by the courts for 86 years. First, the "injury" requirement of Clayton section 4 was deleted by the Senate bill; the word "injury" thus appeared nowhere in the Senate bill. Instead, the Senate bill permitted recoveries "in respect of any damage substained" by natural persons. Second, Clayton section 4 does not permit recoveries for all conceivable kinds of injury. Instead, to be actionable, the injury must be a tangible, actual, concrete, financial injury; namely, an injury to the business or property of the plaintiffs. But the Senate bill's section 4C completely eliminated the "business or property" requirement set forth in Clayton section 4. The House conferees, concerned over the erosion of these traditional elements of private recoveries, and the consequent possible creation of broad new liability, drafted compromise language which requires that parens patriae recoveries be premised upon "injury sustained by natural persons to their property by reason of any violation of the Sherman Act."

Unlike Clayton section 4 plaintiffs, cosumers in parens actions need not be injured in their business. But this is because commercial entities are excluded from parens patriae actions, and thus, by definition, consumers injured in their "business" could never recover under the new Clayton section 4C. Moreover, requirements of "standing" that are entirely appropriate for commercial litigants—such as the "direct injury" test—are not appropriate for consumer litigants, as the courts have recognized. See Carnivale Bag, infra.

Like both the House and Senate bills, new Clayton section 4C also incorporates the traditional "causation" requirement of Clayton section 4, which is embodied in the "by reason of" language of the compromise bill. The retention of this requirement means that any State attorney general must bear the traditional antitrust plaintiff's burden of proving causation: He must prove a violation, and that it resulted in an illegal overcharge, and that the overcharge was in fact passed on to and borne by the consumers of his State. Consequently, the compromise bill—like the House bill—does not in any way change the law of causation as it has evolved under section 4 of the Clayton Act. Nevertheless, some opponents of this bill have argued that it does change the law of causation. They claim, for example, that if, first, manufacturers illegally fix the price of ball bearings; second, which are subsequently incorporated into a popcorn vending machine; third, which is sold to the owners of a movie theater in Cleveland; and, fourth, who then charge moviegoers 50 cents per box of popcorn, that the Ohio State attorney general, for example, can then recover treble damages from the manufacturers. But plainly, the State could never prove "causation" in such a case. It would be an accountant's nightmare. The State would simply be dismissed on the pleadings, for under no set of facts could it possibly carry its burden of proving "causation"—by showing that the initial violation, through this series of transformations, ultimately caused the consumers to pay a higher price.

Some changes are made by the compromise bill, and, like those embodied in the original House bill, these are procedural changes. First, the compromise bill expressly gives "standing to sue" to the State attorney general. And the compromise bill squarely grants "standing" in cases where consumers have purchased price-fixed products—such as bread, potato chips, milk, eggs, gasoline, automobiles, and the like. Thus, assuming the State attorney general proves a violation, and proves that an overcharge was "passed on" to the consumers, injuring them "in their property"; that is, their pocketbooks—recoveries are authorized by the compromise bill whether or not the consumers purchased directly from the price fixer, or indirectly, from intermediaries, retailers, or other middlemen. The technical and procedural argument that consumers have no "standing" whenever they are not "in privity" with the price fixer, and have not purchased directly from him, is rejected by the compromise bill. Opinions relying on this procedural technicality—see *Donson Stores, Inc.* v. *American Bakeries Co.*, 1973–1 CCH Trade Cases, ¶ 74.387 (S.D. N.Y.) (price-fixed bread); *City of Detroit* v. *American Bakeries Co., Inc.*, No. 33046 (E.D. Mich. 1971) (price-fixed bread); *City of Akron* v. *Laub Baking Co.*, 1972 CCH Trade Cases, ¶ 73,930 (N. D.Ohio) (price-fixed bread); *Travis* v. *Fairmount Foods Co.*, 1973–1 CCH Trade Cases, ¶ 74,308 (E.D.Pa.) (price-fixed milk); and *United Egg Producers* v. *Bauer*, 1970 CCH Trade Cases, ¶ 73,299 (S.D.N.Y.) (price-fixed eggs)—are squarely rejected by the compromise bill.

First, if this bill means anything, it means that the State may recover damages for purchasers of price-fixed bread, potato chips, and the like. To argue that consumers must be direct purchasers from the price fixer is to deny recovery in these cases—for the consumer rarely if ever buys potato chips directly from the manufacturer, or bread directly from the bakery. In these cases, the manufacturer invariably sells through wholesalers and retailers—grocery stores, drug stores, and the like—and if the intervening presence of such a middleman is to prevent recovery, the bill will be utterly meaningless. In any event, most courts have recognized this fact: See *Carnivale Bag Co.* v. *Slide-Rite Mfg. Corp.*, 1975 CCH Trade Cases, ¶ 60,370 (S.D.N.Y.) ("It cannot be said * * * that the injury sustained by a purchaser one or two stages from an illegal overcharge is an "incidental" effect of a price-fixing conspiracy"); *Boshes* v. *General Motors Corp.*, 1973–1 CCH Trade Cases, ¶ 74,483 (N.D. Ill.) ("A simple rule of privity is inappropriate under the wording of the statute [Clayton section 4]"); *Midway Enterprises Inc.* v. *Petroleum Marketing Corp.*, 1974–2 CCH Trade Cases, ¶ 75,200 (D.Md.) ("one intermediary between

plaintiff and defendant through which passed a commodity [gasoline] unaltered by manufacturer or processor"); *Bray* v. *Safeway*, 1975-1 CCH Trade Cases, ¶ 60,-193 (N.D.Cal.) ("It should be noted that the Ninth Circuit has specifically held that the mere presence of an intermediary between the plaintiff and the defendant would not require a finding of lack of injury. * * * It is the economic area in which the plaintiff is damaged that is the crucial factor—not an artificial limitation based upon the number of links in the chain of distribution.")

Second, the courts that have required privity between the plaintiff and the defendant as a prerequisite to standing, have generally done so, because they have misread the Supreme Court's Hanover Shoe opinion, 392 U.S. 481 (1968). Fearing that the first purchaser can, under Hanover Shoe, recover the entire overcharge, whether or not he absorbs all or merely part of it, these courts have clearly been motivated by the specter of double liability raised by successful actions by subsequent secondary purchasers. However, the compromise bill—unlike the House bill—expressly forbids duplicative recoveries. This additional safeguard against duplicative recoveries makes express the House intention, and is not intended to detract from plaintiff's burden of proving injury and the amount of damages suffered by natural persons on whose behalf the action is brought. In this light, to insist that indirect purchasers of price-fixed bread have no standing, because Hanover Shoe requires "privity" in order to avoid double recoveries, is to seriously misread the compromise bill.

Second. Like the House bill, the compromise bill is not a rule 23(b)(3) class action under Clayton section 4. It is instead a single action by the State. In particular, it is a superior alternative to a rule 23(b)(3) class action. Thus, the compromise bill does not incorporate the various requirements of rule 23(b)(3): That the claims be "typical"; that common issues "predominate" over individual ones; that the action be "manageable" within the meaning of rule 23; or that the representation be "adequate" within the meaning of rule 23—for this bill represents the legislative conclusion that the State's attorney general is the best representative conceivable for the State's consumers—as the courts have repeatedly recognized.

Third. The House bill authorized only "damages." The Senate bill authorized "monetary relief" and "other relief" to "prevent or remedy" the violation. According to the Senate report, "other relief" means restitution, injunctive relief, or equitable relief—such as a decree of divestiture. The compromise bill authorizes only monetary relief. That is because restitution seems unnecessary in light of the broad authority for damage recoveries conferred by the compromise bill. As for injunctive relief, the compromise bill omits any reference to it solely because such relief is already available to State attorneys general, acting as parens patriae in injunctive actions under the Clayton Act, 15 United States Code, section 26. The compromise bill, therefore, in no way alters the current case law on parens patriae injunctive relief. Provision for equitable relief; that is, decrees of divestiture, was squarely rejected by the House conferees in the belief that State attorneys general should not be authorized to file parens suits seeking divestiture.

Fourth. The House bill permitted State attorneys general to recover "the cost of suit and a reasonable attorneys fee." The Senate bill authorized State attorneys general to recover "the cost of suit, a reasonable attorney's fee, and other expenses of the litigation." The compromise bill rejects any recoveries for such "other expenses," which leaves the law in this area as it presently is.

Fifth. Like the House bill, the compromise bill specifically authorizes aggregate damages in cases where there has been a determination that a defendant agreed to fix prices. Unlike the Senate bill, it does not specifically authorize aggregation in cases of Sherman Act violations arising out of patent fraud. Under the compromise bill, "price fixing" means horizontal price fixing or vertical price fixing. It does not mean monopolization, market allocations, output restrictions, customer or territorial restraints, tie-ins, group boycotts, predatory pricing, reciprocal dealing, or other non-price-fixing violations of the Sherman Act.

The House bill expressly authorized aggregation in cases of "willful" price fixing. The compromise bill omits the requirement that the price fixing be "willful." First, "willful" price fixing may seem to imply criminal scienter. This is not the intention of the House conferees. Were the House bill interpreted in this manner, aggregation might be permitted only in those price-fixing cases that would constitute a criminal violation of the Sherman Act, or even further, only in cases where the defendants have been adjudged guilty of a criminal price-fixing violation. Second, the bill in no way changes the traditional elements of a Sherman Act price-fixing offense. Generally, the crucial and essential element of any price-fixing case has always been a conscious, willful, overt, deliberate, intentional, actual agreement to fix prices. Thus, if a businessman, on the basis of his own independent business judgment, simply charges the same prices as his competitors charge, he does not thereby "fix prices." The Sherman Act has always required that businessmen must in fact combine together, deliberately agree to fix prices, and actually adhere thereafter to that agreement, before the violation is completed. Concededly, direct proof of the actual agreement is not required, and the actual agreement may be inferred from the surrounding circumstances; but it must be there. In this sense, inclusion of the word "willful" was superfluous, for the House conferees in no way intend any alteration of the well-established requirements of this offense.

Finally, the House bill provided for a reduction of aggregate treble damages to single damages, if the defendant established that he acted in good faith without reasonable grounds to believe that his conduct violated the Sherman Act. The compromise bill omits this "good faith" single damages proviso. While the inclusion of this proviso would not have caused any particular harm, and might even be helpful in some hypothetical situations, the limitation of the aggregation section of the bill to price-fixing cases only, and the adoption of the Senate provision making the bill apply only to future actions, have made the proviso inoperative and meaningless in the vast majority of cases.

Mr. Speaker, I offer for inclusion in the RECORD following these remarks an editorial from today's Washington Post. I also offer a letter from the National Association of Attorneys General, which indicates their intention to cooperate fully in providing information to the Congress annually in the years to come, so that we may properly oversee the workings of this pioneer legislation, and, if appropriate, enact further legislation to improve its efficacy and curb abuses, if any.

The material follows:

PENALTIES FOR PRICE-FIXING

The antitrust bill is once again in peril. That's to be expected. The subject is complex, time is running out, and the opposition is fierce. It's coming mainly from people like Sen. James Allen (D-Ala.) and Sen. Roman Hruska (R-Neb.), who favor competition in principle but find that, in practice, a little of it goes a long way. The bill has attracted their attention for the very good reason that it would make price-fixing much more dangerous—particularly in consumers' goods.

The bill now hangs on one take-it-or-leave-it vote in the House, within the next day or so. If the House passes the bill as it stands, it will go directly to the President's desk. If the House changes the bill in any respect, however minor, it will be dead. The reason is the intemperate and intransigent opposition in the Senate, where a small number of members, led by Mr. Allen, have promised to filibuster it once again.

They filibustered the bill on its original passage. The filibuster was broken, but that took much time and effort. The House moved the legislation along in somewhat different form, as usual, and normally there would have been a conference to reconcile the differences. But that would have given Sen. Allen & Co. two more opportunities to filibuster, once on the naming of the conferees and again on their report. Majority Leader Mike Mansfield made it clear to the bill's sponsors that the Senate could afford the time to break one filibuster but not two. It is the old story. The approaching end of the session strengthens every dilatory and obstructive tactic.

Several senators and representatives met informally last month to do the work of a conference. Their compromise version of the bill went first to the Senate where Mr. Allen predictably filibustered it again. The filibuster was broken, and the bill passed, by large majorities. Now the bill goes to the House. Since any amendment at all would send it back to the Senate and further extended discussion by Mr. Allen and his friends, the practical choice is between the bill in its present form and nothing. The bill has been greatly refined over the past half-year of debate, and would constitute a valuable addition to national economic policy.

It contains a number of improvements in the administration of the antitrust laws. But its largest contribution would be an altogether new method of assessing damages. Consider the dozens of commodities—gasoline, milk, bread, soda pop—that everybody

buys continually in small quantities. A conspiracy to fix prices might add only a fraction of a cent to the price, yet bring millions of dollars to the perpetrators. Under present law, the public has no practical way to recover damages. Who keeps the receipts for a year's purchases of bread? Even if a suspicious customer began collecting receipts, they would never add up to enough money to justify a long and difficult lawsuit. The conspirators would risk being convicted of a crime, but it would be almost impossible to make them return the proceeds of this crime to consumers. The antitrust bill changes that. It would permit a state to hire a lawyer and sue in behalf of its citizens, assessing damages by economic estimation. If the conspiracy had raised the price of soda by half a cent per can, the damages would be computed simply by multiplying the number of cans sold, during the life of the conspiracy, by half a cent. Full restitution would suddenly become a real possibility.

The bill has been narrowed considerably in recent months to meet some of the objections to its original language. Some antitrust violations are less precisely defined than others. The new assessment procedure would be limited to cases of price-fixing, the clearest of antitrust offenses. Many businessmen also feared the effects of contingent fees in which the lawyer takes a percentage of the damages as his fees. Fees running up to a third or a half of the damages would act as bait, they argue, to create a whole new legal industry and generate a flood of dubious suits. In response to this objection, the managers of the bill have explicitly ruled out fees based on a share of proceeds.

Stronger antitrust enforcement is a weapon against inflation. The bill deserves the votes of those congressmen who believe in open markets and greater competition in the American economy.

SEPTEMBER 16, 1976.

Hon. PETER W. RODINO,
Chairman, Subcommittee on Monopolies and Commercial Law, Rayburn Building, Washington, D.C.

DEAR CHAIRMAN RODINO: You have asked for our ideas with respect to this Association's assisting the Congress in its oversight function if the pending Parens Patriae legislation is enacted. We have given this matter considerable thought and believe that we have a plan of action which would substantially assist the Congress in one of the more controversial aspects of the new legislation, the contingency fees provision. We will recommend to the Association for action at its annual meeting in December a resolution which will provide for supplying the following information annually to the Chairmen of the House and Senate Judiciary Committees:

1. A copy of the Complaint of each new case commenced by any Attorney General under the new Parens Patriae authority,
2. The name of any outside counsel retained by any Attorney General in connection therewith,
3. A statement of the fee arrangement with such counsel if it includes any computation based upon the outcome of the case,
4. A description of any such case which has been settled including a copy of the settlement agreement approved by the Court and a copy of any judgement of attorneys' fees entered by the Court.

We believe that the information resulting therefrom would be useful to the Congress in assessing the actual impact of the contingency fees provision as it is now phrased in HR 8532. While no mechanism presently exists within our Association for gathering, organizing, and disseminating such information, we will recommend to the full Association that it adopt such procedures and we believe that the Association is likely favorably to consider that proposal.

Finally, we thank you for your strong efforts on behalf of the public interests which this bill is designed to protect.

With best regards and,

Sincerely yours,

SLADE GORTON,
President, Attorney General of the State of Washington.

ANDREW P. MILLER,
Chairman, Antitrust Committee, Attorney General of the Commonwealth of Virginia.

Mr. SEIBERLING. I thank the Chairman.

Mr. Speaker, the gentleman from Illinois made a rather impassioned speech, and I think it would be helpful to, as they say, look at the record. I am looking at the RECORD for March 18, 1976, the day that this bill was passed. On page 7038 the gentleman from Illinois (Mr. MCCLORY) offered the amendment which he and I worked out together, which contained the proviso that any damages awarded a defendant could be reduced from treble damages to actual damages if the defendant established that he acted in good faith and without reasonable grounds to believe that the conduct in question violated the antitrust laws. That was an amendment to the aggregation of damages section, and is the language which the Senate dropped from the bill that is now before us. I agree that that was appropriate language when this section of the bill provided for aggregation of damages in all antitrust cases brought by a state attorney general under this bill.

But something happened to his amendment before it was adopted by the House—the gentleman from Alabama (Mr. FLOWERS) offered an additional amendment to the amendment of the gentleman from Illinois. Mr. FLOWERS' amendment limited the aggregation section to cases of willful price-fixing, and the gentleman from Illinois opposed the amendment offered by the gentleman from Alabama (Mr. FLOWERS). Let us look at the RECORD and see what he said in stating his opposition.

Mr. Speaker, I am turning now to page 7041 of the RECORD of March 18, 1976, and I am quoting from it:

Mr. MCCLORY. Mr. Chairman, I am going to oppose the amendment offered by the gentleman from Alabama (Mr. FLOWERS), and state that it seems to me that the impact of this legislation should be, as the gentleman from Ohio indicated, far beyond that of price-fixing. Therefore, it seems to me that the authority for aggregation of damages should cover the gamut of antitrust violations—not merger cases, not Robinson-Patman cases, but the rest of them. Therefore, I do not think that this right should be limited further—in parens patriae cases. . . . I think that if anything, the amendment offered by the gentleman from Alabama would be confusing and not consistent with the general thrust of this legislation.

And the gentleman was absolutely right in saying that the effect of Mr. FLOWERS' amendment was confusing, because if we were going to limit this bill to price fixing, and even more to willful price fixing, then it makes little sense to tack on to it a proviso which allows mitigation of damages if the defendant can prove good faith, because the concept of good faith and willful price fixing are inherently incompatible.

Now what does this bill do? We took the word "willful" out of the aggregation section because everybody agrees that connotes criminal intent. But it is still hard to conceive of a case where defendants engaged in price fixing, a per se violation of the Sherman Act would be able to show that they acted in good faith, and without reason to believe their conduct violated the law. If the section in question had been limited to price fixing before the gentleman from Illinois offered his amendment, I doubt if it would have been accepted, since it was no longer of much significance.

Now there are a few possible hypothetical situations, such as where a change in the law is made after the fact and, therefore, someone could say he relied on the fact that the law was different at the time he went into the price-fixing arrangement, let us say a fee schedule.

We are going to make it clear that, by adopting the nonretroactivity feature of the Senate bill, we do not intend that the bill be applied retroactively to such situations.

I want to make just one further point and then I will yield to the gentleman from Illinois.

There is a long line of cases where the courts have said where the law in effect is changed they will not merely reduce damages to single damages, they will not allow any damages retroactively. In addition, under the well-known doctrine of remittitur, the courts can also reduce damages where they believe they are excessive.

Mr. Speaker, this is a bill to benefit consumers by strengthening the legal keystone of our free enterprise system, the antitrust laws. It will also benefit consumers by making anticonsumer actions, especially price fixing, less likely. It will further benefit consumers, finally, by giving them a meaningful way of recovering their damages in those few cases where the antitrust laws are violated.

I offer for inclusion in the RECORD at this point three letters from citizens organizations expressing strong suport for this legislation:

SEPTEMBER 13, 1976.

MEMORANDUM

To: All Members of the House of Representatives.

From: Coalition in Support of H.R. 8532.

We, the undersigned, support the passage of amended H.R. 8532, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, particularly Title III, the Parens Patriae provision, which authorizes states to sue price fixers to recover damages for consumers.

Since March when the House first passed its Parens Patriae version, the specific language of the omnibus antitrust bill has been extensively debated and modified. On September 8, 1976, the Senate passed H.R. 8532 by a 69–18 vote with this final version being refined through informal negotiation between both Chambers. The Parens Patriae provisions, the focus of much controversy, were in essence limited to price fixing violations. Fraud on the Patent Office was dropped. Of the 41 major initial disagreements between the two Chambers, 25 were resolved according to House wishes, 6 involved compromise and 10 accommodated Senate preferences. Because of the parliamentary posture of the bill, any House amend-

ment would kill the bill. Although some still disagree with certain provisions or believe that the language can be improved, the sole question now before the House is whether there will be any bill at all.

Public confidence in government's ability to protect both consumers and businesses from antitrust violators has been shaken. This legislation represents a step in the right direction to restore public confidence.

Now it is time for a truce. Let us finally approve this vital legislation. We urge you to support H.R. 8532 on the House floor this week.

Respectfully submitted,

Consumer Federation of America, National Retired Teachers Association, American Association of Retired Persons, Computer and Communications Industry Assn., United Mine Workers of America, National Association of Attorneys General, National Farmers Union, Congress Watch, Citizens for Class Action Lawsuits, National Council of Senator Citizens, United Steelworkers of America, National Consumer Congress, International Union of Electric, Radio and Machine Workers, Public Interest Economics Center, United Auto Workers, National Rural Electric Cooperative Assn., MCI Communications Corp., International Ladies Garment Workers Union, American Federation of State, County, and Municipal Employees.

CONSUMER FEDERATION OF AMERICA,
Washington, D.C., September 15, 1976.

DEAR REPRESENTATIVE: Tomorrow you will vote on the most critical piece of antitrust legislation of the last 25 years. Consumer Federation of America actively supports this legislation and is particularly enthusiastic about the *Parens Patriae* provisions.

The bill is a recognition of the fact that antitrust violations, including price-fixing, cost consumers incalculable sums of money every year. In addition, they contribute to the increasing erosion of public confidence in industry and in the ability of the federal government to enforce antitrust laws. Obviously it is unrealistic to rely on the federal government for adequate and comprehensive antitrust enforcement, particularly when the annual funding for federal antitrust enforcement is equal to the sum expended by one giant firm in defending itself against an antitrust action.

Individual consumers usually lack the expertise and resources to bring private antitrust actions. They also lack the motivation to bring a lawsuit when, for example, the price-fixing results in an individual product cost increase of less than a dollar. Cumulatively, however, the cost impact is millions of dollars. Within the past year, seven individuals did bring an antitrust action for price-fixing against a major food chain resulting in a jury award in excess of $32.7 million. Unfortunately, private citizen action is very much the exception, not the rule.

H.R. 8532 is a practical and much needed approach to this consumer problem. By allowing state Attorneys General on behalf of the citizens of their states to bring civil actions for antitrust violations, the law increases the ability of state Attorneys General to afford consumers the protection and economic benefits they deserve.

Unfortunately, the merits of the legislation have been clouded by a most regrettable misunderstanding. The question is whether two provisions of this Senate-passed substitute were agreed to during advance informal negotiations with members of the House Judiciary Monopolies and Commercial Law Subcommittee who had been appointed as conferees. Informal negotiations were pragmatically necessary because Senator James Allen (D-AL) had indicated that he would filibuster both the naming of conferees and the conference report itself.

Obviously we did not participate in those informal negotiations and are not in a position to comment on the origin or details of the misunderstanding. Please find enclosed, however, a statement of Senator Hugh Scott (R-PA) which sheds some light on the misunderstanding. Yet before we discuss the substance of the two controversial issues, we feel compelled to emphasize in the strongest possible terms that any action to recommit, to amend or to refer this bill to conference will have the very real effect of killing the legislation. The reason is simple. Because it is so late in the Congressional year, the Senate leadership has made it clear that it cannot afford to waste the floor time which would be absorbed by the minimally two Allen filibusters which would definitely result if the bill is sent back for any further Senate action.

Therefore, regardless of how you view the procedural principles involved, we implore you to consider a still higher principle—namely, that consumers deserve and demand the strong antitrust law and enforcement that the Ford Administration promised would be its best remedy for the economic ills which have beset this country.

We share the frustration of those who deplore the fact that the legislation as introduced has been gradually narrowed and thus weakened. Nonetheless, we are persuaded that the Senate-passed substitute is infinitely better than the status quo and is a promising step in the right direction.

As to the two controversial features of the substitute, please consider the following:

1. *Contingency Fees.*—The expression "contingency fees" in the context of class action antitrust suits often conjures up images of greedy attorneys reaping a sizeable percentage (e.g. 34%, 50%) of a potentially enormous court award to the tune of thousands or millions of dollars. The Senate-passed substitute eliminates that potential windfall because it contains an outright ban on contingency fees which are percentages of the court award. Non-percentage contingency fees must be approved by the court (for example, if the case is unsuccessful the plaintiff's attorney receives nothing; if successful, the attorney receives a fee of $50 per hour.

It cannot be overemphasized that in more than one-third of the states there is not a sufficient staff or budget in the Attorney General's office to bring more than a bare minimum number of *parens patriae* cases. If the legislation is to have any practical significance for these states, they must be provided with the flexibility to utilize the services of private practioners.

2. *Aggregate Damages.*—In the original House-passed version, treble damages could be reduced to single damages when a defendant can establish that the violation was in good faith. The rationale of that House provision was to protect certain existent good-faith practices from being the target of litigation. As the Senate-passed substitute allows treble damages for prospective price-fixing, that earlier provision is no longer necessary.

With these considerations in mind, we urge you to vote in favor of H.R. 8532 so that state governments can be equipped with expanded legal rights to enforce antitrust laws for the benefit of consumers.

Very truly yours,

CAROL TUCKER FOREMAN,
Executive Director.
KATHLEEN F. O'REILLY,
Legislative Director.

CONGRESS WATCH,
Washington, D.C., September 13, 1976.

DEAR REPRESENTATIVE: This week the House will vote on a motion to concur in the Senate substitute amendment to the antitrust bill, H.R. 8532, an omnibus bill which increases the investigatory powers of federal antitrust enforcement agencies and grants states attorneys general the power to represent their citizens in civil antitrust cases. If this motion is rejected, and the bill is amended, this piece of antitrust legislation is dead for this Congress.

Normally, any further change in the House bill as amended by the Senate would merely lead to a conference (since it cannot be amended beyond the third degree). Because fourteen legislative days have been wasted so far by opponents of this bill in the Senate, Majority Leader Mansfield has announced that he will not schedule the appointment of conferees and the conference report. Just two weeks ago, the appointment of conferees was filibustered in the Senate, the first time such an action has been taken since 1946. To avoid the three cloture votes necessary to disengage a filibuster of the appointment of conferees, negotiations were held between the House and Senate Antitrust Subcommittees, resulting in the compromise passed. Even if Senator Mansfield were willing to schedule the cloture votes needed to appoint conferees at this late date the opponents could easily delay the bill beyond the date now set for adjournment, killing other House-passed legislation in the process.

The House is being urged to open the bill for amendment by Representatives who never supported the bill in the first place. They can claim to have been mistreated only if they ignore the fact that the Senate substitute is much closer to the House bill than to the Senate version. Of forty-one disputed issues, the House language was accepted twenty-five times, the Senate six, and ten issues were compromised.

The House Committee Republicans are complaining about two issues which are not substantial enough to warrant killing the entire bill. These issues have shrunk in importance because the original committee bill is now effectively restricted to price fixing and no longer covers a variety of antitrust violations.

1. One issue is whether to insist upon the House provisions which allow treble damages only when the price fixer was acting willfully and in bad faith. These requirements were dropped because of the improbability of finding an unintentional price fixer and the prodigious but unproductive use defendants would likely make of those defenses, wasting time and money. Since these limitations on damages would apply only to suits instituted by state attorneys general, an anomaly would be created: there would be a great gap between the damage recoveries depending on whether the state or federal law enforcement agencies were prosecuting the violation. Some legitimate concern has been expressed over potential reliance by defendants upon precedence which is subsequently overturned by the court, such as when the Supreme Court recently outlawed minimum attorney schedules. The sponsors of the legislation have agreed to a floor colloquy to cover this rare situation.

2. The second issue raised regards contingency fees. Both the House and Senate rejected attempts to alter the ban on contingency fees. However, negotiations with Senators opposed to contingency fees produced a compromise which eliminated the primary concern of these Senators: that attorneys would be awarded large percentages of the state's recovery. The compromise ties the attorney's fees to the number of hours worked by the attorney, and is supervised and determined solely by the court. To go further would impair the ability of the court to award fees, which opponents of contingency in both Houses have stated is not their intent.

The House opponents of this bill are trying to exploit the parliamentary predicament faced by the bill's proponents in order to kill this landmark legislation on procedural rather than substantive grounds. But their motivations are clear. The fact is that everyone concerned would prefer a conference, but the dilatory tactics of a Senate minority have made that impossible. This legislation has already been greatly restricted in scope from the original committee passed version, and is more faithful to the original House passed bill than are most conference reports.

The significance of this bill should not be underestimated. This is the first major piece of antitrust legislation to pass both houses of Congress in twenty-five years. Even though its application has been effectively limited to price fixing, that violation alone cost the American people $70 billion annually, according to former Deputy Attorney General for Antitrust Thomas Kauper. The tremendous potential impact of this legislation is substantiated by the vicious lobbying campaign being waged by its corporate opponents, such as the Business Roundtable. Its earnest opposition should be no surprise, since during the past ten years seventy of the 160 Roundtable members have been found guilty of antitrust law violations, have signed cease or desist orders, or have antitrust cases pending.

Some officeholders, including the President, have advocated using the antitrust laws as a substitute for government regulation. Ironically, when legislation to make these laws functional is proposed, these antitrust advocates become antitrust adversaries, or they quietly try to kill the bill by maneuvering it down a procedural back alley. The attempt to defeat the motion to concur in the Senate antitrust bill, H.R. 8532, is such an attempt. We urge you to support the motion.

Sincerely,

JOAN CLAYBROOK,
MITCHELL ROFSKY.

Mr. McCLORY. Mr. Speaker, if the gentleman will yield, I did not want to limit the language just to price fixing cases but I only wanted single damages to be recovered in parens patriae cases whether the basis for the action was price-fixing or some other antitrust violation. When the good faith provisions were offered as an amendment to this bill, there were other types of cases, in addition to price-fixing cases, where defendants might have acted in good faith. The "dear colleague" letter which the gentleman from Ohio (Mr. SEIBERLING) himself signed indicated there can be good faith violations—there should be an opportunity to reduce the damages in such cases from triple damages to single damages. If this is the law at this time—under case law and court decisions—why do we not put it in the statute? We are admitting it is the law but we are not putting into the statute what the gentleman is saying is the law.

Mr. SEIBERLING. I would just like to say there is no point in putting in something which is superfluous, but I would read from page 7038, the gentleman's own interpretation of this bill even without the Flowers amendment:

What my amendment would do would be to allow treble damages only in cases where there is a willful or deliberate violation of the antitrust law.

Mr. Speaker, the gentleman was talking about the entire body of antitrust law, not just price fixing.

Mr. RODINO. Mr. Speaker, I yield 3 minutes to the gentleman from Maine (Mr. COHEN).

Mr. COHEN. Mr. Speaker, I commend the chairman for listing all the areas where the Senate did recede from its position, but I would suggest that that was because of the carefully drafted language and the merit and the equity of the House version of the CID bill and the premerger notification bill. Many of the Senate provisions were not only inequitable, but I would suggest unconstitutional, which is why they have yielded to the House position. There are several letters circulated that those opposed to this bill as it is now written are trying to kill it through a procedural device.

I think the gentleman from New Jersey (Mr. RODINO) would verify that I voted for this bill in the subcommittee and voted for it in the full committee and took an active part in debate on the floor in support of it, so there should be no doubt about my commitment to the concept of parens patriae; but I must express my objection to the newly added contingent fee arrangement in this legislation and the elimination of the defense of good faith. I know a number of my colleagues are concerned about this. The gentleman from California (Mr. ROUSSELOT) had to leave, but the gentleman did express to me his concern about these two points and these two points only. I suggest the gentleman is expressing this as a matter of good faith and is not trying to kill the bill.

One Senator had threatened to filibuster this measure and that is why the bill has arrived here in its present form. I do not think we should allow one set of vocal cords to strangle the will of this House.

Again, there will be some discussion by the gentleman from Alabama (Mr. FLOWERS). Perhaps the gentleman could answer some questions I have about good faith.

The gentleman from Ohio (Mr. SEIBERLING) suggests the current law protects those that act in good faith. My understanding of the current antitrust law is that only where we have a complete reversal of the Supreme Court decision has the Court moved in the direction to allow good faith as a defense.

Senator KENNEDY said yesterday that only those that wish to deliberately violate our antitrust laws should fear this legislation. I agree with the Senator's use of the word "deliberately."

I want to know about those areas that are still vague. For example, in Parker against Brown the Court said that where there is a State regulatory scheme being followed that there is an exemption from the antitrust laws. This has been cut back by the recent Goldfarb decision which permits the exemption only if that individual is acting under State compulsion. There are individual decisions that show that there may be gray areas. I am concerned about those individuals acting in good faith based upon prior law, yet might not be acting under State compulsion as finally construed by the Supreme Court. What about those instances? That is why we insisted on the provision of good faith. That is my principal concern over the elimination of the House provision.

Mr. RODINO. Mr. Speaker, I yield 5 minutes to the gentleman from Alabama (Mr. FLOWERS).

Mr. FLOWERS. Mr. Speaker, as a member of the Monopolies Subcommittee of the Judiciary Committee, I would like to clarify a few points about this legislation with my distinguished committee chairman, Mr. RODINO, before we act.

On Thursday, August 26, the House conferees met for the purpose of informally negotiating a possible compromise bill that both Houses could accept without a formal conference. We did not sit down with the Senators. Instead, we met alone for several hours into the evening to draft a substitute that would represent our final bargaining position. We submitted this draft to the Senators the next morning. This House draft was accepted in toto by the Senators with two exceptions. These exceptions were, first, the elimination of both the word "willful" and the good faith proviso from the fluid recovery provisions; and, second, the adoption of the Senate ban on percentage-based contingency fees in lieu of the total House ban on all contingency fees. I thus agree with the statements of my distinguished colleagues Messrs. McCLORY and RAILSBACK 2 weeks ago that there was no compromise agreed to and in fact no meeting between the Senate managers and the House conferees.

I cannot, however, agree that these two changes go to the heart and soul of this legislation. In fact, it is wholly erroneous to refer to the bill pending before us today as the Senate proposal. To the contrary, the bill we are about to vote upon was drafted by our conferees and staff and accepted by the Senate verbatim with just two changes. I am therefore amused by the Senate's reference to our bill as the so-called Byrd substitute. This legislation is in fact a House substitute which embodies all the basic House concepts. Senators ABOUREZK and KENNEDY, the Senate negotiators, were really confirming this when they pointed out how the bill pending before us and drafted by us rejects most of the Senate positions.

As Senator ABOUREZK pointed out on September 7, for example, the fluid recovery provision—not contingency fees—is, and I am quoting, "the heart" of the parens patriae title. As I shall remind everyone, this provision represents the basic House approach, not the Senate. The essential point is that while the two Senate changes in the House bill are not unimportant, they are not at the heart of this legislation. They cannot alter the fact that with the exception of those changes and the Senate retroactivity provision, what we are voting upon today is the House bill, both in specific detail and general approach.

With this background in mind, Mr. RODINO and I would like to assure the House on the following points:

Mr. Speaker, I was the author of the amendment which limited the use of the aggregate damages provision to price fixing. I would like to state the reasons why my amendment initially contained the word "willful" and why its elimination is acceptable to the House. Prior to consideration of my amendment, the House had adopted the good faith pro-

viso offered by Mr. McCLORY to protect inadvertent violators. I believed that it would not achieve adequate protection. This is because it would not prevent the filing of punitive lawsuits which would in all likelihood force defendants into settlements before the good faith proviso could ever come into effect. Accordingly, I offered my amendment so as to limit damage aggregation to the clearest, most pernicious and—it now appears from the Justice Department's recent efforts—the most frequent violation.

I did not intend the word "willful" to impose a criminal burden of proof. Rather, I used the word to make sure that States would not try to allege new theories of price fixing such as conscious parallelism, not now accepted in law, in order to bring suits under some radical new theory of what constitutes price fixing.

I was also concerned with permitting a court to assess damages retroactively after overruling long-accepted practices, such as minimum fee schedules, or prior court rulings of exemption, such as the baseball exemption. The House bill did not at that time have a provision against nonretroactivity.

The adoption of my statement rendered Mr. McCLORY's amendment superfluous, but it was impossible procedurally to delete it. However, the Senate did delete the proviso when it adopted the House aggregate damages provision as part of the final Chiles-Byrd compromise on June 10 prior to initial Senate passage of H.R. 8532. See page 17545 of the June 10, 1976 CONGRESSIONAL RECORD. The authors of that compromise, Senators CHILES, PERCY, and JAVITS, also determined to delete the word "willful," because they feared a criminal standard, which I never intended, might be imposed. But they did so only after a detailed colloquy to satisfy the two concerns I had—to limit the bill to the existing law on price-fixing conspiracies and to guard against retroactivity.

A good faith defense is simply not necessary to legislation limited to price fixing. Competitors must in fact contract, combine, or conspire together in some manner, deliberately agree to fix prices, and actually adhere to the agreement thereafter before the key parens patriae provision applies. Price fixing has always required a deliberate, knowing and intentional combination, and the aggregate damages provision is limited to this kind of violation. Good faith cannot by definition be present, except in the very limited circumstances where the courts or Congress overrule an exemption or provision for immunity. I think we have taken care of that problem by adopting the Senate nonretroactivity provision. It is our intent, as I believe it was the intent of Senator PERCY, that courts not apply aggregate damages retroactively when and if a specific exemption or immunity is withdrawn in the future.

There are, of course, case precedents for denying retroactive damages in similar circumstances. See, for example, *Chevron Oil Co.* v. *Huson*, 404 U.S. 97. In our opinion, however, these cases leave too much to the equitable discretion of a district court. It is our intention by accepting the Senate non-retroactivity provision in our House substitute to require prospective treatment of aggregate damages where there is reasonable reliance on immunity or an exemption later altered. The Supreme Court's recent Cantor against Detroit Edison decision is a good example of where the dissent's fears about a defendant's guessing wrong have no foundation, at least as far as this legislation is concerned.

NEW CAUSE OF ACTION ISSUE

One of my particular concerns is the discussion on page 29342 of the RECORD of September 8, under the heading "Separate Cause of Action," in Senator HART's insertion. In that discussion, Senator HART's paper states that the bill that we passed "purported to be entirely procedural in nature." That is correct. The paper then says that the original Senate-passed bill created a "separate cause of action in the State," regardless of whether consumers actually have a cause of action. It says that the Senate bill was, and I quote, "more than merely procedural because it deliberately bypassed some of the language of section 4 of the Clayton Act." Senator HART's statement then indicates that the new version proposed by the Byrd motion, which was supposedly agreed to by the House conferees, "adopts the basic Senate approach." According to the statement, this would mean that there would be liability to the State in a parens patriae action even if, under existing principles of substantive antitrust law, consumers do not have a cause of action or a right of recovery at all.

As has been made clear, there was no such agreement to adopt the basic Senate approach. Quite to the contrary, the bill ultimately voted upon by the Senate was drafted by us and based on the basic House approach. I would therefore like to confirm that the House conferees never committed themselves to the changes and objectives set out in Senator HART's statement; and second, that enactment of the bill before us would not create a new cause of action that would establish new liability or permit right to recovery where none would otherwise exist under the antitrust laws.

The bill is to provide a practical procedural mechanism for enforcing antitrust liability, but without changing the basic substantive principles which determine whether there is any liability or a right to recovery. I do not understand how the Senate could have had a more sweeping objective after it substituted the House aggregate damages provision for the Senate Judiciary Committee version on the Senate floor in June.

In any event, I can state clearly that neither I, nor to the best of my knowledge, any of the House conferees, agreed to such a fundamental change in our intention. We have always insisted that the bill is procedural and not substantive, and is simply designed to provide a practical mechanism by which a State attorney general can step into the shoes of the consumers in the State to enforce their antitrust claims. An essential part of this objective is that the legislation would not create liability to consumers where the courts would otherwise hold there is no compensable injury to consumers.

To make sure of our intent, we in fact added to the House substitute adopted by the Senate some language that was not originally included in our bill. This new language is the phrase "for injury sustained by such natural persons to their property" in section 4C(a)(1). This is basically the same language found in section 4 of the Clayton Act, which creates treble-damage liability to a person who "is injured in his business or property" by an antitrust violation. We included this language keyed into section 4 of the Clayton Act in order to make it crystal clear that the attorney general is simply being empowered to sue on behalf of consumers when and if he can demonstrate, in accordance with the standards applied under section 4, that consumers have been injured in their property.

Finally, I would like to refer to the statement made on the Senate floor by Senator ABOUREZK, the Senate floor's manager and principal negotiator:

> Let me emphasize one thing. The bill creates no new antitrust liability, it merely provides an effective mechanism for enforcement of the existing antitrust laws. (Page 29146.)

I believe that statement accurately reflects what I assume was the consensus, namely, that the enactment of the pending parens patriae bill would not change any of the rules of law that determine whether or not consumers have any right of recovery.

There also arises a question concerning the part of section 4C(a)(1) of H.R. 8532 that prohibits duplicative damage awards. When we originally passed this bill in this House, we did not include similar language because we thought it unnecessary. That is, the legislation before us requires the State attorneys general to bear the burden of proving, as a condition to obtaining any recovery, that conduct shown to be in violation of the antitrust laws caused actual injury to consumers rather than someone else in the chain of distribution. Thus, for example, a State attorney general would bear the burden of proving by competent evidence that any illegal overcharge was in fact passed on to consumers. Accordingly, there would be virtually no risk of a duplicative damage award. When we drafted the House substitute for submission to the Senate managers in late August, we decided to make this intent clear and thus added an express prohibition against duplicative damages.

I am also troubled by paragraph six of the so-called statement inserted into the RECORD by the senior Senator from Michigan when the House substitute was passed in the Senate on September 8. This statement is unclear.

It correctly states that a State attorney general will have to establish the amount of damage properly allocable to consumers. But it seems to suggest that in some, unspecified circumstances the defendants will have the burden of proving that the effects of anticompetitive activity were or were not passed on to consumers. This latter suggestion is incorrect. I know that the House conferees

communicated only with Senators KENNEDY and ABOUREZK, so that Senator HART's misstatement is perhaps understandable. But to avoid any possibility of confusion, I would like to confirm my understanding that we have no intention of changing the law to require the defendant to show who was and who was not injured by his alleged misconduct.

Not all antitrust violations injure all economic actors along a chain of distribution, and not all antitrust violations, including price fixing, ultimately cause actual injury to consumers. Title III of H.R. 8532 is procedural only, and is not intended to change the requirement that anyone suing under the antitrust laws, including State attorneys general representing the interests of consumers, must bear the burden of proving that injuries caused by anticompetitive conduct befell them, rather than anyone else in the chain of distribution.

The aggregate damages provision offers the attorney general an alternate way of proving the scale of damages suffered by consumers once price fixing has been found. But the burden of proving both the fact of actual injury to consumers and the scale of damages suffered by consumers remains with the attorney general in all parens patriae cases that would be brought under this bill.

Mr. Speaker, there is one further point I think should be discussed. Both the original House CID bill, H.R. 13489, and title I of the House substitute, which is virtually identical and which is now before us, make the standards of the Federal Rules of Civil Procedure applicable to CIDs. The Senate bill did not contain a similar provision. The purpose of the House provision is set forth in the House Judiciary Committee report. There is, however, a curious discussion of this provision in the so-called additional statement of Senator HART inserted in the Senate RECORD after the debate. This discussion may be interpreted to imply that the standards of the Federal rules apply only to the extent that they are identical to the grand jury protections against undue burden or oppression. For example, the statement says that the protection against annoyance and embarrassment contained in rule 26 is not applicable. As far as we are concerned, this is simply wrong. It is our intent to stand by the additional protections afforded by the Federal rules. I would ask Mr. RODINO if this is not correct.

Mr. RODINO. That is correct. Our committee report is unequivocal. That report says on page 12 that except where the Federal rules are inconsistent with the CID act, as set forth on page 12, then, and I quote, "the Federal judiciary may treat objections to CID's much like objections to civil discovery requests."

Mr. FLOWERS. I have really no reservations at this point about going with the language that is here before us as a result of a process that I do not necessarily agree with, but we are in the position now of determining whether or not we are going to have legislation this year, and I think we ought to move forward.

Mr. COHEN. As I understand it, the House version originally provided for a good faith provision, and the gentleman from Alabama is the one who insisted upon that, as I recall.

Mr. FLOWERS. Well, the good faith provision was a part of the measure I amended to limit specifically to price fixing in, so it was attached to it, but that is not necessary, in my judgment, because price fixing inherently is not in good faith.

Mr. COHEN. Would the gentleman suggest that is true for the practice of minimum bar fee schedules, real estate schedules, for engineers and architects?

Mr. FLOWERS. I think there could be good faith reliance on what one considered to be a regular or accepted practice, and that is why we want to emphasize so strongly the line of cases which allow the court the discretion to allow no damages in those instances.

Mr. COHEN. Under this bill, is it the gentleman's opinion that be followed by the court, or at least develop a legislative history in those cases where they are, in fact, relied upon, primarily administrative and judicial decisions? That is, not enforce treble damages?

Mr. FLOWERS. I would hope very strongly that the court would look to legislative history and abide by those terms.

Mr. SEIBERLING. Mr. Speaker, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Ohio.

Mr. SEIBERLING. At the time I conferred with the gentleman from Illinois (Mr. MCCLORY) on the drafting of the amendment which he offered, that had the good faith proviso in it, we were not contemplating a bill that had the aggregation of damages section limited by the Flowers amendment, which restricted it to price fixing. When the gentleman from Illinois offered his amendment, we did not have any price-fixing limitations in this section. It was only after he offered his amendment that the section was so limited.

As the gentleman will recall, I opposed that limitation but the House overruled my views. Thereafter, I went to the gentleman from Alabama and said, "You know, it does not make sense, now that we have limited this to price fixing, to say that defendants found guilty of price fixing can reduce damages by showing good faith. I really find it hard to conceive of price fixing in violation of the law in good faith." Yet that is the situation we found ourselves in, and that is why the Senate, very logically in my view, took it out. However, as a conferee, I had been willing to go along with leaving it in as a compromise.

The SPEAKER. The time of the gentleman from Alabama has expired.

Mr. RODINO. Mr. Speaker, I yield 2 additional minutes to the gentleman from Alabama.

Mr. FLOWERS. I think we have probably ridden this horse into the ground, and there is no sense in going over it again. I think there is another aspect of controversy here, or apparently in controversy, that there should be some discussion of, and that is the matter of contingency fees.

I was also the author of an amendment which would have allowed for a contingency fee in the true sense of the word; that is, a fee based upon a percentage amount of the recovery, because I felt in good faith that this would be helpful to small States such as my own, to employ expert legal counsel to represent them. Now, this body did not see it my way and voted down my amendment. So, we have now, in effect, a provision before this body which disallows that kind of contingency fee.

It allows only the historic attorney's fee. One can use the word "contingent" if one wishes in connection with it, but it is really an attorney's fee based upon success or lack of success, based upon time spent and all of the range of consideration that normally come to bear when a court sets a reasonable attorney's fee.

Mr. THORNTON. Mr. Speaker, will the gentleman yield?

Mr. FLOWERS. I yield to the gentleman from Arkansas.

Mr. THORNTON. I thank the gentleman for yielding.

As the gentleman knows, I strongly support the doctrine of parens patriae. However, I am concerned that in our enthusiasm for the good features of this bill, we are being asked to accept a harm which I think will airse from the approval of contingency fees.

In my view the allowance of contingent fees is inconsistent with the doctrine of parens patriae. That doctrine rests upon the theory that the State should accept the responsibility of representing classes of its citizens in certain antitrust actions.

The proper exercise of that responsibility requires that the State be accountable for its actions, and in complete charge of the case.

Mr. RODINO. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. HUTCHINSON), the ranking minority member of the committee.

Mr. THORNTON. Mr. Speaker, will the gentleman yield so that I might continue my statement?

Mr. HUTCHINSON. I yield to the gentleman.

Mr. THORNTON. Mr. Speaker, I would like to continue my statement by saying that the doctrine of parens patriae necessarily includes accountability, and accountability is not served by contingent fee contracts. Law firms should not be permitted to approach States with a no-risk contract, by means of which the law firm gains control of the case.

The primary interest of a firm employed under such a contract would not be in protecting the interests of the citizens of the State, but in whether or not it gains a fee from the rendition of services.

Parens patriae actions brought on behalf of a State should be the responsibility of the State attorney general, who is accountable to the electorate, and such cases should remain under the State attorney general's control.

I believe that States can and should develop the resources and capabilities to represent the State's legal interests wherever needed.

I do not believe that only the largest States need or can afford such a legal capability within the State attorney gen-

eral's office. The State of Arkansas has demonstrated that a State can develop its own effective antitrust legal resources.

Where needed, a State attorney general can draw on the advice and assistance of the Antitrust Division of the U.S. Department of Justitce. Where needed, he can also hire outside members of the private antitrust bar, on an hourly or per diem basis, out of the resources of the State, to assist the State in handling unusual situations requiring specialized expertise.

States should develop their own in-house legal capabilities, and hire any needed assistance by outside lawyers on a definite and specific hourly rate or dollar compensation basis out of the State's resources, based on the attorney general's responsible professional judgment as to the merits and prospects of a case.

I support the doctrine of parens patriae but I believe the House's prohibition against contingency fees should be insisted upon in this bill.

Mr. HUTCHINSON. Mr. Speaker, I want to state to the Members on the floor that there are those of us on the floor who are fully in support of two-thirds of this bill but are strongly opposed to the concept of parens patriae.

I oppose parens patriae because I think it is poor public policy to delegate to the States their responsibility of enforcing Federal antitrust laws. I think that we should have strong antitrust enforcement. We need that. But it should be done by the Federal Government because they are Federal laws, and it should be done by the Department of Justice. I think it is very poor public policy for us to delegate to State attorneys general, who go out and run for office every couple of years or every 4 years, the power of starting all manner of suits, perhaps harassing suits, against alleged violators of the Federal antitrust laws, and then with the realization that there is not going to be anybody in the public who is going to actually receive those damages. This is just a new kind of a fining procedure. If we want to assess fines, it seems to me as though that ought to be done through the criminal law.

Mr. Speaker, the Senate amendment before us today has three titles. Two titles are good legislation and one title is bad. The two good titles are the first two, concerning civil investigative demands and premerger notification. They provide reasonable help to Federal law enforcement enforcing Federal antitrust laws. And they are strongly supported by the administration. Moreover, the Senate substitute closely resembles the House bills which the House passed under suspension of the rules on August 2, 1976.

The third title, parens patriae, is not good legislation. It would embroil Federal antitrust enforcement in State politics. It would unfairly benefit State enforcement by providing special trial advantages not given to the people or to the Federal Government when they bring antitrust actions. And since big money would be involved, the authority given every State attorney general to dispense million dollar favors on his lawyer-friends will unfortunately breed scandal.

Now if that isn't bad enough, the Senate has sent us a new version, even worse. Under the Senate version, good faith violators will be hit with treble damages. The purpose of this, I suppose, is to deter people who think their activities are legal from going forward. Also under the Senate version, the State will be able to farm out these cases to friends of the attorney general without any financial risk to the State. The lifting of the ban on contingency fees will remove the brakes on this mischievous vehicle.

I address those in this body who thought last March that the House bill was a good idea: You better look closely at the Senate substitute because it is vastly different.

I bring to your attention Senator HART's report on the substitute printed in the CONGRESSIONAL RECORD for September 8, 1976. On page 29342, it states that whereas the House bill was "procedural"—and that is correct, the Senate bill creates a new cause of action in order to reject "the use of such labels as 'standing,' 'manageability,' 'priority,' 'target area,' or 'remoteness' by the court to frustrate the intent of the legislation."

Well, the first two titles are House versions, and the third title is the Senate's, and the Senator for whom this bill is named should know what the Senate intended. But the legal implications of those quoted words are incredible.

What is the intention of this bill? What guidelines are there for this new cause of action that tosses aside tests of standing and casuality? According to the Senator's report, the intention is to permit those who were "denied the benefits of a free and open market to recover damages".

Well, I do not think the House can accept the untested breadth of the revised parens patriae title. The name is the same. But that is all. I hope that the Members of this body will not be intimidated and panicked into passing this legislation for fear that a vote for sound reason will be distorted by the newspapers as a vote against antitrust.

If the legislative intent of the authors of the language before us matters, if the addition of provisions the House already rejected matters, if the words before us matter, one cannot in good conscience vote to concur.

The choice is not a difficult one. Because if this package with all its bad provisions dies, the good within it still lives. The two titles other than parens patriae have an independent existence as House passed bills now awaiting Senate approval. So have no fear that in trying to restore the House position on parens patriae you might lose everything. Not so. For if parens patriae dies, the other titles can still easily be salvaged.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. HUTCHINSON. I yield to the gentleman from Illinois.

Mr. McCLORY. I thank the gentleman for yielding.

In carrying on what the gentleman is saying, we are not only delegating to the attorneys general of the various States this authority, but we are delegating the authority to engage private attorneys and make contingency fee contracts with them.

CALL OF THE HOUSE

Mr. ASHBROOK. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. RODINO. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The call was taken by electronic device, and the following Members failed to respond:

[Roll No. 742]

Abzug	Holland	Rees
Ashley	Howe	Rhodes
Breaux	Jarman	Riegle
Burke, Calif.	Johnson, Pa.	Rose
Burke, Fla.	Jones, Ala.	Rousselot
Carter	Jones, Tenn.	Santini
Cederberg	Karth	Sarbanes
Chisholm	Kelly	Satterfield
Cleveland	Ketchum	Scheuer
Cochran	Koch	Schneebeli
Conlan	Landrum	Stanton, James V.
Conyers	Long, Md.	Stark
D'Amours	Madigan	Steelman
Daniel, Dan	Mathis	Steiger, Ariz.
Derrick	Matsunaga	Stephens
Derwinski	Mazzoli	Stokes
Diggs	Meeds	Stuckey
Eckhardt	Melcher	Teague
Edwards, Calif.	Metcalfe	Thompson
Esch	Michel	Thone
Eshleman	Mikva	Treen
Fish	Milford	Tsongas
Ford, Tenn.	Mink	Udall
Fraser	Murphy, N.Y.	Ullman
Fuqua	Neal	Vander Jagt
Green	Nolan	Vander Veen
Hansen	O'Hara	Waxman
Harrington	Passman	Wilson, C. H.
Harsha	Patterson, Calif.	Winn
Hébert	Pike	Wright
Heinz	Pressler	Yatron
Helstoski	Pritchard	Young, Alaska
Hinshaw		

The SPEAKER. On this rollcall 333 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

AMENDING THE CLAYTON ACT

The SPEAKER. The Chair recognizes the gentleman from New Jersey (Mr. RODINO).

Mr. RODINO. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. HUGHES).

Mr. HUGHES. I thank my chairman, the gentleman from New Jersey, for yielding.

Mr. Speaker, I am delighted, first of all, to see that the Chamber is full. We have been talking to a fairly empty House, and I think that this is an extremely important piece of legislation—a measure that is misunderstood by a lot of my colleagues.

There are three basic aspects of the legislation: one dealing with CID, civil investigative demands, which is noncontroversial, premerger notification, which is noncontroversial; and parens patriae, which has two areas of question, one dealing with a good faith defense to price fixing, which I think my colleague, the gentleman from Alabama,

addressed very well in colloquy with my colleague, the gentleman from Maine; and the second dealing with contingency fees.

I think there is a great deal of misunderstanding as to what in effect is in the compromise, so I would like to address that one issue dealing with contingency fees. Clearly the compromise measure forbids percentage contingency fees. The House-passed version of H.R. 8532 contained a provision flatly prohibiting contingency fees of any kind. This provision was addressed primarily to those States which lacked their own in-house capacity to prosecute antitrust cases and are, therefore, required to retain outside counsel with expertise in the field of antitrust law to prosecute cases on behalf of the State. It was the intent of the original House version to prevent enterprising lawyers working on a flat percentage fee basis from maintaining these suits for their own enrichment rather than in the public interest. This was obviously a legitimate concern.

However, by prohibiting all contingency fees of any kind, the House bill went too far. As originally passed by the House, the only permissible fee would be paying lawyers on a straight hourly or per diem basis, regardless of the merits of the case or whether they win or lose.

While this amendment was well intentioned, it actually would have the opposite effect. From the standpoint of a lawyer earning an hourly or per diem fee, the longer the case and the longer he has the meter running, the better. The more protracted the litigation, the more money he makes. Certainly we should not encourage that type of arrangement as a matter of public policy.

There is one form of fee which provides the best of both worlds, and that is the one provided for in the amendment now before us. The legislation as now submitted would permit the type of fee arrangement whereby if the lawyer loses, he gets nothing, or his costs; but if he wins, he gets a reasonable hourly rate for his services, to be approved by the court.

The SPEAKER. The time of the gentleman has expired.

Mr. RODINO. Mr. Speaker, I yield 30 additional seconds to the gentleman from New Jersey.

Mr. HUGHES. The compromise retains the original House bill's prohibition against flat percentage fees. However, it would permit a fee to be determined by the court on the basis of the actual hours put in by the attorney, the quality of the work, and the resulting benefits to the consumer. This type of approach would discourage frivolous suits and give a lawyer a strong incentive to win his case expeditiously.

I strongly urge my colleagues to ratify this reasonable approach to a most difficult issue.

The SPEAKER. The time of the gentleman has expired.

Mr. RODINO. Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. RAILSBACK).

Mr. RAILSBACK. Mr. Speaker, in the other body this bill is considered as a memorial to two formidable antitrust champions, Senator HART and Senator SCOTT and that is as it should be. However, it seems obvious to me that the Senate would not have taken the grave risk of challenging the House on the two most important issues in disagreement, especially after our displeasure was made a matter of record, unless either the chairman had given his approval to the Senate action or the Senate managers were confident that they could dispose of further House amendments prior to adjournment. Since the chairman has assured us that he did not approve of the Senate action, it may be that there is still time for the Senate to agree to House amendments.

Of course, some Members will argue that time has run out. There will be statements to that effect. But if you look behind those statements at the voting record of those who say that time has run out, you will see that they never have supported the House position banning contingency fees. So what is really happening should be clear: we are being panicked into abandoning the House position by those who never really liked it anyway.

With regard to the deletion of "good faith" defense, we are being given belated rationalizations that the amendment is unnecessary because its contents are already the law. This is news to some of us on the antitrust subcommittee as it must be to members of the antitrust bar. By elaborate argument, a few dicta, and a very limited discretionary exception are being inflated to appear as some general rule.

It should also be noted that this belated rationalization was not the thinking in the other body. Rather, the other body seemed to suggest that one could not fix prices in good faith—that the amendment was an impossibility. Here, we are told not that a good faith defense is impossible but that it is the law. Perhaps the House and the Senate managers should confer with each other on the question.

Finally, I am somewhat disturbed by the ex post facto attempt in the other body to write legislative history by inserting in the RECORD, after the debate had concluded, a statement which was erroneous in many particulars. I hope that in the future when this bill becomes law, with or without the amendments in controversy, that no court is deceived by this attempt.

Particularly, with regard to the first two titles, the Senate amendment is basically the House version. It would seem to me that the House reports on House language would be controlling.

Moreover, every Member of this body ought to know and every court ought to know that the House conferees met, having been informed of the desires of the Senate managers, and drafted the language of a proposed compromise. In doing so we did no violance to the provisions of the first two titles as they passed the House. With regard to title III, we created a hybrid. But our intention was never to dismiss legal doctrines of long standing as totally irrelevant. It is evident that the other body tampered substantially with our draft of title III, but its refusal to accept a good faith defense or a ban on contingency fees is not a basis for restructuring the parens patriae action itself.

Let me close with an example that should put this attempt in perspective. The House version had a provision that a CID could be objected to for reasons one might object to a grand jury subpena or a discovery order under the Federal rules of civil procedure. Let me tell you that certain House conferees were contacted by Senators who wanted this provision stricken or weakened because it was mischievous. Now it should be known that this provision and other similar ones were extremely helpful in getting this bill out of limbo. So the House conferees held fast, and the House language was retained verbatim.

The statement of intent now suggests that the Senate adopted the House language because it was essentially meaningless. The House report explains the language. It should be emphasized that the provision embracing the Federal rules would incorporate by reference any new developments thereunder, generally shows greater sensitivity to matters such as trade secrets, and would permit in appropriate cases protective orders and orders conditioning compliance upon the advancement of costs.

Finally, I want to concur in the earlier remarks by the chairman, the gentleman from New Jersey (Mr. RODINO), on the intention and purpose of the Senate amendment and the various differences between it and the three bills previously passed by the House. I think his remarks—except those relating to the "good faith" defense—reflect the views of us on the minority side of the subcommittee and accurately express the legislative intention of the language of the Senate amendment which we, in large part, drafted.

Mr. RODINO. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Speaker, I am here to talk about something dear to my heart: attorneys' fees. The contingent fee section in the bill as reported by the informal conference is diametrically opposed to the position of the House. The position of the House was sustained by a wide margin. The position of the House was presented to the Senate. It narrowly failed in the Senate. Notwithstanding the weight of this support for the House language, it is abandoned in the proposal now before. Contingent fee payments, if approved by the court, are authorized in cases which are settled. This is the most common situation. In other words, current practice, and all of its excesses, is ratified in this bill.

The justification, Mr. Speaker, for contingent fees is that it allows the impoverished plaintiff an opportunity to hire the best legal brains available. That is why attorneys' fees on a contingent basis are condoned at all.

But does anybody here think that any State in the Union properly can be characterized as an impoverished plaintiff? Of course not. They should have the same burden as the defendant. When a defendant is served with a complaint, he

hires an attorney and pays for legal services at an hourly rate. What is wrong with casting the same burden upon the plaintiff as well? Contingency fees ought to be eliminated, Mr. Speaker, in this class of cases, and that was the considered judgment of the House. We should not repudiate that judgment now.

Class actions have resulted in enormous fees to private counsel. Parens patriae actions will exacerbate this problem. The most classic illustration of what I am speaking about are the tetracycline cases in which roughly $200 million was distributed. The actions presumptively were brought on behalf of consumers. The consumers received about $40 million, and the attorneys got about $40 million. The rest was paid to the Government and other entities.

If we cut up $40 million among a dozen attorneys and cut up the remaining $40 million among millions of consumers, who really profits from the lawsuit? Was it brought because of the attorneys' economic interest or brought because of the possibility of recovering a dollar or two on behalf of the individual consumer? The answer is clear, and we should not tolerate it. This legislation grants enormous power to State government. It is going to be abused by State governments hiring counsel on a contingent basis.

The contingent fee language of the bill is deceptive. It purports only to eliminate some contingent fee arrangements, in fact it does not change present practice.

My colleague, Mr. ROUSSELOT, has also expressed to me his concern over this section, and the bill as a whole. Well he might, for the legislation is unacceptable in its present form.

Mr. Speaker, let us stick to the House language.

Mr. RODINO. Mr. Speaker, I yield 3 minutes to the gentleman from Alabama (Mr. FLOWERS).

Mr. SEIBERLING. Mr. Speaker, will the gentleman from Alabama yield for one short observation?

Mr. FLOWERS. I yield to the gentleman from Ohio for a short observation only.

Mr. SEIBERLING. Mr. Speaker, the gentleman from California said that parens patriae cases have resulted in enormous attorney fees. I am sure that was a slip of the tongue, because unless this bill is passed, there is no basis for bringing parens patriae damage actions, and there have been none for damages up until now.

Mr. WIGGINS. Mr. Speaker, if the gentleman will yield, class actions of this sort have resulted in enormous fees.

Mr. FLOWERS. Mr. Speaker, I would also like to address the contingency fee issue and I ask my colleagues to pay close attention here, because I think we are in danger of being influenced by a false problem here.

Mr. Speaker, I want to assure my colleagues that I am not supporting the Senate change as an effort to obtain an amendment that was lost in March. The fact is that the Senate change closes a loophole that was permitted by the House provision, though perhaps not contemplated by its sponsor, the gentleman from California (Mr. WIGGINS). This loophole existed because the original House version was not clear in its application to settlements as distinguished from litigated cases. There was, therefore, nothing to prohibit a State from agreeing to provide a portion of a settlement fund for the lawyer in addition to any fixed-fee arrangement, so long as the court approved. The Senate change does not prohibit hourly-based fees that are contingent upon success. But its ban of percentage-based fees applies to settlements and it does require the court not merely to approve, but in fact to determine the appropriate fee.

This is not a contingent fee arrangement in the normal sense in any way whatsoever. It is the normal, reasonable attorney's fee that we all know about, we are used to and the courts do it all over the land.

Let me ask my distinguished chairman, the gentleman from New Jersey (Mr. RODINO) if the gentleman agrees with this analysis here?

Mr. RODINO. Mr. Speaker, will the gentleman yield?

Mr. FLOWERS. I yield to the distinguished chairman.

Mr. RODINO. Mr. Speaker, I agree totally, because here we are dealing with a question that really gets to the heart of it, because the problem with fees is not their contingent nature. The problem really we are dealing with is the percentage arrangement that the State's lawyer extracts either from the State in his contract, or from the defendant in settlement negotiations. The Senate change would prohibit private settlement arrangements that result in percentage and other unreasonable fees coming out of the settlement fund and, thus, out of the pockets of consumers. It will do this by requiring the court—not the litigants—to determine the fees in all cases in the future, and not merely to approve the litigants' arrangements as in the past.

The SPEAKER. The time of the gentleman from Alabama has expired.

Mr. RODINO. Mr. Speaker, I yield myself 1 additional minute.

Mr. Speaker, we want to stress the word "determine." We intend by this to focus settlement negotiations on the merits of a case, and to leave the fee determination to the court, and that is where it should be. Ordinarily, if the plaintiff fails to prevail substantially and substantively in his complaint, no legal fees whatever would be approved by the court and that is why this method of dealing with contingent fees is acceptable to us.

Mr. Speaker, it is my intention to move the previous question on my earlier motion when I conclude my remarks. Before I do so, however, I want to take this final opportunity to remind the House that it will be this next vote—the vote on the previous question—that will determine the fate of this critical legislation, and to put it very succinctly and forcefully, we will have to either fish or cut bait. If those who want to support the type of legislation to enforce our antitrust laws, to protect competition, to protect the consumers' interests and are in support of this kind of legislation, then I think that it is up to them to support the motion on the previous question.

Mr. McCLORY. Mr. Speaker, I ask unanimous consent that the gentleman have 5 additional minutes.

The SPEAKER. The gentleman has no time left. The Chair has said he has 1½ minutes, and that is all that can be used.

Mr. RODINO. Mr. Speaker, the Committee on the Judiciary, has studied these specific issues for nearly 3 years; the House has passed nearly identical forms of this very bill four times already in this Congress. Yet because of the parliamentary situation, we have not yet enacted this badly needed legislation into law. If the previous question is not ordered on this next vote, the bill, I am afraid, will slip beyond us for the last time in this Congress.

I urge the help of all my colleagues, and I am certain American consumers will benefit greatly from your support.

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Illinois.

Mr. McCLORY. I just want to say that we have assurances from the other body that there will not be a filibuster and that there will be a prompt vote on the two amendments.

Mr. RODINO. I refuse to yield further because, Mr. Speaker, we have no such assurances.

Mr. McCLORY. I have them in writing, as the gentleman knows.

Mr. RODINO. Mr. Speaker, I move the previous question on the motion.

PARLIAMENTARY INQUIRY

Mr. McCLORY. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. McCLORY. Mr. Speaker, in view of the fact that rule XVII states that "It shall be an order—after the previous question shall have been ordered on its passage, for the Speaker to entertain and submit a motion to commit, with or without instructions, to a standing or select committee," and in view of the fact that motions to commit are permitted when the stage of disagreement has been reached in the context of the consideration of conference reports, and in view of the fact that prior precedents indicate that a motion to commit is in order after the previous question has been ordered on a motion to concur in a Senate amendment (V, 5575), is it absolutely necessary to first vote down the previous question before I may be recognized to offer a motion to commit?

The SPEAKER. The answer to the specific question is "yes," but the precedent cited by the gentleman is not applicable in the present situation, since in this case the stage of disagreement has been reached and therefore the pending motion is most preferential as tending to resolve the differences between the Houses most quickly.

Mr. McCLORY. I thank the Chair.

Mr. ASHBROOK. Mr. Speaker, I had sought time to ask questions of the chairman regarding the effect of this legisla-

tion on current labor law. I feel that there are a number of areas where unions who support this legislation might find themselves with unexpected results not to their liking. Not that they would not deserve it but at least these questions should have been raised. In the Senate on September 8, Senator HART obviously tried to anticipate some of the problems in labor law under parens patriae and insert remarks on pages 29343 and 29344. I think these remarks muddied the water.

Here are the questions I would have asked and the answers I would have given. I do not now know what answers the chairman would have gotten.

QUESTIONS AND ANSWERS CONCERNING THE LABOR ANTITRUST EXEMPTION

Q. If a union and an employer agree on the price at which the employer must sell his products, would the union be exempt from the antitrust laws?

A. No. The Supreme Court clearly stated such actions by a union would not be exempt from the antitrust laws. *Mine Workers* v. *Pennington*, 381, U.S. 657, 663, (1965) and *Meat Cutters* v. *Jewel Tea*, 381, U.S. 676, 689 (1965).

Q. Can a union agree with one employer, or set of employers, to impose a certain wage scale on employees of the employer or employers who are not in the union without violating the antitrust laws?

A. No. The Supreme Court has said such an agreement would clearly violate the antitrust laws. *Mine Workers* v. *Pennington*, 381 U.S. 657, 665–66 (1965).

Q. Can a union, without violating antitrust laws, agree with both contractors and manufacturers who employ the union's members that the contractors will buy goods only from the union's local manufacturers and the manufacturers will sell in the local area only to the union's contractors?

A. No. The Supreme Court found such an agreement was not exempt from the antitrust laws in *Allen Bradley Co.* v. *Union*, 325 U.S. 797 (1945).

Q. Can a union agree with an employer of its members that the employer will subcontract work only to firms who also have contracts with the union without violating the antitrust laws?

A. No. The Supreme Court clearly held such an agreement, or even attempts to force an employer to sign such an agreement, would violate the antitrust laws. *Connell Co.* v. *Plumbers & Steamfitters*, 421 U.S. 616, 623–25 (1975).

Q. Under the proposed legislation that we are here considering, would unions be subject to *parens patriae* suits in each of the instances that I have just cited?

A. Clearly they would where the violation could be alleged to have caused injury to consumers. The examples you cite point up the fact that contrary to a popular assumption, unions do not have blanket exemption from the antitrust laws. In fact, the examples you cite by no means exhaust the type of activity which would make labor unions vulnerable to *parens patriae* suits.

Q. Is there any exemption for labor unions written into this bill?

A. No; there is not.

Mr. RAILSBACK. Mr. Speaker, while my views on this legislation are well known, I want to commend Chairman RODINO and other members of the Judiciary Committee who have labored long and hard to produce this omnibus antitrust legislation.

Their endeavors are particularly praiseworthy to the extent the House is now voting on a more moderate enactment, particularly with respect to title III—parens patriae, which differs from the many extreme proposals which were advocated in the Senate and which are elaborated in the report of the Senate Committee on the Judiciary and in explanations during the voluminous Senate debates.

Among the moderating revisions in title III, for which I credit my colleagues in this Chamber, are the following:

First. The preservation of express parens patriae terminology, so as to insure historic fiduciary obligations of parens patriae, and other common law obligations.

Second. The retention of Clayton Act section 4 requirements of "injury" to the "property" of the natural persons for whom action is filed, as well as the required causal nexus that such "injury" is actually "sustained" by them "by reason of" a Sherman Act violation.

Third. Extension of all claims which properly belong to "any business entity" in the chain of distribution or causation.

Fourth. Judicial determination of the amount of any plaintiff's attorney's fee awarded in the case of a prevailing plaintiff who is entitled to treble damages and costs, "including a reasonable attorney's fee."

Fifth. Limitation of proven "aggregate" damages to actions where there has been a determination that defendants in fact, rather than by inference or implication, "agreed to fix prices in violation of the Sherman Act."

Sixth. Exclusion from participation in parens patriae actions of any private person hired on a "percentage" or "any other contingency fee basis," excepting only the court's "award of a reasonable attorney's fee to a prevailing plaintiff" as "determined under section 4C(d)(1)"—rather than out of a recovery which belongs in full to the State or to its residents, or out of proceeds of actions terminated without findings for a "prevailing plaintiff," under section 4C (c) or otherwise.

Seventh. Retention of the authority of State legislatures to provide by law for the nonapplicability of the Federal parens patriae authorization in such a State, and to determine by State law who, other than the State's chief legal officer, is to be authorized to bring parens patriae actions under the new Federal cause of action established under section 4C.

Eighth. Confirmation that the provisions of title III are inapplicable to preenactment causes of action, with an express limitation barring claims for "any injury sustained prior to the date of enactment."

In summary:

I want to give credit where credit is due, and commend Chairman RODINO and his collaborators for many improvements which moderate the more extreme positions of the Senate proponents.

The SPEAKER. The question is on ordering the previous question.

The question was taken; and the Speaker announced that the ayes appeared to have it.

RECORDED VOTE

Mr. McCLORY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 215, noes 177, not voting 38, as follows:

[Roll No. 743]

AYES—215

Abzug
Adams
Addabbo
Allen
Ambro
Anderson, Ill.
Annunzio
Aspin
AuCoin
Badillo
Baldus
Baucus
Beard, R.I.
Bedell
Bergland
Bevill
Biaggi
Biester
Bingham
Blanchard
Blouin
Boland
Bolling
Bonker
Brademas
Breckinridge
Brodhead
Brooks
Brown, Calif.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Burton, John
Burton, Phillip
Carney
Carr
Clay
Collins, Ill.
Conte
Conyers
Corman
Cornell
Cotter
D'Amours
Daniels, N.J.
Danielson
Delaney
Dellums
Dent
Diggs
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Oreg.
Early
Edgar
Edwards, Calif.
Eilberg
Evans, Colo.
Evans, Ind.
Evins, Tenn.
Fary
Fascell
Fenwick
Fisher
Fithian
Flood
Florio
Flowers
Ford, Mich.
Fraser
Gaydos
Gibbons
Gilman
Green
Gude
Hall, Ill.
Hamilton
Hanley
Hannaford
Harkin
Harris
Hawkins
Hayes, Ind.
Hechler, W.Va.
Heckler, Mass.
Heinz
Hicks
Hightower
Holtzman
Howard
Hughes
Hungate
Ichord
Jacobs
Jeffords
Johnson, Calif.
Jones, Ala.
Jordan
Kastenmeier
Keys
Koch
Krebs
LaFalce
Lehman
Long, Md.
Lundine
McCloskey
McCormack
McDade
McFall
McHugh
McKay
Madden
Maguire
Melcher
Meyner
Mezvinsky
Mikva
Miller, Calif.
Mineta
Minish
Mitchell, Md.
Moakley
Moffett
Moorhead, Pa.
Morgan
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Natcher
Neal
Nedzi
Nix
Nolan
Nowak
Oberstar
Obey
O'Hara
O'Neill
Ottinger
Patten, N.J.
Pattison, N.Y.
Pepper
Perkins
Peyser
Pickle
Pike
Pressler
Preyer
Price
Randall
Rangel
Rees
Reuss
Richmond
Rinaldo
Risenhoover
Rodino
Roe
Rogers
Roncalio
Rooney
Rosenthal
Rostenkowski
Roush
Roybal
Russo
Ryan
St Germain
Santini
Scheuer
Schroeder
Seiberling
Sharp
Shipley
Simon
Sisk
Slack
Smith, Iowa
Solarz
Spellman
Staggers
Stanton, James V.
Stark
Steed
Stokes
Studds
Sullivan
Symington
Thompson
Traxler
Tsongas
Udall
Ullman
Van Deerlin
Vanik
Vigorito
Waxman
Weaver
Whalen
White
Wilson, C. H.
Wilson, Tex.
Wirth
Wolff
Wright
Yates
Young, Ga.
Zablocki
Zeferetti

NOES—177

Abdnor
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Archer
Armstrong
Ashbrook
Bafalis
Bauman
Beard, Tenn.
Bell
Bennett
Boggs
Bowen
Breaux
Brinkley
Broomfield
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Byron
Cederberg
Chappell
Clancy
Clausen, Don H.
Clawson, Del
Cochran
Cohen
Collins, Tex.
Conable
Coughlin
Crane
Daniel, Dan
Daniel, R. W.
Davis
de la Garza
Derrick
Derwinski
Devine
Dickinson
Duncan, Tenn.
du Pont
Edwards, Ala.
Emery
English
Erlenborn
Findley
Fish
Flynt
Foley
Forsythe
Fountain
Frenzel
Frey
Giaimo
Ginn
Goldwater
Gonzalez
Goodling
Gradison
Grassley
Guyer
Hagedorn
Haley

Hall, Tex.
Hammer-schmidt
Harsha
Hefner
Henderson
Hillis
Holt
Horton
Hubbard
Hutchinson
Hyde
Jarman
Jenrette
Johnson, Colo.
Jones, N.C.
Jones, Okla.
Karth
Kasten
Kazen
Kemp
Kindness
Krueger
Lagomarsino
Landrum
Latta
Leggett
Lent
Levitas
Lloyd, Calif.
Lloyd, Tenn.
Long, La.
Lott
Lujan
McClory
McCollister
McDonald
McEwen
McKinney
Madigan
Mahon
Mann
Martin
Mathis
Michel
Milford
Miller, Ohio
Mills
Mitchell, N.Y.
Mollohan
Montgomery
Moore
Moorhead, Calif.
Mosher
Myers, Ind.
Myers, Pa.
Nichols
O'Brien
Passman
Paul
Pettis
Poage
Pritchard
Quie
Quillen
Railsback
Regula
Rhodes
Roberts
Robinson
Runnels
Ruppe
Sarasin
Satterfield
Schneebeli
Schulze
Sebelius
Shriver
Shuster
Sikes
Skubitz
Smith, Nebr.
Snyder
Spence
Stanton, J. William
Steelman
Steiger, Wis.
Stratton
Stuckey
Symms
Talcott
Taylor, Mo.
Taylor, N.C.
Thone
Thornton
Treen
Vander Jagt
Waggonner
Walsh
Wampler
Whitehurst
Whitten
Wiggins
Wilson, Bob
Wydler
Wylie
Young, Alaska
Young, Fla.
Young, Tex.

NOT VOTING—38

Alexander
Ashley
Carter
Chisholm
Cleveland
Conlan
Eckhardt
Esch
Eshleman
Ford, Tenn.
Fuqua
Hansen
Harrington
Hébert
Helstoski
Hinshaw
Holland
Howe
Johnson, Pa.
Jones, Tenn.
Kelly
Ketchum
Matsunaga
Mazzoli
Meeds
Metcalfe
Mink
Patterson, Calif.
Riegle
Rose
Rousselot
Sarbanes
Steiger, Ariz.
Stephens
Teague
Vander Veen
Winn
Yatron

The Clerk announced the following pairs:

Mr. Hébert with Mr. Johnson of Pennsylvania.
Mrs. Mink with Mr. Winn.
Mr. Mazzoli with Mr. Cleveland.
Mr. Harrington with Mr. Eshleman.
Mr. Eckhardt with Mr. Hansen.
Mr. Ashley with Mr. Ketchum.
Mr. Sarbanes with Mr. Rousselot.
Mr. Patterson of California with Mr. Kelly.
Mr. Yatron with Mr. Steiger of Arizona.
Mr. Metcalfe with Mr. Carter.
Mr. Jones of Tennessee with Mr. Esch.
Mr. Fuqua with Mr. Conlan.
Mrs. Chisholm with Mr. Ford of Tennessee.
Mr. Vander Veen with Mr. Helstoski.
Mr. Stephens with Mr. Matsunaga.
Mr. Riegle with Mr. Holland.
Mr. Meeds with Mr. Rose.
Mr. Alexander with Mr. Teague.

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey (Mr. RODINO).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. COHEN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 242, nays 138, not voting 50, as follows:

[Roll No. 744]

YEAS—242

Abzug
Adams
Addabbo
Allen
Ambro
Anderson, Ill.
Annunzio
Aspin
AuCoin
Badillo
Baldus
Baucus
Beard, R.I.
Bedell
Bell
Bergland
Bevill
Biaggi
Biester
Bingham
Blanchard
Blouin
Boggs
Boland
Bolling
Bonker
Brademas
Breckinridge
Brodhead
Brooks
Broomfield
Brown, Calif.
Burke, Calif.
Burke, Mass.
Burlison, Mo.
Burton, Phillip
Byron
Carney
Carr
Cohen
Collins, Ill.
Conte
Conyers
Corman
Cornell
Cotter
D'Amours
Daniels, N.J.
Danielson
Delaney
Dellums
Dent
Derrick
Diggs
Dingell
Dodd
Downey, N.Y.
Downing, Va.
Drinan
Duncan, Oreg.
du Pont
Early
Edgar
Edwards, Calif.
Eilberg
Emery
English
Evans, Colo.
Evans, Ind.
Evins, Tenn.
Fary
Fascell
Fenwick
Findley
Fish
Fisher
Fithian
Flood
Florio
Flowers
Foley
Ford, Mich.
Fraser
Gaydos
Gibbons
Gilman
Gradison
Grassley
Green
Gude
Hall, Ill.
Hamilton
Hanley
Hannaford
Harkin
Harris
Hawkins
Hayes, Ind.
Hechler, W. Va.
Heckler, Mass.
Heinz
Hicks
Hightower
Holtzman
Howard
Hughes
Hungate
Ichord
Jacobs
Jeffords
Johnson, Calif.
Jones, Ala.
Jones, Okla.
Jordan
Kastenmeier
Keys
Koch
Krebs
Krueger
LaFalce
Leggett
Lehman
Lloyd, Calif.
Long, Md.
Lundine
McClory
McCloskey
McCormack
McDade
McFall
McHugh
McKay
McKinney
Madden
Maguire
Melcher
Meyner
Mezvinsky
Mikva
Miller, Calif.
Mills
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Morgan
Mosher
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Natcher
Neal
Nedzi
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
O'Hara
O'Neill
Patten, N.J.
Pattison, N.Y.
Pepper
Perkins
Peyser
Pickle
Pike
Pressler
Preyer
Price
Pritchard
Railsback
Randall
Rangel
Rees
Reuss
Richmond
Rinaldo
Risenhoover
Rodino
Roe
Rogers
Roncalio
Rooney
Rosenthal
Rostenkowski
Roush
Roybal
Russo
St Germain
Santini
Scheuer
Schroeder
Seiberling
Sharp
Shipley
Shriver
Simon
Sisk
Skubitz
Smith, Iowa
Solarz
Spellman
Staggers
Stanton, J. William
Stanton, James V.
Steelman
Stokes
Studds
Sullivan
Symington
Thompson
Thornton
Traxler
Tsongas
Udall
Ullman
Van Deerlin
Vanik
Vigorito
Walsh
Waxman
Weaver
Whalen
White
Wilson, Tex.
Wirth
Wolff
Wright
Wydler
Wylie
Yates
Young, Ga.
Zablocki
Zeferetti

NAYS—138

Abdnor
Anderson, Calif.
Andrews, N.C.
Andrews, N. Dak.
Archer
Armstrong
Ashbrook
Bafalis
Bauman
Beard, Tenn.
Bennett
Bowen
Breaux
Brinkley
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Fla.
Burleson, Tex.
Butler
Cederberg
Chappell
Clancy
Clausen, Don H.
Clawson, Del
Cochran
Collins, Tex.
Conable
Coughlin
Crane
Daniel, Dan
Daniel, R. W.
Davis
de la Garza
Derwinski
Devine
Dickinson
Duncan, Tenn.
Edwards, Ala.
Erlenborn
Flynt
Forsythe
Fountain
Frenzel
Frey
Giaimo
Ginn
Goldwater
Gonzalez
Goodling
Guyer
Hagedorn
Haley
Hall, Tex.
Hammer-schmidt
Harsha
Hefner
Henderson
Hillis
Holt
Horton
Hubbard
Hutchinson
Hyde
Jarman
Jenrette
Johnson, Colo.
Jones, N.C.
Kasten
Kazen
Kemp
Kindness
Lagomarsino
Landrum
Latta
Lent
Levitas
Lloyd, Tenn.
Long, La.
Lott
Lujan
McCollister
McDonald
McEwen
Madigan
Mahon
Mann
Martin
Mathis
Michel
Milford
Miller, Ohio
Montgomery
Moore
Moorhead, Calif.
Myers, Ind.
Myers, Pa.
Nichols
Paul
Pettis
Poage
Quie
Quillen
Regula
Rhodes
Roberts
Robinson
Runnels
Ruppe
Sarasin
Satterfield
Schneebeli
Schulze
Sebelius
Shuster
Sikes
Smith, Nebr.
Snyder
Spence
Steiger, Wis.
Stratton
Symms
Taylor, Mo.
Taylor, N.C.
Thone
Treen
Vander Jagt
Waggonner
Wampler
Whitehurst
Whitten
Wiggins
Wilson, Bob
Young, Alaska
Young, Fla.
Young, Tex.

NOT VOTING—50

Alexander
Ashley
Burton, John
Carter
Chisholm
Clay
Cleveland
Conlan
Eckhardt
Esch
Eshleman
Ford, Tenn.
Fuqua
Hansen
Harrington
Hébert
Helstoski
Hinshaw
Holland
Howe
Johnson, Pa.
Jones, Tenn.
Karth
Kelly
Ketchum
Matsunaga
Mazzoli
Meeds
Metcalfe
Mink
Ottinger
Passman
Patterson, Calif.
Riegle
Rose
Rousselot
Ryan
Sarbanes
Slack
Stark
Steed
Steiger, Ariz.
Stephens
Stuckey
Talcott
Teague
Vander Veen
Wilson, C. H.
Winn
Yatron

The Clerk announced the following pairs:

Mr. Hébert with Mr. Winn.
Mrs. Chisholm with Mr. Eshleman.
Mr. Slack with Mr. Ketchum.
Mr. Yatron with Mr. Johnson of Pennsylvania.
Mr. Metcalfe with Mr. Steiger of Arizona.
Mr. Passman with Mr. Carter.
Mr. Eckhardt with Mr. Hansen.
Mr. Ashley with Mr. Talcott.
Mr. Fuqua with Mr. Cleveland.
Mr. Karth with Mr. Rousselot.
Mr. Mazzoli with Mr. Kelly.
Mr. Rose with Mr. Esch.
Mr. Stephens with Mr. Conlan.
Mr. Sarbanes with Mr. Ottinger.
Mrs. Mink with Mr. Alexander.
Mr. Matsunaga with Mr. Ryan.
Mr. Harrington with Mr. Meeds.
Mr. Clay with Mr. Stark.
Mr. Jones of Tennessee with Mr. Ford of Tennessee.
Mr. Helstoski with Mr. Riegle.
Mr. Vander Veen with Mr. Charles H. Wilson of California.
Mr. Teague with Mr. Stuckey.
Mr. Steed with Mr. Patterson of California.
Mr. John Burton with Mr. Holland.

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid upon the table.

GENERAL LEAVE

Mr. RODINO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on the motion just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO FILE CERTAIN REPORTS

Mr. HOWARD. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation may have until midnight tonight, Thursday, September 16, 1976, to file reports on the following bills:

H.R. 15134. A bill to amend the Public Buildings Act of 1959 in order to preserve buildings of historical or architectural significance through their use for Federal public buildings and to amend the act of August 14, 1968, relating to the accessibility of certain buildings to the physically handicapped;

H.R. 15026. A bill to authorize reduced fare transportation on a space available basis for elderly persons and handicapped persons;

H.R. 12349. A bill to equalize the treatment afforded to tax loss carrybacks in determining regional air carrier subsidy;

H.R. 3647. A bill to amend the Federal Aviation Act of 1958 to permit aliens holding permanent residence visas to register aircraft in the United States; and

H.R. 12484. A bill to amend the Federal Aviation Act of 1958, to provide for expedited consideration by the Civil Aeronautics Board of applications for certificates of public convenience and necessity.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

CONFERENCE REPORT ON SENATE CONCURRENT RESOLUTION 139, SECOND CONCURRENT RESOLUTION ON THE BUDGET, FISCAL YEAR 1977

Mr. ADAMS. Mr. Speaker, I call up the conference report on the Senate concurrent resolution (S. Con. Res. 139) revising the congressional budget for the U.S. Government for the fiscal year 1977, and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER. The Clerk will read the conference report.

The Clerk read the conference report.

(For conference report and statement, see proceedings of the House of September 11, 1976.)

Mr. ADAMS (during the reading). Mr. Speaker, I ask unanimous consent that the conference report be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

The SPEAKER. The Chair lays before the House the Senate amendment to the House amendment, which the Clerk will read.

The Clerk read the Senate amendment to the House amendment, as follows:

In lieu of the matter proposed to be inserted by the House engrossed amendment, insert:

That the Congress hereby determines and declares, pursuant to section 310(a) of the Congressional Budget Act of 1974, that for the fiscal year beginning on October 1, 1976—

(1) the recommended level of Federal revenues is $362,500,000,000, and the amount by which the aggregate level of Federal revenues should be decreased is $15,300,000,000;

(2) the appropriate level of total new budget authority is $451,550,000,000;

(3) the appropriate level of total budget outlays is $413,100,000,000;

(4) the amount of the deficit in the budget which is appropriate in light of economic conditions and all other relevant factors is $50,600,000,000; and

(5) the appropriate level of the public debt is $700,000,000,000.

SEC. 2. Based on allocations of the appropriate level of total new budget authority and of total budget outlays as set forth in paragraphs (2) and (3) of the first section of this resolution, the Congress hereby determines and declares pursuant to section 310 (a) of the Congressional Budget Act of 1974 that, for the fiscal year beginning on October 1, 1976, the appropriate level of new budget authority and the estimated budget outlays for each major functional category is as follows:

(1) National Defense (050):

(A) New budget authority, $112,100,000,000.

(B) Outlays, $100,650,000,000.

(2) International Affairs (150):

(A) New budget authority, $8,900,000,000.

(B) Outlays, $6,900,000,000.

(3) General Science, Space, and Technology (250):

(A) New budget authority, $4,600,000,000.

(B) Outlays, $4,500,000,000.

(4) Natural Resources, Environment, and Energy (300):

(A) New budget authority, $18,200,000,000.

(B) Outlays, $16,200,000,000.

(5) Agriculture (350):

(A) New budget authority, $2,100,000,000.

(B) Outlays, $2,200,000,000.

(6) Commerce and Transportation (400):

(A) New budget authority, $17,200,000,000.

(B) Outlays, $17,400,000,000.

(7) Community and Regional Development (450):

(A) New budget authority, $9,550,000,000.

(B) Outlays, $9,050,000,000.

(8) Education, Training, Employment, and Social Services (500):

(A) New budget authority, $24,000,000,000.

(B) Outlays, $22,200,000,000.

(9) Health (550):

(A) New budget authority, $40,500,000,000.

(B) Outlays, $38,900,000,000.

(10) Income Security (600):

(A) New budget authority, $155,900,000,000.

(B) Outlays, $137,200,000,000.

(11) Veterans Benefits and Services (700):

(A) New budget authority, $20,300,000,000.

(B) Outlays, $19,500,000,000.

(12) Law Enforcement and Justice (750):

(A) New budget authority, $3,500,000,000.

(B) Outlays, $3,600,000,000.

(13) General Government (800):

(A) New budget authority, $3,600,000,000.

(B) Outlays, $3,500,000,000.

(14) Revenue Sharing and General Purpose Fiscal Assistance (850):

(A) New budget authority, $7,600,000,000.

(B) Outlays, $7,700,000,000.

(15) Interest (900):

(A) New budget authority, $39,600,000,000.

(B) Outlays, $39,600,000,000.

(16) Allowances:

(A) New budget authority, $700,000,000.

(B) Outlays, $800,000,000.

(17) Undistributed Offsetting Receipts (950):

(A) New budget authority, —$16,800,000,000.

(B) Outlays, —$16,800,000,000.

Mr. ADAMS (during the reading). Mr. Speaker, I ask unanimous consent to dispense with further reading of the Senate amendment to the House amendment.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

MOTION OFFERED BY MR. ADAMS

Mr. ADAMS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. ADAMS moves to concur in the Senate amendment to the House amendment.

The SPEAKER. The gentleman from Washington (Mr. ADAMS) is recognized for 1 hour in support of his motion.

GENERAL LEAVE

Mr. ADAMS. Mr. Speaker, prior to making my remarks, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate Concurrent Resolution 139.

The SPEAKER. Is there objection to the request of the gentleman from Washington?

There was no objection.

Mr. ADAMS. Mr. Speaker, I rise in strong support of the conference report on the second budget resolution for fiscal year 1977. This report represents a reasonable compromise between the House- and Senate-passed resolutions of last week.

The conferees agreed to the following budget aggregates for fiscal year 1977:

Revenues: $362.5 billion, the same amount as in the House resolution and $500 million above the Senate resolution,

Budget authority: $451.55 billion, approximately $1 billion below the House resolution and $4 billion above the Senate resolution,

Outlays: $413.1 billion, $100 million below the House resolution and $300 million above the Senate resolution,

Deficit: $50.6 billion, $140 million below the House resolution and $200 million below the Senate resolution, and

Public debt: $700 billion, the same amount as in the House resolution and $1 billion below the Senate resolution.

After adoption of this report, the Congress may not consider legislation which would reduce revenues below the revenue floor, or increase spending above the total budget authority and outlay levels specified in the resolution. The functional amounts in the resolution are not ceilings.

The conference report also provides distributions of budget authority and outlays by functional categories of the budget. I am inserting at this point in the RECORD the conferees' agreement on these amounts, along with the original House and Senate resolutions:

[In billions of dollars]

	Senate	House	Conference
Fiscal year 1977 budget authority:			
050 National defense	112.1	112.086	112.1
150 International affairs	9.1	8.770	8.9
250 General science, space and technology	4.6	4.595	4.6
300 Natural resources, environment and energy	18.2	17.923	18.2
350 Agriculture	1.6	2.317	2.1
400 Commerce and transportation	15.2	17.699	17.2
450 Community and regional development	7.5	9.584	9.55
500 Education, training, employment and social services	24.0	23.884	24.0
550 Health	40.5	40.527	40.5
600 Income security	156.2	155.872	155.9
700 Veterans' benefits and services	20.3	20.323	20.3
750 Law enforcement and justice	3.5	3.490	3.5
800 General government	3.6	3.556	3.6
850 Revenue sharing and general purpose fiscal assistance	7.6	7.617	7.6
900 Interest	39.6	40.400	39.6
Allowances	.7	.860	.7
950 Undistributed offsetting receipts	—16.8	—16.920	—16.8
Total	447.5	452.583	451.55

	Senate	House	Conference
Fiscal year 1977 outlays:			
050 National defense	100.7	100.606	100.65
150 International affairs	6.9	6.763	6.9
250 General science, space and technology	4.5	4.505	4.5
300 Natural resources, environment and energy	16.0	16.227	16.2
350 Agriculture	2.0	2.239	2.2
400 Commerce and transportation	17.4	16.984	17.4
450 Community and regional development	9.0	9.078	9.05
500 Education, training, employment and social services	22.3	22.187	22.2
550 Health	38.8	38.960	38.9
600 Income security	137.3	137.000	137.2
700 Veterans' benefits and services	19.5	19.539	19.5
750 Law enforcement and justice	3.6	3.571	3.6
800 General government	3.5	3.534	3.5
850 Revenue sharing and general purpose fiscal assistance	7.7	7.657	7.7
900 Interest	39.6	40.400	39.6
Allowances	.8	.910	.8
950 Undistributed offsetting receipts	—16.8	—16.920	—16.8
Total	412.8	413.240	413.1

For the benefit of the House, I would like to describe briefly the major differences between the conference report and the House-passed resolution.

First, in the natural resources, environmental, and energy function, the conference report adopts the Senate resolution amount of $18.2 billion in budget authority. This amount assumes a higher budget authority level for EPA construction grants—$5.7 billion, rather than the $1.5 billion assumed by the House—and no budget authority at this time for the proposed Nuclear Fuel Assurance Act, rather than the $4 billion in authority assumed by the House.

With respect to the Nuclear Fuel Assurance Act, the conferees agreed that there are too many contingencies involved in both the authorization and appropriations bills to determine precisely how much budget authority should be provided. Consequently, as the statement of managers states:

Should the authorization and subsequent appropriations be adopted, they will result in budget authority and the Budget Committee would consider the possibility of a third budget resolution to cover this requirement, taking account of the total budgetary situation at that time.

Second, in the commerce and transportation function, the conference report assumes $2 billion in budget authority for the Government National Mortgage Association mortgage purchase program, rather than the $3 billion assumed by the House resolution. In addition, the conference report assumes $500 million in budget authority and outlays for additional subsidies to the Postal Service, over the amounts provided in the House resolution. These amounts have been authorized and are expected to be appropriated shortly.

And third, the conference report assumes budget authority and outlays of $39.6 billion for interest on the public debt, $800 million below the House resolution. The amount agreed to represents the best estimates of the two Budget Committees and the Congressional Budget Office of interest costs for the upcoming fiscal year.

At the end of my remarks, I am inserting for the RECORD a more complete legislative history of the assumptions for each functional category.

Mr. Speaker, before closing I wish to call the House's attention to the outstanding performance by the chairman of the Ways and Means Committee, Mr. ULLMAN, and his fellow conferees on the tax bill. Through their efforts, the first budget resolution target of $362.5 billion has been successfully met, avoiding the sharp revenue losses contemplated by the Senate bill.

Finally, I want also to thank all House Members and the House leadership for their full cooperation and support in making this new budget process work so successfully this year. I believe that through our collective efforts we have taken a most important step toward reasserting Congress historic prerogatives in setting fiscal and spending policy.

I want also to thank the members of the House Budget Committee whose cooperation and effort have made the committee's success this year possible; and Senator MUSKIE, chairman of the Senate Budget Committee, for his outstanding job in the Senate. Senator MUSKIE's performance in making the new process an integral part of the Senate's procedures is widely appreciated both in the Congress and in the Nation as a whole. He has always been available to work out the many problems which inevitably rise when a new process is started. I wish him well next year.

EXPLANATION OF CONFERENCE AGREEMENT ON FUNCTIONAL CATEGORIES

050: NATIONAL DEFENSE

The conference agreement provides budget authority of $112.1 billion and outlays of $100.650 billion. This is an increase of $14 million in budget authority and $44 million in outlays over the House resolution. The conference agreement generally supports the same assumptions as previously approved by the House. It also assumes absorption of amounts for pay raises in line with past experience.

150: INTERNATIONAL AFFAIRS

The conference agreement provides $8.9 billion in budget authority and $6.9 billion in outlays. This is an increase of $130 million in budget authority and $137 million in outlays over the House resolution. The levels agreed to represent the latest estimates of spending from appropriations bills already approved, plus an amount to cover the Foreign Assistance Appropriations Bill still in conference.

250: GENERAL SCIENCE, SPACE, AND TECHNOLOGY

The conference agreement provides budget authority of $4.6 billion and outlays of $4.5 billion. This is an increase of $5 million in budget authority over and a decrease of $5 million in outlays from the House bill. The agreement substantially supports the assumptions included in the House resolution.

300: NATURAL RESOURCES, ENVIRONMENT, AND ENERGY

The conference agreement provides budget authority of $18.2 billion and outlays of $16.2 billion. This is an increase of $277 million in budget authority over and a decrease of $27 million in outlays from the House resolution.

While the conference agreement is very close to the House amounts for this function, it involves two internal changes in the House assumptions. First, the conferees agreed to strike the $4 billion in budget authority that had been assumed for the Nuclear Fuel Assurance Act, without prejudicing future action of the Congress on this program. At the same time, they agreed that this program should be an on-budget, rather than off-budget program. Second, the conferees provided an additional $4.2 billion allowance in budget authority for EPA construction grant programs.

350: AGRICULTURE

The conference agreement provides budget authority of $2.1 billion and outlays of $2.2 billion. This is a decrease of $217 million in budget authority and $39 million in outlays from the House resolution. The only significant change is a $224 million reduction below the House resolution in budget authority assumed for reimbursement to the Commodity Credit Corporation for net realized losses. Both Houses are assuming $25 million of budget authority and outlays for agriculture research expansion, and an increase of $300 million for outlays to reflect a higher program level for short-term commodity sales.

400: COMMERCE AND TRANSPORTATION

The conference agreement provides budget authority of $17.2 billion and outlays of $17¼ billion. This is a decrease of $499 million in budget authority from and an increase of $416 million in outlays over the House resolution.

The agreement provides $2 billion in budget authority for the Government National Mortgage Association's program of mortgage market support, and $500 million in budget authority and outlays for additional payments to the Postal Service during FY 1977. In addition, funds are provided to cover anticipated supplemental requirements in the transportation area. Potential items to be covered include general fund highway programs, additional railroad requirements, mass transit substitute projects under the Interstate Transfer provisions of the Highway Act, and additional liquidating cash to

cover the planned level of Airport Development Grants for the Transition Quarter and FY 1977.

450: COMMUNITY AND REGIONAL DEVELOPMENT

The conference agreement provides budget authority of $9.55 billion and outlays of $9.05 billion. This is a decrease of $34 million in budget authority and $28 million in outlays from the House resolution.

The Senate conferees agreed to adopt the position taken by the House conferees that sufficient budget authority be provided within the FY 1977 totals to accommodate enactment of the pending supplemental appropriations for public works and employment. The conference agreement indicates the conferees' view that if funding for this program occurs in the transition quarter, the $2 billion included for this purpose in FY 1977 should not be available for any other purpose.

500: EDUCATION, EMPLOYMENT, TRAINING AND SOCIAL SERVICES

The conference agreement provides budget authority of $24.0 billion and outlays of $22.2 billion. This is an increase of $116 million in budget authority and $13 million outlays over the House resolution. the increases will cover estimates of needed funds for employment and training activities. The conference agreement reaffirms the Congressional policy to provide funding for 500,000 temporary public service jobs by the end of the fiscal year.

550: HEALTH

The conference agreement provides budget authority of $40.5 billion and outlays of $38.9 billion. This is a decrease of $27 million in budget authority and $60 million in outlays from the House resolution.

The conference agreement provides the following:

(1) budget authority for Medicare is included at $23.100 billion and outlays at $21.850 billion;

(2) for the Medicaid program, the House resolution had provided the current law estimate of $10.235 billion in budget authority and $10.169 billion in outlays; the Senate resolution provided $10.000 billion in budget authority and outlays; the conferees agreed to a budget authority and outlay level of $10.100 billion; the reduction from the current law estimate is based on anticipated initiatives to control fraud and abuse; the totals will permit an anticipated supplemental of about $800 million; and

(3) for all health programs other than Medicare and Medicaid, the conferees agreed to provide budget authority of $7.300 billion and outlays of $6.950 billion; these amounts are in recognition of the need to fund several important health programs not included in the Labor–HEW Appropriation bill because of late enactment or absence of authorization legislation; budget authority of $700 million and outlays of $290 million are included within the totals for these programs.

600: INCOME SECURITY

The conference agreement provides budget authority of $155.9 billion and outlays of $137.2 billion. It reflects the House resolution estimate for budget authority. Outlays are increased by $0.2 billion over the House resolution due to a re-estimate of current policy costs for unemployment compensation.

The conference agreement reflects the following assumptions regarding major pending legislation included in the House resolution:

Enactment of the Supplemental Security Income Amendments (H.R. 8911).

Elimination of the one-percent kicker with either the modification in the intervals between cost-of-living adjustments proposed by the Chairman of the Post Office and Civil Service Committee, or with the semi-annual adjustments included in a Senate amendment to the Legislative Appropriations bill.

Extension of special unemployment assistance (SUA), as reported to the full committee on Ways and Means (H.R. 14970).

The revenue impact from the Unemployment Compensation Amendments of 1976 (H.R. 10210).

700: VETERANS BENEFITS AND SERVICES

The conference agreement provides budget authority of $20.3 billion and outlays of $19.5 billion. This is $23 million in budget authority and $39 million in outlays below amounts assumed in the House resolution. The slight reductions involve new entitlement authority for veterans programs.

750: LAW ENFORCEMENT AND JUSTICE

The conference agreement provides budget authority of $3.5 billion and outlays of $3.6 billion. This is an increase of $10 million in budget authority and $29 mlion in outlays over the House resolution. There were no substantive differences between the House and Senate resolutions. The House conferees accepted the slightly higher Senate figures.

800: GENERAL GOVERNMENT

The conference agreement provides budget authority of $3.6 billion and outlays of $3.5 billion. This is an increase of $44 million in budget authority over and a decrease of $34 million in outlays from the House resolution. There were no substantive differences between the two resolutions. The House conferees accepted the Senate figures, which were slightly higher in budget authority and slightly lower in outlays.

850: REVENUE SHARING AND GENERAL PURPOSE FISCAL ASSISTANCE

The conference agreement provides budget authority of $7.6 billion and outlays of $7.7 billion. This is a decrease of $17 million in budget authority from and an increase of $43 million in outlays over the House resolution. There were no substantive differences between the two resolutions. The House conferees accepted the Senate figures, which were slightly lower in budget authority and slightly higher in outlays.

900: INTEREST

The conference agreement provides budget authority of $39.6 billion and outlays of $39.6 billion. This is a decrease of $800 million in budget authority and outlays from the House resolution. In view of recent and anticipated trends in money market conditions, the conferees accepted the lower Senate figure for interest on the public debt.

ALLOWANCES

The conference agreement provides budget authority of $700 million and outlays of $800 million. This is a decrease of $160 million in budget authority and $110 million in outlays from the House resolution. The conferees agreed that it is reasonable to assume absorption in line with past experience for the anticipated pay raise for non-Defense agencies.

950: UNDISTRIBUTED OFFSETTING RECEIPTS

The conference agreement assumes receipts of —$16.8 billion in budget authority and outlays. This is $120 million lower in receipts than assumed in the House resolution. The conferees adopted the Senate figures, reflecting a re-estimate of the amount of interest to be paid to government trust funds, consistent with the conference agreement on the Interest function.

Mr. Speaker, I yield to the gentleman from Ohio (Mr. LATTA) for purposes of debate only.

Mr. LATTA. Mr. Speaker, I do not intend to support this conference report, for the reasons just given by the gentleman from Washington. These are almost the same figures that left the House. They are much too high. They provide for $700 billion in national debt next year. The deficit for next fiscal year will be $50.6 billion. The budget authority will be $451.55 billion. Outlays will be $413.1 billion, and there will be revenues of only $362.5 billion.

Mr. Speaker, since there has been so little change in this budget resolution, I am constrained to oppose it.

Mr. Speaker, except for a major increase in budget authority for EPA construction grants and the elimination of all budget authority for the Nuclear Fuel Assurance Act, and a few minor adjustments, this conference report is substantially the same as the budget resolution that cleared the House last week. I do not support this conference report.

This legislation promises more of the same economic policies that have weakened and will continue to weaken our economy. It calls for more Federal spending. This approach preserves an evil that people at the grassroots in both parties—Democrats and Republicans alike want to see dealt with effectively—and that is Government that is growing far too fast and too big.

Under the fiscal plan contained in this resolution, the public debt will soar to an unbelievable $700 billion by the end of fiscal year 1977. That figure is even more scary when you realize that almost half of that amount, $320 billion, has been piled on over just the last 15 years. Let me point out to my colleagues that adding $320 billion to the national debt means an additional tax burden of over $1,500 for every man, woman, and child in the country. Think of that, an additional $1,500 burden for every man, woman, and child in the Nation racked up in just the last 15 years. Can there be any doubt that Federal spending trends have to be turned around.

These tremendous amounts of Federal deficit spending have contributed much to our combined inflation/unemployment problem today. Inflation has been lowered very encouragingly since 1974 from the 11-percent range to the 5-percent range. But inflation threatens to soar again if Government spending is not brought under control.

Unfortunately, it hardly seems that this legislation promises the spending restraints that are needed. It includes, for example, start-up funds for two measures whose combined budgetary impact could be well over $130 billion annually. These are for national health insurance legislation and the discredited Hawkins-Humphrey bill. It neglects the President's block grant proposals which would improve services and cut costs in the areas of health, social services, education, and child nutrition by consolidating the existing tangle of some 59 categorical programs. Instead of saving, it is business as usual.

On the tax side, the budget resolution goes in the wrong direction. What we should be providing is additional income tax relief to the individual income taxpayers, such as an increase in the personal exemption from $750 to $1,000, raising the standard deduction, and reducing the tax rate as proposed by the President.

The Congress with the help of the new budget process can and must exercise improved economic leadership and exert

some budgetary leadership for the benefit of all of the people of the Nation. Regrettably, this budget resolution does not do this and I must oppose it.

Mr. MORGAN. Mr. Speaker, I rise in support of the conference report on Senate Concurrent Resolution 139, the second concurrent resolution on the budget for fiscal year 1977.

Adoption of this conference report will demonstrate that the new congressional budget process is workable.

It will show that the Congress can successfully deal with the Federal budget on a total rather than a piecemeal basis.

It will prove that the Congress can live within its budget targets.

Finally, it demonstrates that the Congress can set its own budget priorities without merely reacting to the President's budget.

I wish to commend the distinguished chairman of the House Budget Committee and his colleagues on the committee for their diligent efforts to make the new process successful. The conference report, in my opinion, reflects the views and actions of the authorizing and Appropriations Committees in a fair and balanced way. Such cooperation between the Budget Committees and the other committees is essential to the continued viability of the budget system.

I particularly want to compliment Chairman ADAMS for his leadership in reaching this fiscal milestone.

I would also like to commend those Members of the House who rejected the amendment to the resolution offered last Thursday which would have arbitrarily cut the international affairs function by 10 percent.

Such a reduction, of course, would nullify many important U.S. programs abroad and seriously impair the conduct of U.S. foreign policy. The fact that the amendment was defeated shows that the House, and Congress as a whole, reject the notion that severe cuts in the international affairs category are in the national interest.

Mr. Speaker, I urge the adoption of the conference report.

Mr. BADILLO. Mr. Speaker, with deep regret, I find myself once again compelled to vote against the conference report on Senate Concurrent Resolution 139, the second concurrent resolution on the budget for fiscal year 1977.

The original raison d'etre, of course, for adopting the congressional budget process was to establish more acceptable and realistic budgetary goals and priorities for our Nation. Unfortunately, this laudable objective has not been realized. Congress, too, appears to have fallen into the trap of labeling "sacrosanct" programs for the military and "expendable" programs designed to deal with our urgent social needs. Once again, the tail is wagging the dog.

Mr. Speaker, I am aware of the fact that the committee has an exceedingly difficult task in bringing about an acceptable and workable balance between our resources and needs. I sincerely hope that by the time it considers the next budget resolution, it will attain this difficult goal. In the meantime, I must once again cast a "no" vote for the budget.

Mr. ALEXANDER. Mr. Speaker, putting a congressional halter on the Federal budget may very well be the most important action we can take this century. During the past half century the President and the executive branch have dominated the Federal budget process.

In 1974 the Congress took decisive action to put an end to this domination by passing the Congressional Budget Control and Impoundment Act. I am proud that I sponsored that law and to have had part in its passage. The Federal budget resolution we are dealing with today was written under that law.

We are still facing some thorny economic problems that this law can help us solve. They include:

Working for tighter controls on Federal spending;

Putting the brakes on inflation rates and keeping them there;

Achieving a balanced Federal budget;

Ending the need for Federal deficit spending; and

Creating a national economy in which business and industry can produce at full capacity, generating jobs for all persons who are willing and able to work.

I believe that we have made major progress toward Federal budget reform. We have taken substantial steps toward putting Congress back into possession of its constitutional responsibility for budget making and Federal spending.

Last year the Congress went through a "trial" session to see how well this new law would operate. This year the law has been in full force.

Though it is not generally recognized, at this time, I think that Congress can take a well-earned bow for the progress we have made. At the same time, I believe that we must redouble our efforts to reach a balanced Federal budget position in the near future.

Last year Congress drafted its own Federal budget and by sticking with it we were able to cut the anticipated 1975 deficit by $10 billion. At the same time we enacted programs to help business and industry recover from the recession, to reduce inflation, and to increase jobs.

With this budget resolution on the 1978 budget under consideration today we are proposing to narrow even further the gap between the income and outgo of Federal dollars. It is estimated that, if we work carefully and keep to the trends being set in our overall budgetmaking process this year we can achieve a balanced budget and sharply reduce unemployment by 1980, while, at the same time, keeping the lid on the inflation cooker.

A Federal budget under control and in balance, and without excessive inflation or unemployment, will obviously mean making some hard choices about which programs to expand or reduce or keep at the same spending levels.

This Federal budgetmaking trail we are following now is critically important. It is helping move us toward a balanced budget. It is giving Congress more firm control over the setting of priorities on what we will spend, how, where, and when. The deficit proposed in the coming year is $25 billion less than the one proposed last September for 1976.

For the first time we are getting a real look at the budget as a whole rather than as a collection of parts. This system of budget formulation Congress has established gives Congress a better chance of making the right decisions on the hard choices before us in our effort to control Federal spending and inflation and avoid a new round of recession.

Mr. ASHBROOK. Mr. Speaker, I strongly oppose the conference report to Senate Concurrent Resolution 139, the second concurrent resolution on the budget. This resolution continues the same irresponsible spending policies that have created and fueled our problems of inflation, unemployment, and high interest rates.

Since first being elected to Congress I have warned my colleagues that there must be a limit to Government spending. I have repeatedly stated that the reckless spending habits advocated by liberal politicians could prove disastrous to the economy of the Nation.

The Congress, however, has enacted new spending program after new spending program without regard to cost. To finance these programs it has resorted to massive deficit spending for 15 of the past 16 years. And now Americans are paying the price for this recklessness. We are suffering from inflation, unemployment, and high interest rates.

I had hoped that the Congress would learn something from this tragic affair. That does not seem to be the case, however. Instead of fiscal responsibility, the second concurrent resolution on the budget calls for more of the same huge deficit spending that has created our problems in the first place.

House Concurrent Resolution 728 proposes budget outlays totalling $413.1 billion. This is approximately $38 billion higher than the budget resolution approved by Congress last November and over $13 billion more than the administration request.

The level of Federal spending has shot up astronomically over the past few years. Total budget outlays, which did not hit the $100 billion mark until the 1960's, have now swollen to four times that amount in little over a decade.

The failure of Congress to bring Federal expenditures under control has grave implications for the future. This tremendous growth in resources consumed by the Government poses a threat to our economic system and individual liberty.

The extent of the danger can be seen in the majority report. It states that even if no new program initiatives are taken during the next 4 fiscal years, spending would increase from $413 billion to $549 billion by fiscal year 1981. Such an increase would largely devour the expected growth in tax revenues. The exact language of the report is as follows:

> As the Committee's 5-year projection of the fiscal year 1977 budget resolution makes clear (see Appendix G), even if no new budget program initiatives are taken during the next four fiscal years, spending will increase from $413 billion in fiscal year 1977 to $549 billion in fiscal year 1981. This increase of approximately $136 billion will nearly absorb the substantial growth in revenues expected to result from the continued economic recovery assumed in the projection, after taking into account the current deficit level.

Steps must be taken now to eliminate unnecessary governmental programs and cut back on wasteful spending. The present Congress, however, is unwilling to do this. Instead of working on ways to reduce spending, the Congress envisions passing new costly Federal programs that would mean still bigger Government. These include start-up funds for such socialistic legislation as the Humphrey-Hawkins bill, which could cost $20 billion or more and national health insurance, which could cost between $50 and $100 billion. This is sheer stupidity.

Also disturbing is the deficit level set forth in the resolution. The Committee on the Budget recommends a fiscal year 1977 deficit of $50.6 billion. When coupled with the $75 billion deficit for fiscal year 1976, the Congress will have run up a $125 billion overall deficit in only 2 years. To show the magnitude of this figure, it exceeds the entire increase in the national debt from 1947 through June of 1971.

The huge deficits piled up by Congress are becoming a tremendous burden on the taxpayers of this Nation. Interest on the debt for fiscal year 1977 is estimated to be $43.9 billion. This is more than 10 percent of the total budget outlays.

Congress is saddling present and future taxpayers with too heavy a load. We cannot afford to continue adding billions and billions of dollars to the public debt. Spending must be brought into line with revenues.

Mr. ARMSTRONG. Mr. Speaker, with adoption of this resolution, Senate Concurrent Resolution 139, the House completes the first full cycle of the new congressional budget process. Today ought to be an occasion for celebration. Today Members of Congress could and should be showing concern for the future of this Nation by adopting the lower spending targets that would promote the economic well-being of America.

But instead of reflecting restraint, this budget calls for an outlay deficit of over $50 billion for fiscal 1976–77, for budget authority $89 billion above revenues and raises the national debt to $700 billion—a travesty of the responsible budgeting which Congress promised the Nation when the new process was established a year ago.

By legislating a deficit of such stupendous proportions, Congress forces the Nation to risk renewed inflation, unemployment and declining productivity and economic sluggishness which have become depressingly familiar in recent years. I share the concern so well expressed by my colleagues Messrs. LATTA, CEDERBERG, SCHNEEBELI, BROYHILL, DEL CLAWSON, SHRIVER, CONABLE, and Mrs. HOLT in the minority views which accompanied this resolution. Thoughtful Americans would do well to reflect on the issues which they have forcefully raised.

Somehow the deficits which Congress has enacted during the past 2 years are so large as to overload our sense of proportion. Somehow we have become numb to the realization of how very, very large our spending and deficits have become. I would like to put the situation and recent trends into perspective.

In the current fiscal year, the deficit alone is as large as the total of all Federal spending only two decades ago.

Just the interest on Federal debt—$40.4 billion—is more than the Federal Government spent for all outlays for the entire period from the Revolutionary War to World War I, twice as much as the Federal budget for all the years from 1789 to 1900, more than the total for all Federal spending for any single year prior to 1943—just the interest!

It took 186 years for the Federal budget to reach $100 billion in 1962; in the next 9 years we reached the $200 billion mark; with 4 more years, $300 billion; now Federal spending has zoomed past $400 billion.

Even more ominous than the actual amount of spending in dollars is the rising share of our income which is going to Federal, State, and local government. This proportion has increased from 10 percent in 1929 to 18 percent in 1940, 21 percent in 1950, 27 percent in 1960, 32 percent in 1970, and is now over one-third and still rising. Literally the "average" American now works the first 4 months of each year to pay the cost of government.

How this could happen in a Nation born in a revolution sparked by excessive and unjust taxation is an issue beyond the scope of the debate on this resolution. But the trend toward greater and greater government spending must be prime concern to anyone who understands the inseparability of economic freedom from other cherished liberties. I do not know where the breaking point is. But it is impossible to believe that freedom of worship, free speech, free press, freedom of association, travel, and other traditional freedoms can survive the indefinite continuation of the trend of government taking more and more of our income each year.

Where do we begin? It does not seem that Congress is capable of putting a bloated bureaucracy on a diet. Of the some $3 billion in savings suggested in the first concurrent resolution, passed May 14, 1976, this Congress has been able to act on only half that amount. Yet each Member will return to his or her district and agree with the voters at home that "we need to reduce government spending." The budget process under which we are considering this resolution is certainly a step in the right direction but, spending totals included here should make it obvious to everyone that we have a long way to go for real budget reform. Until we adopt procedures long used by State governments—zero based budgeting and constitutional prohibitions against deficit spending, we are deceiving ourselves and our constituents by assuming a Congress collectively accountable to no one will somehow act differently in the future than it has in the past.

Mr. Speaker, for these reasons, I am constrained to vote against this budget resolution.

Mr. FRENZEL. Mr. Speaker, the final budget resolution returns to us from conference committee in about the same sorry state in which it left the House; $413 billion in spending and $51 billion in deficits simply cannot be justified.

At this time, I must conclude that the budget process has been an educational adventure, but it surely hasn't done much for the taxpayers. One can only hope that the education will be of some benefit next year.

I also note that between the Congressional Budget Office and the staffs of both Budget Committees, we have added more than 400 employees. That's been a great WPA program for underemployed economists, but the costs of this vast army of budgeteers have probably exceeded any savings it might accidentally have caused.

Let us hope that next year the Budget Committees exercise at least a little of their own discretion rather than simply adding up all the spending requests of paternalistic subcommittee chairmen. That is the only way the budget process can become more than an early warning of the extent of the annual fiscal insanity.

Mr. ADAMS. Mr. Speaker, I move the previous question on the motion.

The previous question was ordered.

The SPEAKER. The question is on the motion offered by the gentleman from Washington (Mr. ADAMS).

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 234, nays 143, not voting 53, as follows:

[Roll No. 745]

YEAS—234

Abzug	Cotter	Hawkins
Adams	D'Amours	Hayes, Ind.
Addabbo	Danielson	Hechler, W. Va.
Ambro	de la Garza	Heckler, Mass.
Anderson, Calif.	Delaney	Hefner
Annunzio	Dent	Henderson
Aspin	Derrick	Hicks
AuCoin	Diggs	Hightower
Baldus	Dingell	Holtzman
Baucus	Dodd	Horton
Bedell	Downey, N.Y.	Howard
Bennett	Downing, Va.	Hungate
Bergland	Drinan	Jarman
Bevill	Duncan, Oreg.	Jenrette
Biaggi	Duncan, Tenn.	Johnson, Calif.
Bingham	Early	Jones, Ala.
Blanchard	Edgar	Jones, N.C.
Blouin	Edwards, Calif.	Jones, Okla.
Boggs	Eilberg	Jordan
Boland	Emery	Karth
Bolling	English	Kazen
Bowen	Evans, Colo.	Keys
Brademas	Evins, Tenn.	Koch
Breckinridge	Fary	Krebs
Brodhead	Fascell	Krueger
Brooks	Fenwick	LaFalce
Brown, Calif.	Flood	Landrum
Burke, Calif.	Florio	Leggett
Burke, Mass.	Flowers	Lehman
Burleson, Tex.	Foley	Levitas
Burlison, Mo.	Ford, Mich.	Lloyd, Calif.
Burton, Phillip	Fraser	Long, La.
Carney	Gaydos	Long, Md.
Carr	Giaimo	McCormack
Clausen, Don H.	Gibbons	McDade
Clay	Ginn	McFall
Cohen	Gude	McHugh
Collins, Ill.	Hall, Ill.	McKay
Conte	Hamilton	McKinney
Corman	Hanley	Madden
Cornell	Hannaford	Maguire
	Harkin	Mahon
	Harris	Mathis

Meyner
Mezvinsky
Mikva
Milford
Miller, Calif.
Mills
Mineta
Minish
Mitchell, Md.
Mitchell, N.Y.
Moakley
Moffett
Mollohan
Moorhead, Pa.
Morgan
Mosher
Moss
Murphy, Ill.
Murphy, N.Y.
Murtha
Natcher
Neal
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Neill
Patten, N.J.
Pattison, N.Y.
Pepper
Perkins
Peyser
Pickle
Pike
Poage
Preyer
Price
Rangel
Rees
Reuss
Richmond
Rinaldo
Risenhoover
Roberts
Rodino
Roe
Rogers
Roncalio
Rooney
Rosenthal
Rostenkowski
Roush
Roybal
Russo
St Germain
Santini
Scheuer
Seiberling
Sharp
Shipley
Sikes
Simon
Sisk
Slack
Smith, Iowa
Solarz
Spellman
Staggers
Stanton, J. William
Stanton, James V.
Steed
Stokes
Stratton
Stuckey
Studds
Symington
Taylor, Mo.
Taylor, N.C.
Thompson
Thornton
Traxler
Tsongas
Udall
Ullman
Van Deerlin
Vanik
Vigorito
Walsh
Waxman
Weaver
Whalen
White
Whitten
Wilson, Bob
Wilson, C. H.
Wilson, Tex.
Wirth
Wolff
Wright
Yates
Young, Ga.
Young, Tex.
Zablocki
Zeferetti

NAYS—143

Abdnor
Allen
Anderson, Ill.
Andrews, N.C.
Andrews, N. Dak.
Archer
Armstrong
Ashbrook
Badillo
Bafalis
Bauman
Beard, Tenn.
Bell
Biester
Breaux
Brinkley
Broomfield
Brown, Mich.
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Fla.
Butler
Byron
Cederberg
Clancy
Clawson, Del
Cochran
Collins, Tex.
Conable
Conyers
Coughlin
Crane
Daniel, Dan
Daniel, R. W.
Davis
Dellums
Derwinski
Devine
Dickinson
du Pont
Edwards, Ala.
Erlenborn
Evans, Ind.
Findley
Fish
Fisher
Fithian
Flynt
Forsythe
Fountain
Frenzel
Frey
Gilman
Gonzalez
Goodling
Gradison
Grassley
Guyer
Hagedorn
Haley
Hall, Tex.
Hammer-schmidt
Harsha
Hillis
Holt
Hubbard
Hughes
Hutchinson
Hyde
Ichord
Jacobs
Jeffords
Johnson, Colo.
Kasten
Kastenmeier
Kemp
Kindness
Lagomarsino
Latta
Lent
Lloyd, Tenn.
Lott
Lujan
Lundine
McClory
McCloskey
McCollister
McDonald
McEwen
Madigan
Mann
Martin
Melcher
Michel
Miller, Ohio
Montgomery
Moore
Moorhead, Calif.
Motti
Myers, Ind.
Myers, Pa.
O'Brien
Ottinger
Paul
Pettis
Pressler
Pritchard
Quie
Quillen
Railsback
Randall
Regula
Robinson
Runnels
Ruppe
Sarasin
Satterfield
Schneebeli
Schroeder
Schulze
Sebelius
Shriver
Shuster
Skubitz
Smith, Nebr.
Snyder
Spence
Steelman
Steiger, Wis.
Symms
Thone
Treen
Vander Jagt
Waggonner
Wampler
Whitehurst
Wiggins
Wydler
Wylie
Young, Alaska
Young, Fla.

NOT VOTING—53

Alexander
Ashley
Beard, R.I.
Bonker
Burton, John
Carter
Chappell
Chisholm
Cleveland
Conlan
Daniels, N.J.
Eckhardt
Esch
Eshleman
Ford, Tenn.
Fuqua
Goldwater
Green
Hansen
Harrington
Hébert
Heinz
Helstoski
Hinshaw
Holland
Howe
Johnson, Pa.
Jones, Tenn.
Kelly
Ketchum
Matsunaga
Mazzoli
Meeds
Metcalfe
Mink
O'Hara
Passman
Patterson, Calif.
Rhodes
Riegle
Rose
Rousselot
Ryan
Sarbanes
Stark
Steiger, Ariz.
Stephens
Sullivan
Talcott
Teague
Vander Veen
Winn
Yatron

The Clerk announced the following pairs:

Mr. Dominick V. Daniels with Mr. Rhodes.
Mr. Hébert with Mr. Johnson of Pennsylvania.
Mr. Passman with Mr. Eshleman.
Mr. Matsunaga with Mr. Carter.
Mr. O'Hara with Mr. Steiger of Arizona.
Mrs. Chisholm with Mr. Conlan.
Mr. Ashley with Mr. Talcott.
Mr. Fuqua with Mr. Kelly.
Mr. Teague with Mr. Heinz.
Mrs. Sullivan with Mr. Cleveland.
Mr. Eckhardt with Mr. Rousselot.
Mr. Helstoski with Mr. Winn.
Mr. Stephens with Mr. Esch.
Mr. Jones of Tennessee with Mr. Goldwater.
Mr. Green with Mr. Hansen.
Mr. Chappell with Mr. Ketchum.
Mr. Mazzoli with Mr. Alexander.
Mrs. Mink with Mr. Holland.
Mr. Sarbanes with Mr. Metcalfe.
Mr. Yatron with Mr. Vander Veen.
Mr. Ryan with Mr. Meeds.
Mr. Bonker with Mr. John Burton.
Mr. Ford of Tennessee with Mr. Rose.
Mr. Harrington with Mr. Beard of Rhode Island.
Mr. Patterson of California with Mr. Stark.

Mr. QUIE changed his vote from "yea" to "nay."

So the motion was agreed to.

The result of the vote was announced as above recorded.

MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF LABOR AND HEALTH, EDUCATION, AND WELFARE, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1977

Mr. FLOOD. Mr. Speaker, in accordance with the unanimous-consent request granted yesterday, I call up the conference report on Senate amendment No. 68 to the bill H.R. 14232, making appropriations for the Department of Labor, and Health, Education, and Welfare, and related agencies, for the fiscal year ending September 30, 1977, and for other purposes.

The Clerk read the title of the bill.

The Clerk read the conference report.

(For conference report see proceedings of the House of September 15, 1976.)

The SPEAKER. The Clerk will report the amendment in disagreement.

AMENDMENT IN DISAGREEMENT

The Clerk read as follows:

Senate amendment No. 68, page 39, line 5, strike out:

"SEC. 209. None of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions."

MOTION OFFERED BY MR. FLOOD

Mr. FLOOD. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. FLOOD moves that the House recede from its disagreement to the amendment of the Senate numbered 68 and concur therein with an amendment, as follows: Restore the matter stricken by said amendment amended to read as follows:

"SEC. 209. None of the funds contained in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

The SPEAKER. The gentleman from Pennsylvania (Mr. FLOOD) and the gentleman from Illinois (Mr. MICHEL) will be recognized for 30 minutes each.

The Chair recognizes the gentleman from Pennsylvania (Mr. FLOOD).

Mr. FLOOD. Mr. Speaker, today we are considering the agreement reached by the conferees on the Senate amendment No. 68 to the Labor-HEW appropriation bill for 1977. I would emphasize that we are considering only the one amendment. The conference report on all other issues connected with this bill has been approved and adopted by both the House and the Senate. I would ask the Members to keep that in mind. As soon as we settle the matter before us today, this $56 billion appropriation bill be sent to the President. I would like to also remind the Members that the fiscal year 1977 will begin October 1 which is, by the way, just 15 days from now.

Today we again have before us the issue of whether the Federal Government, through the medicaid program, should pay for abortions.

On June 24, the House adopted the Hyde amendment by votes of 207 to 167 and 199 to 165. The Hyde amendment inserted Section 209, which stated that:

None of the funds appropriated under this Act shall be used to pay for abortions or to promote or encourage abortions.

On June 28, the Senate struck the entire section from the bill by a vote of 57 to 28. We were unable to resolve the issue in our first conference with the Senate on the Labor-HEW bill. On August 10, a motion to recede and concur in the Senate amendment was defeated in the House of Representatives by a vote of 223 to 150. On August 25, a motion to recede to the House on this amendment was defeated in the Senate by a vote of 53 to 35. The result of all these votes was a continued confrontation between the House and the Senate on the issue of payment for abortion. We had to go back to conference. This has been the most difficult conference, believe me, the most difficult conference that I have ever experienced in my public life.

We met repeatedly with the Senate conferees day after day for many, many hours. The House conferees insisted that they could not, and would not, recede from the clearly stated position of a majority of the Members of the House that HEW funds should not be used to pay for abortions. We proposed a modification of the Hyde amendment to permit payment for abortions only in those instances where it is necessary to save the life of the mother. The Senate conferees attempted repeatedly to persuade us to agree to language which we believed would leave the door open to payment for abortions in cases where it is not a true medical necessity. We rejected all such proposals. Finally, the House and the Senate conferees agreed to accept a proposal made by the gentleman from Massachusetts (Mr. CONTE) that the language be amended to read:

None of the funds contained in this act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

As far as I am concerned, this language means essentially the same thing as the language which I originally proposed to permit abortion only in cases were necessary to save the life of the mother. For that reason, and for that reason alone, I was able to accept it.

Mr. Speaker, I strongly urge to the President and the Secretary of HEW not to permit this legislative provision, now whose intent is clear and unmistakable, to be emasculated by any regulations or interpretations. I am convinced that if it is properly administered by the Department of Health, Education, and Welfare, it will bring about a substantial reduction in the number of abortions performed for nontherapeutic reasons.

Mr. Speaker, I urge the adoption of the motion.

Mr. MICHEL. Mr. Speaker, I yield 10 minutes to the gentleman from Massachusetts (Mr. CONTE).

Mr. CONTE. Mr. Speaker, I rise in support of this conference report on the Labor-HEW appropriations bill for fiscal year 1977. As my colleagues know, this is the second time we have presented a conference report on this measure, and I am hopeful that we will be able to get the Senate to approve the bill this time.

It is not necessary to run through this entire bill again. It contains appropriations for some $56.6 billion worth of programs in the areas of labor, health, education, and welfare, as well as certain related agencies. We have already agreed on funding amounts for those programs, and those amounts have already been approved by the House and Senate.

The sticking point on this bill has been Senate amendment No. 68, the so-called Hyde amendment which as passed by this House prohibited the use of Federal funds for abortion.

The Senate did not include this prohibition in its bill, and was unwilling to accept the prohibition in conference. That is why the last conference report failed in the Senate.

Since that time, we have been meeting steadily with the Senate conferees, and have had some dozen sessions, trying to hammer out a compromise. Yesterday I offered language that was acceptable to a majority of the conferees on both the House and Senate sides, and I am here in the well to urge my colleagues' support for that language.

In essence, we have kept the Hyde amendment prohibition except when the life of the mother would be endangered if the fetus were carried to term. As was made clear in the statement of the conferees, it is intended to prohibit payment for abortions as a method of family planning, or for emotional or social convenience.

I want to stress very clearly that we did not prohibit abortions per se; there is serious doubt whether such a prohibition could be made except through constitutional amendment.

What this bill does is prohibit Federal funding of abortions, not the performance of abortions themselves.

It is not the intent of this measure to preclude payment for abortions when the life of the woman is clearly endangered, as in the case of multiple sclerosis or renal disease. Nor is it the intent to prohibit medical procedures necessary for the termination of an ectopic pregnancy or for the treatment of rape victims. Nor is it intended to prohibit the use of contraceptive devices or the so-called morning after pill.

It may well be that this is not the best possible compromise, although I believe that it is. But my colleagues should be very aware of the time frame in which we are operating.

As my colleagues know, this bill is some $4 billion above the President's budget. It is expected that the President will veto this bill, and that we will then vote to override that veto.

In order to have that opportunity to override, and to get this bill approved according to our Budget Committee timetable, we must get this bill to the President by Monday. After that date, we will be running into problems from a pocket veto if we adjourn sine die as expected on October 2.

Mr. Speaker, I believe that it would be irresponsible to let the programs provided for in this bill run under continuing resolution because of the controversy over this prohibition.

As the author of amendments which provided significant and necessary increase in funding for mental health research and treatment, and as a supporter of funding increase for other programs, I believe that we must adopt this compromise in order to meet our vital responsibilities in human resources.

To let the Members know just where I stand on this thing, should the President veto the bill, I will vote to override the veto.

Mr. Speaker, I urge the adoption of this motion.

Mr. FLOOD. Mr. Speaker, I yield to the gentleman from Wisconsin (Mr. OBEY) 10 minutes.

Mr. OBEY. Mr. Speaker, I rise in support of this amendment but because of the atmosphere in which this bill is being considered I want to say something else which I think needs saying.

Last Thursday the Nation witnessed a public appearance by a spokesman for the American Council for Catholic Bishops which, even if understood, left the implication that the bishops had a preference for President, based upon their interpretation of the respective positions of the two candidates on the issue of abortion.

The Council of Bishops has the same right as any other organized group—indeed they have an obligation—to speak out on moral issues which confront the Nation. But, when they collectively or individually, in and through their roles as officials of the Catholic church, go beyond that by leaving the implication that they prefer a Presidential candidate because of his position on one issue, to the exclusion of all others, they make a serious mistake for the church and a mistake for the country.

One of the foundations of American freedom has been the tradition, rooted in the first amendment to the Constitution, which draws a hard firm line between church and State. That line stands as the one sure protection of all churches against the heavy hand of government and against the domination of public affairs by any one organized church.

I am a Catholic. I make no claim to any special piety. The judgment about how well I practice my religion will, in the end, be made neither by me nor by any other living person.

But, because I do care about the church, and even as I support the amendment I feel it necessary to object to the bishops' political statement in my individual capacity as a Catholic and in my public capacity as a public official who happens also to be a Catholic.

In my private capacity as a Catholic, I must object because I believe the bishops' action will produce a backlash against the church and is distorting Catholic values in the eyes of the American people. The action of the Catholic bishops in appearing to be subtly blessing the candidacy of one candidate for President simply on the basis of his position on abortion, even though that difference is one of tactics, not substance, and even though the other candidate is extremely close to the church on a great number of other moral issues, is a negation—even though unintentional—of what the church has always stood for—concern about poverty, about racial justice, about hunger, and other areas of social justice.

If the bishops are, in fact, to measure candidates, should not they be measured against all of the moral guidelines laid down by church teachings in a whole series of great encyclicals on social justice and not just those found in a single encyclical?

As the President of Georgetown University, Rev. Timothy S. Healy said Tuesday,

> Any reduction of all issues in a major political contest to one only is a serious distortion. No matter how worthy the end, narrowing the vision of the electorate can lead to disaster.

But the basic question is really whether the bishops should be making any pronouncements at all concerning individual candidate preferences, no matter how subtle or indirect they may be. I believe they should not.

And I feel duty bound by the oath I have taken to uphold the Constitution of the United States to make clear to both clergy and the American public that while I welcome expressions of opinion by anyone on any subject at any time, I do not recognize the wisdom or the right of the official leaders of the Catholic church to pressure public officials, be they Catholic or not, into taking certain actions on matters of political strategy.

I happen to agree with the position of the Catholic Church on the question of abortion. I am voting for this amendment today which limits Government payments for abortion except in cases of strict medical necessity. I have done so not because I am Catholic, but because I think that it is sound public policy. This amendment is not the language I would have preferred. I believe it should have given physicians more latitude in determining medical necessity, because the last time I looked, the physicians seemed to know a little bit more about medical requirements than the politicians. But I

am willing to accept this language in order to save this bill and in order to try to keep this country together on this most divisive and emotional issue and I hope you are too.

And, irrespective of whether the Government finances abortion, I also agree with the Catholic Church that abortions should be discouraged by every rational means. But I happen to disagree with the church about what tactics and techniques will be most effective in minimizing abortions. So does Mr. Carter. Both Mr. Ford and Mr. Carter oppose abortion. Their only disagreement is over tactics—over what techniques, if any, should be employed to implement that opposition.

As Father Healy said, for the Catholic Church:

> The appearance of identification with any one party, any one candidate, or above all, with any one political strategy is likely to be as destructive as it will be useless.
>
> "Millions of Catholics" won't accept identification with any one political party, candidate or strategy "for the good and simple reason that, like their pastors, they care too much for the church to hobble it to a political stake."

When official leaders of the Catholic Church or any other church try to bring their official and collective weight to bear in a debate between public officials over questions of strategy—that is whether a constitutional amendment or some other form of action is the most appropriate Government response to the abortion question—they are operating outside of their own realm of competence.

I would remind the bishops of the words of another Catholic, John F. Kennedy, who 16 years ago this week gave perhaps the best definition of the proper role of organized religion in our constitutional system ever given by an American. President Kennedy said the following:

> I do not speak for my church on public matters and the church does not speak for me.
>
> Whatever issue may come before me as President, if I should be elected—on birth control, divorce, censorship, gambling, or any other subject—I will make my decision in accordance with these views, in accordance with what my conscience tells me to be in the national interest, and without regard to outside religious pressure or dictate. And no power or threat of punishment could cause me to decide otherwise.
>
> I believe in an America where the separation of church and state is absolute—where no Catholic prelate would tell the President (should he be a Catholic) how to act and no Protestant minister would tell his parishoners for whom to vote. . . .
>
> I believe in an America that is officially neither Catholic, Protestant nor Jewish—where no public official either requests or accepts instructions on public policy from the Pope, the National Council of Churches or any other ecclesiastical source—where no religious body seeks to impose its will directly or indirectly upon the general populace or the public acts of its officials. . . .
>
> For, while this year it may be a Catholic against whom the finger or suspicion is pointed, in other years it has been and may someday begain, a Jew—or a Quaker—or a Unitarian—or a Baptist. It was Virginia's harassment of Baptist preachers, for example, that led to Jefferson's statute of religious freedom. Today, I may be the victim—but tomorrow it may be you—until the whole fabric of our harmonious society is ripped apart at a time of great national peril.

I agree. I will stand by that statement. So should Mr. Ford. So should Mr. Carter. And so should the bishops.

Mr. MICHEL. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. HYDE), the author of the original amendment.

Mr. HYDE. Mr. Speaker, I deplore the introduction of the Carter-Ford controversy on this issue. As I recall it, it was Mr. Carter who sought an interview with the bishops, not the bishops with Mr. Carter. As I recall, Mr. Carter was concerned with the reaction to the Democratic Platform, which went out of its way to bring this issue in our political spectrum more than it was.

I just think it is unfair to take umbrage at the bishops for going to see the President after they acceded to the invitation of Mr. Carter to go see Mr. Carter. I do not think it has anything to do with what we are talking about. I wish we could talk about the issue. Enough said about that.

Mr. Speaker, I fully support the compromise language settled on by the conferees. Admittedly it is compromise language, but is honestly and fairly implemented it contains the essential elements of what I intended all along, namely to prevent the use of Federal funds to pay for abortions except to save the life of the mother. I offer this as a clear statement of legislative intent.

The compromise language omits the proscription against using these funds to promote or encourage abortions, but I should think reasonable persons would interpret the plain, clear language of this amendment as discouraging abortion as a solution to the problem of an unwanted pregnancy.

No one, least of all myself, denies the hardship and even in some cases tragedy that can result from an unwanted pregnancy. The issue, however, is whether the avoidance of this hardship is worth the killing of a human life. The issue is the nature of the sacrifice to avoid this hardship.

The word "kill" is a harsh word—the preferred word among abortionists is "terminate." Can you imagine anyone saying "I'm going to terminate these mosquitoes or cockroaches or crabgrass?" No, you "kill" these pests but you "terminate" the human life of an unwanted and innocent pregnancy through abortion. The use of terminate instead of kill is a triumph of esthetics over intractable reality.

There is language in the report that goes beyond my views on this issue. Particularly that portion which asserts that Congress, by this action, does not intend to prejudge any constitutional questions before the Supreme Court this fall. It certainly is up to the Court to adjudicate constitutional issues just as it is our responsibility to legislate. I view this portion of the report as gratuitous and irrelevant.

I wish to congratulate the gentleman from Massachusetts (Mr. CONTE) for proposing the compromise language, and also every member of the conference committee for their devotion and energy and steadfastness in this matter. It is beneficial to the other body to learn from time to time that this House shares an equal role in the legislative process.

George Will, in the current issue of Newsweek in an editorial entitled "Discretionary Killing," tells us that last year there were a million abortions in the United States and 50 million worldwide. He characterizes the killing of the unborn on this scale "a revolution against the judgment of generations."

An article in the Chicago Tribune of August 20 by columnist Joan Beck states:

> A sad irony now confronts the feminists who fought so hard and so long to make abortion on demand legally available: Abortion is increasingly being used to end the life of healthy unborn infants just because they are not of the sex their parents prefer. And almost all of the unborn babies being aborted for no reason except that they are of an unwanted sex, are female.
>
> This ultimate discrimination against females is expected to increase rapidly in the next few years. Cheap and highly accurate methods of learning the sex of unborn infants early in pregnancy will become widely available in one or two years. These methods will replace the complex and expensive techniques now required for the purpose. Couples willing to resort to abortion will then find it easy to produce only sons or daughters in the precise order they desire.

Justice William O. Douglas is esteemed by many Americans as a man of limitless sensitivity and compassion. In a lengthy dissent in the 1972 case of *Sierra Club vs. Morton* (405 U.S. 727), he urged that in cases concerning the environment—

> Environmental issues should be tendered by the inanimate object itself. Then there will be assurances that all of the forms of life which it represents will stand before the Court—the pileated woodpecker as well as the coyote and bear, the lemming as well as the trout in the streams. Those inarticulate members of the ecological group cannot speak. But those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological community.

He also said:

> The ordinary corporation is a "person" for purposes of the adjudication process whether it represents proprietary, spiritual, esthetic or charitable causes. So it should be as respects valleys, Alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland or even air, that feel the destructive pressures of modern technology and modern life.

I have difficulty in reconciling these views with those holding the unborn to have no standing in court or in their mother's womb. The unborn possess this distinction—they are human and, if not killed by some physician, then life and thought, emotion and choice, love and reason, will go on inside them.

I do support this amendment, not because it is perfect, but because it is the best attainable. Many human lives will be saved, and this is no small achievement.

This language says that human beings are not mere commodities to be manipulated, exploited, or thrown away. This language tells the social and biological engineers that this Congress still believes that human life is unique in creation and possessed of dignity.

Mr. Speaker, I urge its support.

Mr. FLOOD. Mr. Speaker, I yield 5 minutes to the gentlewoman from New York (Ms. ABZUG).

Ms. ABZUG. Mr. Speaker, I am certain that the courts of our land will be extremely interested in our debate here today because it merely proves, in my opinion, and makes the legislative history quite clear, that what we propose today is discriminatory legislation and unconstitutional. I hope and expect that it will be struck down.

In any case, I have always wondered at the fact that this is a body that has many lawyers in it, and yet we are unwilling to allow this issue, which is already before the Supreme Court, to be determined there, where it belongs. What the Members supporting this amendment are challenging is a Supreme Court decision with which they disagree. And even though they disagree with that Supreme Court decision—with which they have a right to disagree—this is not the way to change it. We cannot change a Supreme Court decision interpreting the Constitution of the United States by an amendment to an appropriation bill. If you want a constitutional amendment, then fight for that. But I think this is an error, an inappropriate way to legislate. I believe the Court will strike it down. It is discriminatory legislation, which creates two classes, those women who can secure abortions because they have money, and those women who cannot secure abortions because they are poor. This is class legislation. It is elementary to those Members who are lawyers that this is unconstitutional.

What is it that we do here today? I say it is an act of extreme cruelty, in addition to being an act in violation of the Constitution. It is an act of cruelty to people who cannot help the fact that they are poor. We spend Federal funds—and all taxpayers contribute to those Federal funds—for many programs and policies not supported by the people paying the taxes. For example, there were a lot of people in this country who disagreed with the war in Vietnam, and yet their tax dollars were used every day to conduct that war in Vietnam to kill innocent people here and abroad. A further irony is that that war was illegal, and yet we paid for it, while here, we are refusing to pay for something guaranteed by the Constitution.

This is a very important question. We have the right of privacy. The Supreme Court has said that it exists under the first, the second, the fourth, the fifth, the ninth, and the fourteenth amendments. It says that this issue is not a political issue, that this issue is not an issue which bishops or rabbis or anybody but the individual herself should decide. Herself, not himself, either. Herself. It is a right of the individual herself to decide what to do about her body, not him, not the bishop, not the rabbi, not Congressmen. It is a right of an individual woman to decide what she should do with her body. That is the right of privacy, and that is what the Supreme Court says.

I found it most shocking when my colleague, the gentleman from Massachusetts (Mr. CONTE), told me that it took $50 million to conduct this program of giving medicaid abortions. I want to know if my colleague, whom I normally regard as a man of compassion, knows what it costs the woman who seeks an unsafe and illegal abortion, in terms of dollars and cents. It has been calculated there are at least 25,000 such cases a year, where there is no right to an abortion. What is the cost in dollars and cents? Hundreds or thousands of dollars for hospital caré for a person who has a self-induced abortion. And some will die. As a result of this appropriation measure, some will die.

I object to this amendment because it is improper legislative action.

I object to this amendment because it is unconstitutional, it is class legislation.

I object to this amendment because it is vague. What does it mean, "endangering the life of a mother"? Who is going to determine that? It permits an abortion if the mother's life would be endangered by the fetus' going to full term. And what if the life of the mother were to be endangered if the fetus went to less than full term? The Members apparently have not considered that.

I think the Members who are lawyers know that we cannot add by legislative history conditions which clearly are not in the statute. Mr. Speaker, they are not kidding me when they say that this language also includes a right to payment for an abortion when the life of a woman is not in danger in instances outlined in the conference report. It will preclude payment where there is rape or incest, because the language of the statute itself does not permit such payment. I believe they are just muddying the waters with this legislative history, because what is plainly in the statute is not going in any way to take care of the ectopic pregnancy or the victims of rape or incest.

The problem of pregnancy resulting from rape is a real one. In 1974 there were 55,000 rapes. And the real number of this underreported crime is probably between three to nine times greater. Four percent of these rapes, which is about 18,000, result in pregnancies.

And the problem of genetic deformity is not even mentioned by the conferees. The thalidomide tragedy brought genetic deformity to the attention of the public. There are other toxic substances, such as the recent gas leak in Italy, which can be equally tragic. Yet under this provision women who are dependent on medicaid would be unable to obtain abortions.

The vagueness of the language "endangering the life of the mother" will leave many doctors and States uncertain about their right to perform and fund abortions. Right now 47 States and the District of Columbia provide medicaid funding for abortions without restriction. Three States permit abortions for therapeutic reasons and in cases of rape or incest. This amendment will throw these practices into chaos.

This very issue—whether a State can prohibit the use of medicaid funds for the performance of abortions—is being argued before the Supreme Court this term in Roe against Maher. I see no reason for Congress to jump into this controversy at this point, particularly when judgments are being influenced by electoral politics and electoral pressures. This question has not been considered in our legislative committees, but was merely tacked on to this appropriation bill. Such an important and controversial question should at the very least receive careful scrutiny with hearings so that persons from all different affiliations could present their views. Although extensive hearings were held on the question of a constitutional amendment, which committees in both the House and Senate rejected, no hearings were held on the separate question of banning medicaid payment for abortions. In light of this and the imminent Supreme Court decision, which could dispose of this issue entirely, I would urge all my colleagues to defeat this amendment and at least defer consideration of such a restriction until we receive some guidance from the Supreme Court. If the Court finds this provision unconstitutional, as I believe it will, this debate will be unnecessary.

Opponents of abortion are well aware that the only way to outlaw abortions in this country is through a constitutional amendment. In the landmark decision of Roe against Wade, the Supreme Court upheld a woman's right to choose an abortion. The only way Congress can properly overturn the Supreme Court decision is through a constitutional amendment. Those who oppose the Supreme Court decision have been fighting for such an amendment and, although I strongly disagree with them, I respect their right to pursue such a change by constitutional means.

But let us not penalize those who are pregnant and poor and outlaw abortions for them when other women will continue to obtain safe, legal abortions.

I want to remind my colleagues that a majority of Americans, regardless of religious affiliation, believe that abortion is a personal and private choice that should not be interfered with by Government action. A New York Times poll earlier this year showed that 67 percent of the respondents believed that the abortion decision should be left up to the woman and her doctor.

I urge the Members of this body to vote down this motion to recede and concur in the Senate amendment with an amendment. Women do have a constitutional right to abortion under the right of privacy. The Supreme Court has decided it, and it ill behooves this body to take it away in this arbitrary fashion.

The SPEAKER. The time of the gentlewoman from New York (Ms. ABZUG) has expired.

Ms. ABZUG. Mr. Speaker, will the gentleman yield 1 additional minute to me?

Mr. FLOOD. Mr. Speaker, I am sorry, but my time is limited.

Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota (Mr. FRASER).

Ms. ABZUG. Mr. Speaker, will the gentleman yield?

Mr. FRASER. I yield to the gentlewoman from New York.

Ms. ABZUG. Mr. Speaker, if I may continue, what I am saying is that this is an instance of a very deceptive and, I believe, a very unfair way to legislate. The

statute would speak simply to this by saying that Federal funds may not be used unless the life of a mother would be endangered if the fetus were carried to term. Then the conferees say in the report that they are not trying to prohibit this, that, and the other thing. They say they would not prohibit procedures necessary for the termination of an ectopic pregnancy or for treatment of rape or incest victims, nor is it their intention to prohibit the use of drugs or devices to prevent implantation of the fertilized ovum, and so on. Nor would it interfere, they say, with Federal aid to medical schools where abortion-related research is going on.

Mr. Speaker, this shows very poor draftsmanship. It shows a desperation to respond to what is a minority view in this country. It is the minority view that opposes abortion. Those who oppose abortion do have a right to oppose it, but we should not legislate on it because it is a personal, private matter. I do not object to their opposition to it, nor to their own refusal to have abortions, nor to their legitimate efforts to amend the Consituation, but I cannot accept the idea that a woman who does believe in abortion and who has a constitutional right to have an abortion should be prevented from exercising that right because she happens to be poor.

Mr. FRASER. Mr. Speaker, I hope that we will defeat this measure which is discriminatory and, therefore, unconstitutional.

I do not find fault with the conference. I know the members of the conference committee were instructed by the House, and it might well be that this is the best compromise they could achieve.

However, the medicaid program was designed to buy comprehensive medical assistance for the needy and for the indigent of this country. For us to say what the medical procedures should be and to say what is available to the indigent and the near poor is, I think, invidious discrimination, and it ought to be stricken down.

The history of the Hyde amendment this session has been a sad one, and the consequences will be not only sad but destructive. If this measure is enacted into law, the consequences will include:

First, a rise in the number of illegal abortions, and a corresponding rise in the number of abortion-related deaths and injuries.

Second, immediate chaos in the 47 States and the District of Columbia that presently reimburse for abortion through medicaid. These States will have to change their laws to comply with both the Supreme Court decisions and the rigid language of the amendment—a "Catch-22" task if ever there was one.

Third, suits in Federal courts to prevent the discriminatory ban from going into effect October 1, at the beginning of the new fiscal year. Seven Federal courts have already upheld the legality of medicaid reimbursement, and the Supreme Court has three cases on its fall calendar which will determine the constitutionality of this reimbursement.

I want to make my views clear on the record because I am sure that this issue will be before the courts. We are not dealing with the question of a constitutional amendment here. I am not in favor of a constitutional amendment, but I am even more strongly opposed to throwing such a burden on the poor of this country.

Mr. MICHEL. I yield 5 minutes to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. I rise in support of the language the conference committee has returned to the House for final action. I would have been much more comfortable with the original language offered by the gentleman from Illinois (Mr. HYDE), who deserves a great deal of credit for the courage he has shown in bringing this issue before the House, but I will abide by the conferees decision. They, too, deserve our thanks.

The statement was made a few moments ago in debate that the proper means to arrive at a solution to the issue of abortion would be a constitutional amendment, and that we should be willing to fight to bring such an amendment before the House. Lord knows, we have tried for years now to do just that. Since the Supreme Court issued their original decision many of us have fought to obtain the right to vote on a constitutional amendment and to debate it on the floor. We have been denied that right of full deliberation in both Houses of Congress. So the means at hand must be used to express our view. The language before the House is perfectly legal and constitutional despite the opinions offered here by lawyers and nonlawyers. The intimation is that this is an unconstitutional prohibition, but I see it as imposing a valid limitation on an appropriation bill. Why should Federal taxpayers' funds be employed to murder the unborn?

There is no denying the fact that many millions of dollars of the Federal taxpayers' money have been used to stamp out the lives of many thousands of unborn children. As the gentleman from Illinois (Mr. HYDE) says, these are indeed the lives of defenseless human beings.

Reference was made also in the debate to the fact that the denial of a tax supported abortion is an extreme act of cruelty. The most extreme act of cruelty is the brutal denial of life itself. I think that should be self-evident, and this thought was expressed in the very first words of our Constitution and Declaration of Independence.

Mr. Speaker, what is so disturbing about this emotional issue is that as a nation we may have arrived at a milestone faced by other nations in the past. We may have reached a point at which our national legislature, the executive branch, in fact, a majority of this country may no longer care about the right to life. A point at which life will now be measured in dollars and cents. Pray God, I hope that is not so.

Mr. Speaker, the argument of inconvenience can be extended to the elderly or to the ill, those who just happen to be in the way of the majority, those who disagree.

We saw in Nazi Germany the ultimate flowering of that pernicious and lethal doctrine. And who here wishes to announce their belated endorsement of Adolf Hitler's "final solution"?

Mr. Speaker, I would hope that the House will adopt the language of this report. I hope there will be no move to sever the motion made by the gentleman from Pennsylvania (Mr. FLOOD), but that we will take our stand.

Make no mistake about it, this language makes the intent of Congress very clear. We are not going to permit the Federal Government and its taxpayers to support wholesale murder. I think that is something about which all of us in this Congress ought to be proud.

Let me add that the gentleman from Wisconsin (Mr. OBEY) has the right to express his opinion as he did earlier in debate but I must suggest, he is mistaken in his view. There should be no indictment of the right of Catholics, Protestants, or Jews or anyone to raise moral issues within the political process. It is well that burning issues have a full airing. Those in places of leadership in our churches, whatever their denomination may be, should be able to step forward and make their views known on an issue so basic as the right to life. It would be immoral to shirk this duty.

Were they to do otherwise, they would avoid the basic issues this country is facing, and we should not quarrel with any group for forcefully stating their views on this issue. Rather, Mr. Speaker, we should applaud them for their stand and seriously question those politicians who seek to curry maximum political favor by avoiding the supreme issues of our day, especially when their goal is the Presidency of the United States.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Massachusetts.

Mr. CONTE. Mr. Speaker, I would like to make some points, one with respect to something which the gentlewoman from New York (Ms. ABZUG) raised about the war in Indochina.

A lot of people were opposed to that war. It was my two amendments, one of which the gentleman from Connecticut (Mr. GIAIMO) cosponsored, that cut funds for Vietnam and put a ceiling on aid to Cambodia. I did that, and my colleagues supported me, because we did not like the killing going on in that war.

Mr. Speaker, let us get back to the point here. This language was a compromise, and the gentleman from New York (Mr. PEYSER) seems to attack it.

Mr. Speaker, we had some 20 amendments to this provision that we tried to get through that conference committee. Some 20 times we tried and failed. We got nowhere for 2 weeks. Finally, yesterday, we agreed on this.

As I said earlier, we are facing a pocket veto of this $56.6 billion bill. And where does the largest chunk of that $56.6 billion go? It goes to the poor people in this country, to those who are in need.

If the gentleman from New York feels that strongly, perhaps he is willing to risk and kill this whole bill. We will almost certainly have an outright veto any way. If the gentleman feels so strongly, he will have the opportunity at that time to sustain the President's veto.

Mr. FLOOD. Mr. Speaker, I yield 2

minutes to the gentleman from Connecticut (Mr. GIAIMO).

Mr. GIAIMO. Mr. Speaker, I rise in opposition to this amendment.

It is all well and good to say that this is a compromise. We know that it is—but we are compromising with respect to some poor woman whom none of us here know, as to what she can expect or cannot expect from her Government.

We are not settling the question of abortion here. The question of abortion, if it is ever settled, will be settled at another time, undoubtedly in the Supreme Court. However, what we are saying here is that while under the present law a woman is legally entitled to have an abortion, if she happens to be poor and cannot afford to have it without some assistance from the Federal Government then she will not have the benefit that wealthier women have.

Mr. Speaker, I cannot accept that, and I do not think that can be compromised. We have medicaid programs; we have all kinds of programs which provide health services to people and types of medical treatment which are legal and proper under the law. Abortion is legal and proper under the law; but we say in the instance of the poor, "We will not provide assistance to you."

Therefore, Mr. Speaker, we are disenfranchising poor women and barring them from rights which they would have if they had money of their own. I do not think it is fair. It pays lip service to extreme conditions in the whole area of abortion, but it really does not solve the issue, although it might benefit some people who think that it does.

Mr. Speaker, it just is not right. The easy vote, I believe, would be to vote in favor of this amendment in order to duck the issue. The only ones who will be angry with us will be some poor unknown women. I do not think that is right, and I think we should vote down this amendment.

Mr. MICHEL. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. PRITCHARD).

Mr. PRITCHARD. Mr. Speaker, I do not want to be critical of the conferees who worked so hard because I know on this whole battle that it was very difficult, but on this particular issue this is not a compromise, it is capitulation. Just remember we in no way took care of the women who will be raped. Fortunately the Supreme Court in the next term will take care of this measure because it is clearly unconstitutional.

Finally, Mr. Speaker, if we had had 17 men and the rest of them were women, then both of us know that there would be a different discussion made today on this decision.

Mrs. FENWICK. Mr. Speaker, will the gentleman yield?

Mr. PRITCHARD. I yield to the gentlewoman from New Jersey.

Mrs. FENWICK. Mr. Speaker, I cannot sit quietly, although I know there is little time left for me to speak, but I do wish to state to the Members that it is obvious that the suggestion that this Government is doing justice is a parody. I have been in countries where it did not stop abortions just by stopping Federal funds, they are just putting a subterfuge to the abortion question.

The SPEAKER. The time of the gentleman from Washington has expired.

Mr. FLOOD. Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Speaker, after 3 months of debate on this amendment, and very exhaustive conference committee considerations, I think we all know where we stand on this issue. We have had extensive debate; we know from our own constituents what they want us to do. But, Mr. Speaker, let me say that the right to life is not primarily or exclusively a religious issue. It is a human rights issue.

There is much in this appropriation bill to sustain human rights; education for the gifted and the afflicted, programs for the poor, programs for health, help for the elderly and for the infirm. The funding for these programs deserves our support, because without the help they provide life itself loses much of its meaning.

Our vote today is not a referendum on the positions taken by the two Presidential candidates, or on a constitutional amendment to protect life. In fact, the role of the President in the constitutional amending process is a very minimal one. Presidents play very little if any role. Few people realize that. It is this body and the other body and the legislatures of all of our 50 States that play a distinct role. It is, therefore, to the Congress, and the State legislatures, that the people of this country, including the Catholic bishops, the Protestant ministers, the rabbis and the Mormons should pay their attention not to the Presidential candidates, on the issue of a constitutional amendment to protect life.

The amendment we are considering this afternoon, however, does involve both the Congress and the Executive. So it is appropriate for all segments of our society to speak up and to be heard. All of us, in a few moments, are going to take a stand, when we vote on this amendment. Both Presidential candidates, I believe, have for some time committed themselves to a position in opposition to Federal funding of abortions, so it is not a partisan issue. I make no reference to their position on a constitutional amendment to protect life.

This vote is not on the issue of poverty or discrimination, this is a human rights issue, the rights of the voiceless and the voteless—the unborn. So I ask my colleagues to vote today for those who cannot vote; vote for life; vote for the unborn.

The SPEAKER. The time of the gentleman has expired.

Mr. FLOOD. Mr. Speaker, I yield 1 minute to the gentleman from Wyoming (Mr. RONCALIO).

Mr. RONCALIO. Mr. Speaker, if the gentleman from Wisconsin (Mr. OBEY), my colleague and my excellent leader, can come down on the same side of this issue with the gentleman from Maryland (Mr. BAUMAN), my friend, then maybe I think it is time for me to come down on the side of the gentleman from Minnesota (Mr. FRENZEL) and on the side of conservative columnist and commentator James J. Kilpatrick. I have here a letter from the gentleman from Minnesota (Mr. FRENZEL) that I include in the RECORD at this time.

DEAR COLLEAGUE: Yesterday the Conference Committee on the Labor/HEW Appropriations Bill compromised the disagreement on the Hyde Amendment by accepting the House position. Additional language was added, but the result will be basically the same as the original Amendment.

That Amendment does not prevent abortions. It doesn't change the Supreme Court's ruling. It merely denies abortions to the people who need them most.

Because James J. Kilpatrick's radio commentary of August 27 matches my own sentiments, I invite your attention to it:

"There is something especially cruel, pointless and indefensible in the position taken by the House of Representatives in the latest controversy over abortion. The House is insisting upon an amendment to the pending $57 billion appropriations bill for HEW. The Amendment would prohibit the expenditure of Medicaid funds for the purpose of abortions. The Senate has refused to go along.

"If the effect of this amendment were absolutely to prohibit abortions anywhere, anytime, by anybody, perhaps it would make some sense. But Congress has no such power to define abortion as a crime and to impose a sweeping ban. That is the business of the separate states.

"What we have here is a misguided proposal to make therapeutic abortions more difficult for the very class of women least able to fend for themselves—the poor women on welfare. The amendment won't prevent them from getting abortions. It will merely drive them into the hands of the underground abortion mills; or it will foster the birth of more unwanted children who will form a new generation of supplicants on the public dole.

"No useful public purpose will be served by the House amendment. The money that might be saved will be spent, now or later, in aid to families with dependent children. Middle-income and upper-income women, able to afford abortions, will get them. Only the poor will be denied the safety and security of proper medical care. Maybe this is good politics—I doubt it—but it is a mean-spirited act. I hope the House retreats. I'm James J. Kilpatrick."

Members will vote against the HEW Appropriation for a variety of reasons. The Hyde Amendment is one reason to do so.

Yours very truly,

BILL FRENZEL,
Member of Congress.

I was once a prosecutor. I prosecuted doctors who did illegal abortions. Some I got convictions on; some I lost. What I remember most is that some mothers died from infections from those illegal abortions.

Abortions are going to go on, whether we stop paying for some of them or not. I think it is an injustice to say that the poor can no longer have abortions in hospitals. They will simply then have them in the back alleys. That is an injustice that I cannot vote for.

Mr. MICHEL. Mr. Speaker, I yield myself the remaining time I have.

Mr. Speaker, as the gentleman from Connecticut said a few moments ago, this is not going to be the final resolution of the issue of abortion in this country. Let us face it. Since it is that emotional and complex a subject, I would not attempt here in the few moments or so that I have left to really discuss that issue.

May I simply, then, in conclusion define, if I can quickly, the parliamentary situation in the event it is anyone's choice and prerogative, as it is in this House, to ask for a division of the question on the motion of our chairman, the gentleman from Pennsylvania (Mr. FLOOD) to recede and concur with an amendment. If there is a demand for a division of the question, I would urge every Member on both sides of the issue to vote to recede, because if we do not vote to recede, we are never going to be able to concur with an amendment. Admittedly, those who are opposed to the position the conferees have taken here, I assume, would like to recede and concur. If that move is made, the preferential motion is one to recede and concur with an amendment which, of course, would be the prerogative of our chairman. Then I would ask that if we get through to that point, that the Members certainly support the chairman and their conferees because, as the gentleman from Massachusetts (Mr. CONTE) has said, 16, 17, 18—I do not know how many—amendments and efforts were made during a 2-week period of time during which we attempted to iron this thing out to the satisfaction and agreement of all parties. It is practically impossible. But in the final resolution I might say that the Senator from Indiana (Mr. BAYH) supported this proposition when it was put to a final vote of the Senate conferees, so I think that should give indication enough to some of those who are of like mind to support what the conferees have done.

Mr. SEIBERLING. Mr. Speaker, would the gentleman yield for a question?

Mr. MICHEL. I yield to the gentleman from Ohio.

Mr. SEIBERLING. I thank the gentleman for yielding.

Would it be correct to summarize the effect of the motion by observing that if we wish to have Dr. Jekyll, we must also take Mr. Hyde?

Mr. MICHEL. Mr. Speaker, I yield back the remainder of my time.

Mr. FRENZEL. Mr. Speaker, we have already adopted the conference report on this bill. I voted negatively because the bill contained excessive spending—at least $4 billion over the President's budget.

Today we are concerned only with the compromise language of the Hyde amendment. The House conferees were successful, and the basic thrust of the Hyde amendment was preserved. Per my remarks when this bill was last before us, I do not support that amendment, and shall vote "no" today.

Mr. LEVITAS. Mr. Speaker, I originally opposed the Hyde amendment for several reasons, but one of the chief reasons was that it deprived a woman who was poor from receiving even a therapeutic abortion, as opposed to an elective abortion. The new amendment presented today eliminates that problem and therefore I can support it.

Mr. REUSS. Mr. Speaker, I support the Senate-House conference position on abortion. In the language of the conference report, which I take it will govern the amendment in disagreement:

It is the intent of the Conference to limit the financing of abortions under the Medicaid program to instances where the performance of an abortion is deemed by a physician to be of medical necessity and to prohibit payment for abortions as a method of family planning, or for emotional or social convenience. It is not our intent to preclude payment for abortions when the life of the woman is clearly endangered, as in the case of multiple sclerosis or renal disease, if the pregnancy were carried to term. Nor is it the intent of the Conferees to prohibit medical procedures necessary for the termination of an ectopic pregnancy or for the treatment of rape or incest victims: nor is it intended to prohibit the use of drugs or devices to prevent implantation of the fertilized ovum.

The conference report replaces language previously adopted by the House, but rejected by the Senate—the so-called Hyde amendment, containing an absolute prohibition against the use of medicaid funds to pay for abortions. This absolute prohibition is identical with that contained in the so-called human life amendment to the Constitution, guaranteeing "the right of life to the unborn from the moment of fertilization."

I know that many sincere persons, both lay and clerical, support the human life constitutional amendment and its legislative counterpart. After carefully studying the 1973 Supreme Court abortion decision, and after extensive dialog and communication, I concluded that I cannot be in support, and have so informed those interested in the human life amendment and its legislative counterpart. For example, to deny to a State the power to legalize an abortion so as to arrest the fertilization that has taken place as a result of rape or incest, or where it is deemed by a physician to be a medical necessity, seems to me to disregard other important human rights—the right of a mother to her health, and the right of a family whose maternal leader has been the subject of rape to avoid the consequences of a violent fertilization.

These are serious questions. I have given them serious thought.

Mr. FLOOD. Mr. Speaker, I move the previous question on the motion.

The SPEAKER. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER. The question is on the motion offered by the gentleman from Pennsylvania (Mr. FLOOD).

PARLIAMENTARY INQUIRY

Mr. WIRTH. Mr. Speaker, I have a parliamentary inquiry in relation to the comments just made.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. WIRTH. My question, Mr. Speaker, is are we going to be able to vote, first of all, upon the amendment as agreed to by the conferees before we vote on the whole of the bill?

The SPEAKER. That is not in order after the question is put.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BAUMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 256, nays 114, not voting 60, as follows:

[Roll No. 746]

YEAS—256

Abdnor
Ambro
Andrews, N.C.
Andrews, N. Dak.
Archer
Armstrong
Ashbrook
Aspin
AuCoin
Bafalis
Baldus
Baucus
Bauman
Beard, R.I.
Beard, Tenn.
Bedell
Bennett
Bergland
Bevill
Blanchard
Blouin
Boggs
Boland
Bonker
Bowen
Breaux
Brinkley
Brooks
Broomfield
Brown, Ohio
Broyhill
Buchanan
Burgener
Burke, Mass.
Burleson, Tex.
Burlison, Mo.
Byron
Carney
Cederberg
Clancy
Clausen, Don H.
Clawson, Del
Cochran
Collins, Tex.
Conable
Conte
Cornell
Cotter
Coughlin
Crane
D'Amours
de la Garza
Delaney
Dent
Derrick
Derwinski
Devine
Dickinson
Dingell
Downing, Va.
Drinan
Duncan, Tenn.
Early
Edgar
Edwards, Ala.
Eilberg
Emery
English
Erlenborn
Evans, Ind.
Fary
Findley
Fish
Fithian
Flood
Florio
Flowers
Flynt
Fountain
Frey
Gaydos
Gibbons
Ginn
Gonzalez
Goodling
Gradison
Grassley
Gude
Guyer
Hagedorn
Hall, Tex.
Hamilton
Hammer-schmidt
Hanley
Harkin
Harsha
Hechler, W. Va.
Heckler, Mass.
Hefner
Henderson
Hicks
Hightower
Hillis
Holt
Horton
Howard
Hubbard
Hughes
Hungate
Hutchinson
Hyde
Ichord
Jacobs
Jarman
Johnson, Calif.
Jones, Ala.
Jones, N.C.
Jones, Okla.
Kasten
Kazen
Kemp
Kindness
LaFalce
Lagomarsino
Latta
Lent
Lloyd, Tenn.
Long, La.
Lott
Lujan
McClory
McCollister
McDade
McDonald
McEwen
McHugh
McKay
Madden
Madigan
Mahon
Mann
Martin
Mathis
Melcher
Mezvinsky
Michel
Milford
Miller, Ohio
Mills
Minish
Mitchell, N.Y.
Moakley
Montgomery
Moore
Moorhead, Calif.
Morgan
Moss
Mottl
Murphy, Ill.
Murphy, N.Y.
Murtha
Myers, Ind.
Myers, Pa.
Nedzi
Nichols
Nix
Nolan
Nowak
Oberstar
Obey
O'Brien
O'Hara
O'Neill
Patten, N.J.
Paul
Pepper
Pickle
Pike
Poage
Pressler
Preyer
Price
Quie
Quillen
Railsback
Randall
Regula
Reuss
Rhodes
Rinaldo
Roberts
Robinson
Rodino
Roe
Rogers
Rostenkowski
Roush
Roybal
Runnels
Ruppe
Russo
St Germain
Santini
Sarbanes
Satterfield
Schulze
Sebelius
Sharp
Shipley
Shriver
Shuster
Sikes
Simon
Sisk
Skubitz
Slack
Smith, Iowa
Smith, Nebr.
Snyder
Spellman
Spence
Staggers
Stanton, J. William
Stanton, James V.
Steed
Steiger, Wis.
Stratton
Sullivan
Symington
Symms
Taylor, Mo.
Thone
Thornton
Traxler
Treen
Ullman
Vander Jagt
Vanik
Vigorito
Waggonner
Walsh
Wampler
Whalen
White
Whitehurst
Whitten
Wilson, Bob
Wolff
Wright
Wydler
Wylie
Young, Alaska
Young, Fla.
Young, Tex.
Zablocki
Zeferetti

NAYS—114

Abzug
Adams
Allen
Anderson, Calif.
Anderson, Ill.
Badillo
Biester
Bingham
Bolling
Brademas
Breckinridge
Brodhead
Brown, Calif.
Brown, Mich.
Burke, Calif.
Burton, Phillip
Butler
Carr
Clay
Cohen
Collins, Ill.
Conyers
Corman
Daniel, Dan
Daniel, R. W.
Danielson
Davis
Dellums
Diggs
Dodd
Downey, N.Y.
Duncan, Oreg.
du Pont
Edwards, Calif.
Evans, Colo.

Evins, Tenn.
Fascell
Fenwick
Fisher
Foley
Ford, Mich.
Forsythe
Fraser
Frenzel
Giaimo
Gilman
Hall, Ill.
Hannaford
Harris
Hawkins
Hayes, Ind.
Holtzman
Jeffords
Jenrette
Johnson, Colo.
Jordan
Kastenmeier
Keys
Koch
Krebs
Krueger
Leggett
Lehman
Lloyd, Calif.
Long, Md.
Lundine
McCloskey
McCormack
McFall
McKinney
Maguire
Mikva
Miller, Calif.
Mineta
Mitchell, Md.
Moffett
Mollohan
Moorhead, Pa.
Mosher
Natcher
Neal
Ottinger
Pattison, N.Y.
Perkins
Pettis
Peyser
Pritchard
Rangel
Rees
Richmond
Risenhoover
Roncalio
Rosenthal
Sarasin
Scheuer
Schneebeli
Schroeder
Seiberling
Solarz
Stokes
Stuckey
Studds
Taylor, N.C.
Thompson
Tsongas
Udall
Van Deerlin
Waxman
Weaver
Wiggins
Wilson, C. H.
Wilson, Tex.
Wirth
Yates

NOT VOTING—60

Addabbo
Alexander
Annunzio
Ashley
Bell
Biaggi
Burke, Fla.
Burton, John
Carter
Chappell
Chisholm
Cleveland
Conlan
Daniels, N.J.
Eckhardt
Esch
Eshleman
Ford, Tenn.
Fuqua
Goldwater
Green
Haley
Hansen
Harrington
Hébert
Heinz
Helstoski
Hinshaw
Holland
Howe
Johnson, Pa.
Jones, Tenn.
Karth
Kelly
Ketchum
Landrum
Levitas
Matsunaga
Mazzoli
Meeds
Metcalfe
Meyner
Mink
Passman
Patterson, Calif.
Riegle
Rooney
Rose
Rousselot
Ryan
Stark
Steelman
Steiger, Ariz.
Stephens
Talcott
Teague
Vander Veen
Winn
Yatron
Young, Ga.

The Clerk announced the following pairs:

On this vote:

Mr. Yatron for, with Mr. Steelman against.

Mr. Levitas for, with Mr. Harrington against.

Mr. Ashley for, with Mrs. Chisholm against.

Mr. Hébert for, with Mr. Stark against.

Until further notice:

Mr. Karth with Mr. Burke of Florida.

Mr. Jones of Tennessee with Mr. Carter.

Mr. Meeds with Mr. Hansen.

Mr. Ryan with Mr. Bell.

Mr. Stephens with Mr. Eshleman.

Mr. Teague with Mr. Conlan.

Mr. Rooney with Mr. Talcott.

Mrs. Mink with Mr. Rousselot.

Mr. Dominick V. Daniels with Mr. Ketchum.

Mr. Passman with Mr. Kelly.

Mr. Matsunaga with Mr. Steiger of Arizona.

Mr. Ford of Tennessee with Mr. Cleveland.

Mr. Haley with Mr. Winn.

Mr. Addabbo with Mr. Johnson of Pennsylvania.

Mr. Holland with Mr. Esch.

Mr. Vander Veen with Mr. Goldwater.

Mr. Young of Georgia with Mr. Heinz.

Mr. Riegle with Mr. Metcalfe.

Mrs. Meyner with Mr. Rose.

Mr. Green with Mr. Helstoski.

Mr. Annunzio with Mr. John Burton.

Mr. Alexander with Mr. Chappell.

Mr. Biaggi with Mr. Eckhardt.

Mr. Fuqua with Mr. Landrum.

Mr. Mazzoli with Mr. Patterson of California.

Mr. SYMMS and Mr. HOWARD changed their vote from "nay" to "yea."

Mr. LLOYD of California changed his vote from "yea" to "nay."

Mr. NEAL changed his vote from "present" to "nay."

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FLOOD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the motion just agreed to in respect to Senate amendment numbered 68 to the bill H.R. 14232.

The SPEAKER. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. RHODES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RHODES. Mr. Speaker, I take this time in order to inquire of the distinguished majority leader, the gentleman from Massachusetts (Mr. O'NEILL), as to the program for tomorrow.

Mr. O'NEILL. Mr. Speaker, if the distinguished gentleman from Arizona (Mr. RHODES) will yield, I will be glad to reply to the gentleman.

Mr. RHODES. I yield to the distinguished gentleman from Massachusetts.

REQUEST FOR HOUR OF MEETING TOMORROW

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 10 o'clock tomorrow morning.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. ASHBROOK. Mr. Speaker, I reserve the right to object.

Mr. O'NEILL. Mr. Speaker, if the gentleman is reserving the right to object, then I will withdraw my request at this time so that I may give the program for tomorrow.

Mr. Speaker, the program for tomorrow, Friday, is as follows:

House Resolution 1540, Select Committee on Assassinations;

We will conclude consideration of H.R. 15069, national forest management reform;

That will be followed by H.R. 15193, District of Columbia appropriations conference report;

H.R. 15194, public works employment appropriations conference report;

H.R. 12987, emergency job programs stopgap extension conference report; and

H.R. 15377, Export Administration, an open rule with 1 hour of debate.

It seems obvious we will not be able to conclude the entire program that we have scheduled. We would hope we would be able to get through with the conference reports, and we would hope we would be able to adjourn at 5 o'clock tomorrow evening.

And so, Mr. Speaker, with that in mind, I will renew my unanimous-consent request.

HOUR OF MEETING ON TOMORROW

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet at 10 o'clock tomorrow morning.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. ASHBROOK. Mr. Speaker, reserving the right to object, first I will say, congratulations to our majority leader.

Some of us are a little concerned about the legislative program. I know that last week some of us felt that it was a show-and-tell session, but many of us have felt this week there is a very serious attempt being made to legislate.

Therefore, I certainly would not object to the request. The gentleman did say that we will be finished by 5 o'clock tomorrow afternoon?

Mr. O'NEILL. Yes. Mr. Speaker, if the gentleman will yield, I say that on the assumption that we can complete consideration of all the conference reports. If we do, we will be out of here by 5 o'clock.

Mr. ASHBROOK. Mr. Speaker, I thank the majority leader, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

PERMISSION FOR COMMITTEE ON RULES TO FILE CERTAIN PRIVILEGED REPORTS

Mr. MADDEN. Mr. Speaker, I ask unanimous consent that the Committee on Rules may have until midnight tonight to file certain privileged reports.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

Mr. BAUMAN. Mr. Speaker, reserving the right to object, will the gentleman tell us what reports are involved in his request?

Mr. MADDEN. Mr. Speaker, will the gentleman yield?

Mr. BAUMAN. I yield to the gentleman from Indiana.

Mr. MADDEN. The privileged reports are on the rule on H.R. 14970, Special Unemployment Assistance Extension Act of 1976; and the rule on H.R. 13350, ERDA authorization, to facilitate the conference.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 15, PUBLIC DISCLOSURE OF LOBBY ACT OF 1976

Mr. MADDEN, from the Committee on Rules, submitted a privileged report (Rept. No. 94–1579) on the resolution (H. Res. 1551) to regulate lobbying and

related activities, which was referred to the House Calendar and ordered to be printed.

EXTENDING AND IMPROVING PROGRAM OF EXCHANGE OF MEDICAL INFORMATION BETWEEN VETERANS' ADMINISTRATION AND THE MEDICAL COMMUNITY

Mr. ROBERTS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 3348) to amend title 38, United States Code, in order to extend and improve the program of exchange of medical information between the Veterans' Administration and the medical community, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment as follows:

Page 2, after line 7, insert:

SEC. 2. (a) Subchapter I of chapter 2 of title 38, United States Code, is amended by adding at the end thereof the following new section:

"§ 203. Availability of appropriations.

"Any funds appropriated to the Veterans' Administration may, to the extent provided in this title or an appropriations Act, remain available until expended.".

(b) The table of sections for subchapter I of chapter 3 of title 38, United States Code, is amended by adding at the end thereof the following new item:

"203. Availability of appropriations.".

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. HAMMERSCHMIDT. Mr. Speaker, reserving the right to object, and I shall not object, but I will take just a moment to yield to the distinguished chairman of the committee so that be can give us a brief explanation of this legislation.

Mr. ROBERTS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, H.R. 3348 would extend the Department of Medicine and Surgery's exchange of medical information program through 1979.

The purpose of the program is to bring modern medical and communications technology to bear on the quality of services available to veterans at VA hospitals which, for reasons of size, location, or lack of resources, are unable to take full advantage of the latest medical information. The program is designed to strengthen medical programs at Veterans' Administration hospitals not affiliated with medical schools or in locations remote from medical teaching centers.

Under the program the Administrator of Veterans' Affairs may enter into agreements with medical schools, hospitals, medical centers, and individual members of the medical profession for the free exchange of medical information.

The program was first authorized in 1966.

The bill would authorize $4 million to be expended in fiscal year 1977.

TECHNICAL AMENDMENT BACKGROUND

For years appropriation acts have specified, for most VA appropriation accounts, that the funds appropriated may remain available until expended. This clarifying amendment is necessary because there is apparently some question as to whether an appropriations act can specify the continued availability of VA funds unless the substantive law authorizing the various VA programs permits such funds to be continued available until expended. Without such authorization an appropriations act specifying the same may be subject to a point of order on the floor of the House.

Some Veterans' Administration programs authorized under title 38 already have such specific authorization with respect to multi-year availability of appropriations. They include medical and prosthetic research—section 216(B)—grants to the Republic of the Philippines—section 631(D)—grants for the construction of State extended care facilities—section 644(d)—loan guaranty revolving fund—section 1824—and assistance for health manpower training institutions—section 5082(B). As to certain other VA programs, there is not such a specific authorization. Accordingly, the clarifying technical amendment would provide explicit authority in order to authorize the House Appropriations Committee to continue existing practice.

Mr. HAMMERSCHMIDT. Mr. Speaker, I support the gentleman's motion to concur with the Senate amendment to H.R. 3348.

This measure was unanimously passed by the House on June 16, 1975. It provides both for the extension and the improvement of the Veterans' Administration's exchange of medical information program. This program, now concluding its eighth year of operation strengthens Veterans' Administration hospitals which are unaffiliated with medical schools and/or are remotely located from medical teaching centers.

First, it has enabled the Veterans' Administration to take advantage of modern communications technologies, in providing information to and developing innovative pilot projects for such hospitals. For instance, the Veterans' Administration has participated in a series of biomedical communications experiments via the ATS-F satellite launched in April 1974, by the National Aeronautics and Space Administration.

Second, it has helped the Veterans' Administration attract highly trained and qualified members of the medical profession to such hospitals.

Third, it has assisted the Veterans' Administration in making up-to-date medical care available to veterans in such hospitals.

The bill under consideration would authorize appropriations of $3.5 million for fiscal 1976; $1.7 million for the transition period; and $4 million each year for fiscal 1977, 1978, and 1979.

The Senate amendment to H.R. 3348 is technical in nature. It authorizes that the appropriated funds remain available until expended. This is in line with a recent interpretation by the House Parliamentarian that an appropriations act is subect to a point of order if the authorizing legislation does not contain language regarding the expenditure of funds after the end of the fiscal year.

Mr. Speaker, I urge my colleagues to support H.R. 3348 with the Senate amendment.

Mr. Speaker. I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

APPOINTMENT AS DELEGATES TO ATTEND CONFERENCE OF THE INTERPARLIAMENTARY UNION AT MADRID, SPAIN

The SPEAKER. Pursuant to the provisions of section 204(b), Public Law 94-141, the Chair appoints as delegates to attend the conference of the Interparliamentary Union to be held at Madrid, Spain, on September 23 to October 1, 1976, the following Members of the House: The gentleman from Oklahoma, Mr. JARMAN; the gentleman from Missouri, Mr. RANDALL; the gentleman from Illinois, Mr. MCCLORY; the gentleman from Florida, Mr. PEPPER; and, the gentleman from Maryland, Mr. BYRON.

A GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES AND THE POLISH PEOPLE'S REPUBLIC—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 94-613)

The SPEAKER laid before the House the following message from the President of the United States, which was read and, together with the accompanying papers, referred to the Committee on Merchant Marine and Fisheries and ordered to be printed:

To the Congress of the United States:

In accordance with The Fishery Conservation and Management Act of 1976 (P.L. 94-265; 16 U.S.C. 1801), I transmit herewith a governing international fishery agreement between the United States and the Polish People's Republic, signed at Warsaw on August 2, 1976.

This Agreement is significant because it is the first to be negotiated in accordance with that legislation. I recommend the Congress give favorable consideration to this Agreement at an early date. I further recommend that, in the event 60 calendar days of continuous session as required by the legislation are not available before March 1, 1977, the Congress consider issuance of a joint resolution in order to bring this Agreement into force by that date.

GERALD R. FORD.

THE WHITE HOUSE, *September 16, 1976.*

MIKE MANSFIELD—A GREAT SERVANT OF HIS STATE AND HER PEOPLE

(Mr. MELCHER asked and was given permission to address the House for 1

minute, to revise and extend his remarks and include extraneous matter.)

Mr. MELCHER. Mr. Speaker, over in the other body of Congress, Senators are paying tribute today to the retiring majority leader, Montana's Senator MIKE MANSFIELD.

I want to join in that tribute, and adopt as my own views everything said in praise there of the Senator's record as a Senator and as majority leader on national and international issues.

I rise in the House of Representatives, however, to remind those who will read the Senate tributes that MIKE first served 10 years in this body, that he made significant contributions here, to pay tribute to him for the great service he has rendered to the State of Montana and her citizens, and to express my own boundless gratitude and appreciation for the guidance, the wise advice, and assistance that he has given me.

There are others in the House who served in this body with him who will, in the days ahead, comment on his service here. Several have discussed it with me and I regret that it was not made known until yesterday that MIKE is leaving Friday for China and may not be back until we have adjourned.

His trip at this moment in China's history is in the national interest.

Just briefly at this time, I wish to make some personal observations.

When I came to Congress 7½ years ago after a special election, I became a part of a congressional delegation that is unique in the country. Members and their staffs meet together regularly on Montana projects and on legislation that affects our State. Our current weekly staff meetings to plan and check on progress with Montana problems are known in our offices as the "Montana Good Government" meetings. There has been a maximum of unity and cooperation on Montana projects and concerns.

This unique, long-term unity and cooperation started back in 1942 when MIKE MANSFIELD came to Congress and initiated it. Senator LEE METCALF, MAX BAUCUS, and I will attest that, working as a unit, the Montana delegation has accomplished much for our State.

While Senator MANSFIELD is known most nationally for his work in the field of foreign affairs, we from Montana think also of his leadership on the development of great power projects—Hungry Horse Dam, Yellowtail Dam, Libby, and more recently the magnetohydrodynamics—MHD—project at Butte, Mont., Tech and our State university at Bozeman—a project that is one of the most promising new energy sources the Nation has, and a project that I will continue to press, with other members of the Montana delegation, because of its great promise of more efficient use of coal, conservation of water, and nonpollution of the air.

Other types of projects in Montana are far too numerous to list, but Montanans know them and will thank MIKE not only for those projects, but for hundreds upon hundreds of things he has done for the individual citizens of the State. Everyone who rides Amtrak through Montana on its southern route—one of Amtrak's most economic lines—owes a debt to MIKE for it was his conviction that that route, slated for abandonment, would be profitable, and his persistence in getting a commitment to continue it, that saved it from execution by planners with a lot less foresight than the senior Senator from Montana.

The Nation is indebted to MIKE for early warnings on our water resources problem. The Senate's Select Committee on Water Resources, which in 1950 gave us the Nation's earliest comprehensive report on impending water shortages, excessive pollution, and other water problems, grew out of a suggestion by MIKE MANSFIELD to a caucus of western Senators that we needed to look into growing water problems.

In many other areas—and that includes the establishment of the special Watergate Committee—MIKE's foresight fathered major happenings which, because of the modest nature of the man, have never been widely attributed to him.

MIKE will go down in history for the record length of his service as majority leader of the Senate. Encomiums will continue, particularly as to his leadership on foreign policy matters, and it will certainly be pointed out that if national leaders had listened to him years ago, we would have avoided that tragic experience altogether.

In Montana, he will also be regarded as a great servant of the State and her people.

And I shall continue to regard him as a friend and mentor whose advice and unfailing help have been of inestimable worth to me, and as a man whose friendship has vastly enriched my life.

MIKE, I am sure, hopes to have more time to devote to personal interests, and to spend with his wife, Maureen, who has shared in his thinking and his work throughout his career. Her contribution has been an especially great one.

I wish MIKE and Maureen a wholly enjoyable and satisfying new life, knowing very well that in any plans they may have, continued service to others, to the State, and the Nation will still have a liberal allocation of their time.

MIKE's retirement is only from the strenuous duties of the majority leadership. I am certain MIKE will continue to be one of our national leaders for many more fruitful years.

CHARLES GORRY OF ASSOCIATED PRESS

The SPEAKER pro tempore (Mr. DANIELSON). Under a previous order of the House, the gentleman from Arizona (Mr. RHODES) is recognized for 5 minutes.

Mr. RHODES. Mr. Speaker, it is with a deep sense of personal sorrow that I rise to pay respects—on behalf of my Republican colleagues—to a great photographer and an exceptional human being, Charles Gorry of Associated Press.

Charlie was an enormously talented man—who was able to capture history through the camera's lens as good as any other person of his time—and better than most. He had a natural instinct for what constitutes news—and his pictures illustrated some of the most memorable and important news stories of this century.

Charlie was also a tremendously warm—and thoroughly decent—person who seemed to make friends wherever he went. To be a friend of Charlie's was to belong to a very special fraternity—a fraternity whose membership included foreign heads of states, Presidents, and Members of Congress on both sides of the aisle.

I remember well the first visit to Capitol Hill made by President Ford after taking the highest office in the land. It was a great occasion for us all—for that was the day that the President—our former colleague—returned to this Chamber to receive our greetings. The President was scheduled to arrive at my office and—as is always the case with a Presidential visit—security was very tight. The Secret Service had restricted the public and the news media behind some ropes in the corridor. Somehow, Charlie Gorry was able to duck under the ropes and join the group of us who were awaiting the President's arrival. A Secret Service agent—noticing Charlie's camera—said very authoritatively that there would be no pictures permitted of the President.

Just as authoritatively, Charlie replied: "Well, I'll just ask Jerry!" And that is exactly what he did do.

Mr. Speaker, we will all miss this talented and kind man—Charlie Gorry—who seemed as much a part of this body during the time he spent with us as any elected Member. He was one of those rare individuals who made life more enjoyable for all those who were fortunate enough to cross his path.

I will never forget him—for he was a very special friend.

GENERAL LEAVE

Mr. MYERS of Pennsylvania. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of the special order today of the gentleman from Arizona (Mr. RHODES), on the extraordinary life and career of Charles Gorry, distinguished photographer for the Associated Press, who was so much a part of the congressional scene, and who died on Wednesday.

The SPEAKER pro tempore (Mr. DANIELSON). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SECOND DISTRICT OF NEW HAMPSHIRE ANSWERS THEIR CONGRESSMAN

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Hampshire (Mr. CLEVELAND) is recognized for 60 minutes.

Mr. CLEVELAND. Mr. Speaker, for 14 years I have been sending an annual questionnaire to my constituents in the Second District of New Hampshire. The results, with my own answers and comments, are placed in the CONGRESSIONAL RECORD and mailed to my constituents. This year approximately 12,000 persons responded to the questionnaire.

The results of this year's questionnaire show both a determination on the part of those answering to get on with solving the problems we face and a disillusionment with political rhetoric.

ENERGY: URGENT NATIONAL CONCERN

Despite the fact that discussion of our energy problems has dropped off dramatically in the news media, this year's results show that the people of New Hampshire view the energy problem as a matter of urgent national concern.

The fact that respondents support construction of the Seabrook nuclear power station to meet present needs while looking ahead to a long-range solution to our energy problems is noteworthy. The overwhelming priority given to development of solar energy resources reflects a determination to move now toward solutions of the future. This questionnaire thus indicates a realistic desire to find solutions both to our present problems and to our long-range problems, and to get busy with both of them.

The results also indicate disillusionment with the government's present performance—most notably in the expressed desire to curb Government spending. Obviously, if our constituents thought the programs Congress has been enacting were so good, they would not consider the spending to be so wasteful. There also appears to be concern that the red tape accompanying most Federal programs slowly but surely intrudes upon our individual freedoms. The lure of "Federal" money is accompanied by Federal restrictions, reports and forms which collectively intrude into our decisions and our freedom.

PRIORITIES

A very interesting part of the results is the ranking of priorities among twenty listed issues of clear national interest. It is obvious that second district residents are not as impressed as Washington by the pleas of special interests. Instead, they want Congress and the Federal Government to focus more effort on solving the genuinely critical problems, and less on promising to solve all problems of all people by creating programs for all the "good and worthy causes."

A close look at these priorities reveals that the double-digit inflation of a couple of years ago has not been forgotten any more than the oil embargo, and that Government spending is perceived as a contributing factor to the chronic inflation of the past decade. Concern about unemployment is balanced by this perception.

Perhaps most striking is that among the top seven priority items we find several that have not been front-page news for at least a couple of years. I have already referred to the energy shortages, but equally significant is the fourth-ranking priority assigned to fighting crime. While there have certainly been newsstories about crime, it has not been a major political issue for several years. But, our people know what their own problems are and want politicians to listen and concentrate on solving those problems.

While politicians have been promising tax reform for as long as I can remember, it is not surprising that people are tired of being confronted every April with income tax forms so complex that the average person is unable to fill them out. This complexity, coupled with reports of wealthy people paying very little in taxes, threatens to undermine the essential faith of the working men and women of this country in the fairness of our tax system.

REALISTIC SOLUTIONS—COMMONSENSE

The questionnaire returns this year demonstrate in every respect a concern for realistic solutions to our problems. Take health care for example. While more than two-thirds of the people are dissatisfied with the present system of paying health bills, the same percentage also rejects the simplistic appeal of comprehensive national health insurance. This reveals an understanding of the need to focus on the problem and on the way Government should solve it, without creating more bureaucracy than is necessary. This answer represents a call for a solution—a lasting solution—to those problems obviously beyond the abilities of an average citizen to take care of alone and unaided.

The commonsense approach in the search for realistic solutions is evidenced also in the strong preference for solving our unemployment by developing jobs in the private sector rather than through make-work Federal programs, and by the understanding that inflation is more of a threat to our long-term economic recovery than unemployment, even though unemployment has a greater impact on affected people. Likewise, though there has been a lot of talk about cutting the defense budget in recent years, I note that national defense is among the top priority items. This, too, evidences a good deal of commonsense.

NEW HAMPSHIRE OPINION PREDICTIVE

Mr. Speaker, it is a particular pleasure for me to share these questionnaire results with my colleagues, as I am becoming increasingly convinced that New Hampshire opinion is remarkably prescient. Last year, the results of my poll revealed strong support for less government regulation and opposition to new Federal programs. State and local governments were perceived as more responsive to the needs of people than the Federal Government. In addition, curbing government waste, developing an energy program, reforming the welfare and tax systems, and restoring confidence in government headed my constituents' list of priorities. Subsequently, these concerns have spread throughout the country.

A fair reading of this year's Presidential primaries has shown how clearly New Hampshire voters last year foreshadowed what has this year become a central issue, that is, the much discussed "anti-Washington" sentiment.

Speaking of Presidential preference primaries, New Hampshire voters have a good record of sending accurate signals to the rest of the Nation. Once again last February they very accurately predicted the final results of the Presidential nominating races.

Mr. Speaker, the questions asked, the results and my comment follow:

1. Seabrook: Do you favor the proposed construction of a nuclear power plant in Seabrook, N.H., subject to existing federal safety and environmental standards?

[In percent]

Yes	63
No	34
Undecided	3

Until our increasing investments in solar energy and other clean energy alternatives make them economically feasible and widely available, the fact remains that we need additional electricity. Even though energy conservation measures have helped reduce demand, our reliance on foreign oil is greater than ever.

It is my strong conviction, therefore, that right now in New England we need to build the Seabrook nuclear power station, on condition, of course, that existing safety and environmental standards are met.

It is significant that New England already gets 25 percent of its electricity from nuclear power. Equally persuasive is the enormous success of nuclear propulsion in the U.S. Navy.

The very strong endorsement of the Seabrook plant by those responding to the questionnaire indicates a belief that nuclear power, even with its limited risk, is vastly preferred to increasing our dependence on Arab oil.

The risks and disadvantages associated with nuclear power have been well publicized. A chief problem is disposal of nuclear waste, which stays with us forever, even though produced in limited quantity. It is not unreasonable to conjecture that technology can solve the problem and quite possibly find a constructive use for the waste.

However, it should be recognized that all presently feasible alternatives have equally serious disadvantages. For example, we are dependent for oil on foreign powers who have already demonstrated a willingness to impose an embargo. Coal is produced outside our New England region, and presents problems in logistics as well as air pollution, mineworker safety, and need for land reclamation. If we do use more coal, as I believe we should, it should first be used to substitute for oil in those generating stations capable of converting to coal.

2. Revenue sharing: Should the general revenue sharing program be continued in substantially its present form?

[In percent]

Yes	68
No	22
Undecided	10

As an original supporter and cosponsor of the Federal revenue sharing program, I enthusiastically endorse this method of reinstating a significant measure of local control over decisionmaking in government.

Although the future of this popular and successful program appeared doubtful earlier in the 94th Congress, because of opposition from special interest groups wanting to restrict the use of funds to Washington-defined goals, the House approved legislation this past spring which extends revenue sharing in substantially its present form. As of this

writing, the Senate has just passed its version so that extension of the program seems likely.

The bill passed by the House would send approximately $20.9 million annually to State, county, and local governments in New Hampshire. This substantial source of revenue is especially valuable becase decisons on how to spend the funds will be made at the local level, thereby insuring that local needs and priorities receive the utmost consideration. Among these is controlling the local property tax burden.

Noteworthy is the number of people who are undecided about revenue sharing. It appears that people are unsure of the program's impact. suggesting that subjects of intense interest to some of us are sometimes of much less so to others.

3. Concorde: Do you approve the decision to permit the British-French SST to land in New York and Washington on a trial basis?

[In percent]

Yes	53
No	44
Undecided	3

I agree—and have so voted—with the majority of my constituents that Transportation Secretary Coleman made the correct decision in allowing the Concorde SST to land at New York and Washington for a trial period. As one who opposed U.S. Government involvement in developing an American SST, on grounds of need and cost, I do support this limited trial as a commonsense way of dealing with the fact the Concorde is flying commercially.

No flights have yet gone to Kennedy Airport in New York, because of a ban imposed by the New York-New Jersey Port Authority, but Dulles International Airport in Washington has had five scheduled flights—both takeoff and landing—per week since May 24. These flights have been very closely monitored by the Federal Aviation Administration for noise levels, engine emissions, structural vibrations, and community reactions.

These tests by the FAA will continue and reports will be issued monthly throughout the Concorde's trial period. They will yield an abundance of valuable data upon which the Secretary can make a final decision about the Concorde. Whatever decision is ultimately made, this trial assures that it will be made on the basis of scientific evidence and not emotion.

4. Tax simplification: Would you favor simplifying the present personal income tax laws by eliminating all exclusions, deductions and exemptions and replacing them with a lower but still graduated income tax, collecting the same amount of money for the federal treasury?

[In percent]

Yes	59
No	36
Undecided	5

The favorable response to this question reflects the widespread belief that there is great need for simplification and reform of the Federal income tax system.

Every time Congress has passed a so-called tax reform bill, new well-intentioned loopholes have been added and the paperwork made worse. This year's tax reform bill has turned out to be a 1,600-page monster. Battalions of bureaucrats, lawyers, and accountants will have a delightful and confusing time with their new toy, but for the rest of us the system has reached the breaking point.

Debate and discussion of the proposal outlined in this question appears to be the best way to get action on overdue reforms of the Federal income tax system, the correction of existing tax inequities, and above all simplification.

But support for such a proposal must be tempered by concern for the desirable social purposes of many existing Federal income tax deductions, exclusions, and exemptions. Despite its inadequacies, the present Federal income tax system does have desirable features. For example, provisions of the tax code encourage charitable contributions, the purchase of homes, and investment and expansion by small businesses.

5. Social security: Do you believe the Social Security program is generally administered efficiently and fairly?

[In percent]

Yes	40
No	54
Undecided	6

The expressed dissatisfaction with the performance of one of our biggest and most visible Federal programs underscores the pitfalls of massive bureaucracies.

This program provides benefits to approximately 30.9 million recipients. The number of people required to administer it, and the massive amount of paperwork involved, have resulted in a great deal of confusion and inefficiency, with the burden being borne by those least able to afford it—the legitimate beneficiaries.

In handling numerous social security cases for constituents, my office has come in contact with many of the dedicated people who work for the Social Security Administration. These people share the frustration of trying to make the system work, and acutely feel the hardship caused to deserving retired and disabled workers by the inequities which can and do occur.

At the time of drafting this questionnaire, my office had become very aware of some of the worst difficulties encountered by social security benefit claimants. One of the stark realities was the fact that while over one-third of the disability benefit denials were being reversed, it often took as long as 18 months for an appeal to be heard. This time lag has since been substantially corrected, but it took some prodding by the Congress to make it happen. In the meantime, many people who were obviously eligible for benefits were penalized by a system which was not only unresponsive to their needs but out of control administratively.

Since I have been in Congress—1963—social security beneficiaries have received a cumulative 134.1 percent increase in benefits, all of which I have supported. The cumulative increase in the Consumer Price Index for that same period has been 85.5 percent. But as noted earlier, increased funding—while often needed—is only part of the solution. We need to make the system work more efficiently and more fairly.

Economy, part I: To stimulate the economy and combat the problem of unemployment, would you (a) spend more on public service employment and public works projects to reduce unemployment? or (b) attempt to stimulate private sector employment by encouraging business investment and expansion?

[In percent]

(a) Public jobs	24
(b) Private	76
(c) No answer	7

The overwhelming support for trying to solve our long-term economic problems by encouraging growth in the private sector is most heartening and reflects a no-nonsense approach to this problem. The most effective way to create new jobs is to pursue balanced economic policies that encourage the growth of the private sector without risking a new round of inflation. The goal is to create permanent private sector jobs, not temporary public jobs payrolled by the American taxpayer.

Public service jobs do not solve our long term economic woes; at best, they only relieve the symptoms. Furthermore, these programs actually discourage private sector employment by fueling excessive growth in Federal spending. Federal Government borrowing to support deficit spending reduces the amount of money available to the private sector for productive investment, thus discouraging the growth needed to create private sector jobs and driving up interest rates.

Furthermore, the well publicized economic stagnation in England emphasizes a danger of an excessive governmental interference in a nation's economy.

Though public service jobs are not the long-term solution to unemployment, a temporary and effective use of this tool can help relieve the hardships of unemployment. For this reason, I have on occasion voted for public employment programs, notably the Comprehensive Employment and Training Act—CETA—and accelerated public works. In fact, I even voted for one version of the celebrated "Jobs" bill, before the U.S. Senate added a couple of extraneous and objectionable programs which doubled the price.

Economy, Part II: At this time, which of the two following economic problems do you consider the greater threat to the American economy?

[In percent]

(a) Unemployment	24
(b) Inflation	76
(c) No answer	5

Inflation represents the greater threat to the American economy.

It inflicts its damage on all areas of our economy—on the senior citizens with fixed incomes, on students, on consumers, on business investment and expansion, on the employed and unemployed. Obviously a new round of high inflation in the midst of our current economic recovery will dim the now bright prospects for restoration of long-term economic stability.

Massive and continuing Federal deficits are largely responsible for high inflation. Because inflation is intrinsically tied to employment, keeping the rate of

inflation under control is probably the best single step we can take to encourage the creation of private sector jobs. This is not to discount the seriousness of our unemployment problems; however, keeping inflation under control will go a long way toward easing them.

And this is actually happening. Even though unemployment remains unacceptably high, the total number of employed people continues to climb to record levels. The number of new people entering the labor force has kept unemployment up, even though the creation of new jobs has more than kept up with the number of additional job seekers.

Energy: Which one of the following solutions to our energy shortages should receive top priority:

[In percent]

(a) Greater use of coal	15
(b) Expedited licensing and construction of nuclear power plants	23
(c) Energy conservation	16
(d) Development of solar energy	41
(e) Other	5
No answer	7

Although solar energy is favored by Second District residents, the large number of votes cast for other choices emphasizes that there is no simple answer to our Nation's energy problems. The question recognized this by referring to the choices as partial solutions, but the many other suggestions listed by respondents indicate that just as the problem is many-sided, so are its solutions.

Energy prices in New England continue to be a critical issue. The number one choice, solar energy, cannot immediately provide significant economic relief to households because of the expensive technological improvements still needed to make it widely available. For this reason, it is essential that the Federal Government step up its commitment to the solar program. This year I cosponsored a proposal increasing present Federal funding of solar development by approximately 170 percent. This dramatic jump was justified by evidence that technology has now reached a point where increased spending can quite possibly make solar energy available at competitive prices by 1985 for the generation of electricity and for significant home use.

In view of the leadtime needed to utilize solar energy fully, I was heartened to find 23 percent of my constituents stressing expedited licensing and construction of nuclear power plants to meet our present energy needs.

New England has not been able to use much domestically produced oil, largely because of our lack of refining capability, and the Nation at large has been shortsighted in ignoring its abundant coal resources. While clean air considerations played a part in the original switch from coal to oil, the equally serious Arab oil embargo has brought no major reconversions to electric generation from coal. The Federal Government is partly to blame, but the fact remains that our own abundant coal reserves could be used to far greater advantage.

Energy conservation remains an important factor and statistics prove that New England consumers have been very conscious of the savings potential. Restricting consumption of valuable resources while maintaining a sufficient degree of economic growth demands the attention and effort of all concerned Americans.

Other noteworthy suggestions included geothermal, wind, and wood power. The last one could be especially valuable in areas of the country such as New Hampshire which are blessed with abundant, and renewable, timber resources.

National health insurance: Which of the following choices fits most closely with your views:

[In percent]

(a) We should leave the current system of paying medical expenses substantially as it is	30
(b) Congress should adopt a comprehensive national health insurance program which would provide every American with complete medical protection	34
(c) Congress should adopt a limited program which would cover medical bills resulting only from "catastrophic" illness	36
No answer	6

Two-thirds of the respondents are dissatisfied with the present system of paying medical expenses. An equal number, however, prefer either retaining the present system or proceeding cautiously with a limited program of effective coverage for catastrophic medical costs.

My own approach at this time to the problem of providing adequate health care at a reasonable cost would be to provide protection against medical catastrophes. Obviously, action to aid those not adequately protected by the private insurance industry in this way is long overdue. One explanation for the failure of Congress to assume any responsibility in this area is that a limited program might reduce the political incentive for jumping headlong into federally financed comprehensive health insurance.

More than $133 billion was spent nationally last year for health care and related activities by the Federal Government and private individuals and groups. It is therefore becoming increasingly urgent for the Federal Government to make some clear policy decisions in this area. There arguments in favor of a limited approach are very persuasive. The cost of a comprehensive, tax-financed health insurance plan according to the Congressional Budget Office would range from $74.7 to $77.2 billion in fiscal year 1977, increasing to $104.2 to $139.6 billion in fiscal year 1981. Cost estimates for a limited, catastrophic program prepared by the Congressional Budget Office range from $9.5 to $11.4 billion in fiscal year 1977 to $24.8 to $27.8 billion in fiscal year 1981. At a time when fiscal restraint ranks first among priorities listed by second district residents, these cost figures indicate that the more practical, yet effective, course of action would be to take care of the most pressing needs. Such a step would also provide for evaluation of the mechanism at its initial stages before deciding whether or how to go further. Dissatisfaction with the way the social security system is operating points up to folly in adding a vast new health care system to the recent evidence of massive fraud in the medicaid program emphasizes the danger of relying on Government more than is necessary.

PRIORITIES

The number and complexity of the issues confronting the Congress dictate as a matter of course that we establish some order of priority in handling them. The process of deciding which needs are going to be addressed before others, produces as expected, a variety of opinions because of the varying interests involved. The responses of my constituents reflect that same multiplicity.

This year my questionnaire asked people to list their top five priorities. It is interesting to note that of the 20 items on my questionnaire, all but 2 of them made the top 5 list of at least 10 percent of my constituents, thus showing the many concerns competing for the attention of Congress. The table below shows the results, indicating what percentage of the respondents included a given issue in their list of the top five.

As in years past, several items dominate the list of priorities, and they have by and large been the same issues. This year inflation heads the list, with 61 percent citing it as one of the top five priorities. Close behind is the desire to cut Government spending, and I am convinced that the two go hand in hand. The reckless spending by recent Congresses is probably the major cause of inflation today, leading to a budget deficit of some $70 billion in 1 year alone, and a failure to impose a spending cut in conjunction with tax cuts. The results of this overspending by the Government is painfully obvious over the long run, and we will not get inflation under control until the Government adopts a more sponsible and stringent budget.

Unfortunately, the fact that deficit-fueled inflation leads ultimately to recession is too little heeded in Washington. Instead, the congressional remedies for recession and unemployment are often more of the same Government spending that helped create the problems.

Since my questionnaire was printed and mailed out, a series of sordid disclosures has rocked the Congress and provoked an outcry about the ethics of public officials. Most of those who wrote in their own priorities referred to this issue, and I agree that there is a need to make the operations and activities of Congress more accountable. As an advocate of congressional reform for many years, I have voted against the pay raise and other allowances and supported moves to televise congressional sessions and committee meetings. Particularly, I long opposed the concentration of power in the Committee on House Administration, until recently chaired by Representative Wayne Hays, Democrat of Ohio.

Priorities: Which of the following should Congress be concentrating on? (For each issue, percentage represents those listing it among their top five priorities.)

[In percent]

Inflation	61
Cutting Government spending	56
Energy shortages	44
Fighting crime	41
Unemployment	36
Tax reform	33

National defense	32
Aid to elderly	24
Paying off national debt	23
Health care	21
Consumer protection	15
Pollution abatement	15
Postal service	15
Public transportation	14
Poverty	13
Education	12
Regulatory reform	11
Housing	5
Foreign aid	2
Better roads	1

LEGIONVILLE NATIONAL HISTORIC SITE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania (Mr. HEINZ) is recognized for 5 minutes.

Mr. HEINZ. Mr. Speaker, today I am introducing legislation which would create a National Historic Site at Legionville, Pa.

As you may be aware, Legionville played a very significant role in American history. It served as the first military training camp in the United States and was the base for Gen. Anthony Wayne's "Legion of the United States" which successfully secured western Pennsylvania from Indian attacks in the 1790's.

Furthermore, the first American Legion, trained at Legionville, opened the Northwest Territory and western expansion to American settlement. During that time a future President, Benjamin Harrison, served as a lieutenant there and Merriweather Lewis served as a major there long before he volunteered for his famous expedition.

However, despite its historical significance, it is still the largest unrestored post-Revolutionary site in the United States.

Through the efforts of interested groups as the Anthony Wayne Historical Society, Legionville has been designated a State Historic Site and is listed in the National Register of Historic Places. Unfortunately, without designation as a National Historic Site, this landmark, zoned for industrialization, will be lost for future generations of Americans to enjoy.

For this reason, I am introducing legislation which directs the Secretary of the Interior to acquire the 22 acres in Harmony Township, Beaver County, Pa. The National Park Service would then administer the land as a national historic site and would be able to reconstruct a model of the encampment.

It is my hope that, in this Bicentennial Year, a vital part of our heritage will be commemorated through the establishment of the Legionville National Historic Site.

For the benefit of my colleagues, I am including the text of my legislation:

H.R. 15598

A bill to direct the Secretary of the Interior to establish the Legionville National Historic Site in the State of Pennsylvania

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to preserve and interpret for the benefit of present and future generations the site of the first military training camp established in the United States, the Secretary of the Interior shall acquire by gift, purchase, or otherwise, the real property described in subsection (b) for the establishment and administration of a national historic site.

(b) The real property referred to in subsection (a) is that real property in Beaver County, Pennsylvania, containing 22 acres more or less, in the northernmost part of Harmony Township, adjacent to Baden Borough, which is bordered by Duss Avenue, State Highway 65, and Logan Lane.

SEC. 2. The property acquired under the first section of this Act shall be known as the Legionville National Historic Site, and it shall be administered by the Secretary of the Interior, acting through the National Park Service, in accordance with the Act of August 25, 1916, entitled "An Act to establish a National Park Service, and for other purposes" (16 U.S.C. 1, 2–4) and the Act of August 21, 1935, entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461–467).

THE NEED FOR INCREASED HISPANIC-AMERICAN LEADERSHIP WITHIN THE MILITARY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. STEELMAN) is recognized for 5 minutes.

Mr. STEELMAN. Mr. Speaker, it is fitting that today as our neighbor, Mexico, celebrates its independence a resolution encouraging increased Hispanic-American leadership within our Armed Forces be introduced. Since the discontinuance of the draft, our armed services have increasingly had to compete with the public sector in the employment of minority individuals. In order to attract minority individuals of high caliber to our Armed Forces, these individuals must be drawn by prospects of advancement and reward. Hispanic Americans, people of Mexican-American, Puerto Rican, Cuban-American, and other Spanish origin Americans, within the military presently have little hope of advancement to high rank if one looks at their representation within the ranks of general and flag officers. I would like to call attention to the following statistics concerning Hispanic-Americans within our Armed Forces.

Hispanic Americans make up 4.1 percent of our Armed Forces. Department of Defense figures for the end of 1975 list 1,163 general and flag officers within the military, unfortunately only 3 are Hispanic Americans. Therefore, for every 29,000 Hispanic military personnel only 1 has attained general or flag officer rank. I will add, that since I have brought these facts to the attention of the Department of Defense, the number of Hispanic-American general and flag officers has increased from two to three.

Despite the courage and dedication displayed by Hispanic-American military personnel as proven by the numbers of Congressional Medals of Honor and other decorations of valor, a meager twenty-six hundredths of 1 percent of our general and flag officers are Hispanic. It is obvious that an injustice has been inflicted. Regardless of the reasons it is time to terminate this form of discrimination in promotion of Federal employees. The military talents and accomplishments of Hispanic Americans must be recognized through promotion of those qualified.

Our Armed Forces must totally utilize the capabilities it has at hand. It can ill afford to allow potential Hispanic-American general and flag officer talent to remain idle. The importance of this resolution is further underscored by our Armed Forces' position within the Federal Government. I hope this resolution will receive expeditious consideration.

BIG CITY LIBERALS AGAIN BLOCK TAX REFORM FOR FARMERS, SMALL BUSINESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. ASHBROOK) is recognized for 15 minutes.

Mr. ASHBROOK. Mr. Speaker, I have often pointed out how the big city liberals pass legislation which shortchanges the rural areas of our country and encourages regulation, welfarism, and antibusiness, antifarm redtape. No better example could be found than today's vote which defeated our efforts to make the estate tax reform one which would be truly meaningful.

By a 229 to 181 vote, with 220 of the votes coming from Democrats in the prevailing side and 129 of the 181 votes on the losing side coming from Republicans, the liberals effectively saddled small businessmen and farmers with a new, repeat new, tax to cut down on improvements in the existing estate tax exemption.

The new tax proposed by the liberal Democrats is a devious one. It is one of the reasons you always have to be careful when they discuss tax reform. Usually they mean tax increase when they talk about reform. Indeed if one reads the CONGRESSIONAL RECORD today he will find repeated examples of the Democratic liberal majority referring to tax losses, losses to the Federal Treasury, how much less tax the Federal Government would collect and so forth. That is accurate. The liberal worries about collecting taxes so they can spend it on their grandiose schemes. We conservatives want to leave as much money as possible in the hands of the average taxpayer so he can take care of himself. On this issue, the liberals defended the Federal Government, we conservatives advocated the cause of the widow, orphan, the farmer, and the small businessman.

How did they do this? Very simple; by establishing a cost basis carryover as a part of their estate tax reform, the liberals make certain that in most cases there will be a new income tax obligation which does not now exist, a capital gains tax. Conservatives wanted to continue the basic provisions of present law and merely increase the taxable exemption from its 1942 level of $60,000 to $200,000 with no carry over provisions or changes. As a result of the liberal Democratic majority's victory—a loss to most of us but a victory as usually for them—many estates which would not have any estate tax will now have a capital gains tax. In addition, it will create accounting problems, encourage litigation, and add to the expense of administering an estate. It may require tracing back many years of records.

Again we see the liberal effort to create

new taxes while advertising in big print that they are reforming the estate tax laws. We lost, as I pointed out by a 229-to-181 vote and this day should be marked down by farmers and small businessmen because it is the beginning of many new estate problems which did not exist up to now and, even worse, the beginning of a new tax. Unfortunately, it is but one part of a large and comprehensive tax reform act which cannot reasonably be vetoed because of this bad feature. The liberals know this and they used their voting power to ram this down our throats.

ESTATE AND GIFT TAX REFORM

Mr. Speaker, a synopsis of what we have done today shows some progress. Our present Federal estate tax laws are seriously outdated. Despite a high rate of inflation and a huge increase in land valuation, the basic $60,000 exemption has remained unchanged for more than three decades.

This limit has placed a severe strain on the families of farmers and small businessmen. Many families have been forced to sell their farm or their business in order to pay the estate taxes. Such a situation cannot be tolerated.

I have previously introduced legislation—H.R. 12277—which would increase the exemption to $200,000. This would be a major step in helping to relieve the estate tax burden on farm and business families.

Unfortunately the estate and gift tax reform proposals in the conference report do not go as far as my bill. The report establishes a $47,000 credit phased in over a 5-year period. This is equal to approximately a $175,000 exemption. Although I would prefer a higher amount, nevertheless the proposed new credit would be a considerable improvement over the existing situation. It should go a long way toward helping the heirs carry on the family farm or business without having to sell all or part of it in order to pay the estate tax.

Another worthwhile change is that providing for an alternate valuation standard. I have previously introduced legislation—H.R. 5131—which would, at the election of the executor, allow a farm estate to be assessed at its value for farming purposes. This would be a valuable alternative to present tax policy of valuing land at its highest potential value.

The conference report adopts this important option. It provides that the executor may elect to value real property which is devoted to farming or other closely held businesses on the basis of such property's value as a farm or business. The executor would not be forced to take the property's fair market value as determined by taking into account its highest potential use. The effect of this provision will be to help keep the family farm and the family business within the family.

The proposed legislation would make other valuable changes in the estate tax laws. These changes include increasing the marital deduction and extending the time for payment of the tax on illiquid estates. Once again, the goal is to avoid the forced sale of farms or businesses in order to pay the estate tax.

Unfortunately a large part of what the conferees give with one hand they would take away with the other as I have already noted. The carryover basis provision would have an adverse impact on estates containing farms and closely held small businesses. It would impose a tax on capital gains from future sales of inherited property by an heir or executor. This would be done by providing that the heir must use the decedent's base rather than the value of the property at the time he inherited it as the law now provides. This is the new tax I have already mentioned.

Under current law a beneficiary's tax basis for inherited property is generally stepped up to its fair market value on the date of the decedent's death. The conference report would require a beneficiary to take over the decedent's basis except that property acquired by a decedent before December 31, 1976, would have a basis equal to its value on that date.

The liberals in Congress would undercut the important gains made by farmers and small businessmen in other sections of this bill. They would force the unwise and unwarranted carryover basis provision into the legislation. I am strongly opposed to this provision and I voted for its deletion from the bill. The big city liberals beat us again and the middle-class farmer or small businessman will be the loser.

CHANGES IN FEDERAL MAKE-OR-BUY AND DESIGN PROCUREMENT POLICIES PRAISED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. KEMP) is recognized for 10 minutes.

Mr. KEMP. Mr. Speaker, the Office of Federal Procurement Policy—OFPP—an office located within the Office of Management and Budget in the Executive Office of the President—has promulgated two revisions to executive policy which have great promise for reducing the cost of Government.

One has to do with removing from Government operations those commercial and industrial activities which private enterprise is both willing and able to perform. I addressed myself specifically to this matter on August 26, and those remarks can be found at pages 27880–27883 of the RECORD of that day. The other revision reorganizes the way in which Government goes about creating optional product choices for either private or public buyers.

Both of these actions provide executive policy guidance with a sense of Congress expressed as long ago as 1933. In that year, a House report provided the first comprehensive study on the extent to which the Federal Government was engaged in commercial activities. That report concluded that if a Government activity was competing with private enterprise, then the Government activity should be liquidated.

It took 22 years, a deep economic depression, and a world war, before this sense of Congress was first instituted in executive policy. That policy—issued in 1955—stated that—

> It is the general policy of the administration that the Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from enterprise through ordinary business channels.

Both the 1933 sense of Congress and the 1955 expression of executive general policy set forth the conclusion that Government has no business being in business.

Executive "make-or-buy" general policy today is the same as issued in 1955. But in 1967 an unworkable clause—an exception to that general policy—was inserted. Along with more reasonable exceptions to the general policy was this exception:

> If private sector supply would result in higher costs to government, then government performance is justified dependent upon a comparative cost analysis.

This exception was unworkable from the start.

While the cost accounting system of Government suppliers has received intense attention from the U.S. Cost Accounting Standards Board—CASB—and its close associate, the General Accounting Office, I was surprised to learn recently that the CASB's charter does not include setting cost accounting standards for the Federal Government. By its title, one would think that it did, but the CASB only sets standards for Government's suppliers. So the Federal accounting mechanism needed to accurately, fairly, and equivalently compare industry and agency costs to perform the identical job has never even existed.

Lacking any industrially equivalent cost accounting system, the estimation of industrially equivalent Government costs has some obvious, large gaps in it. Two of these have been picked up by the OFPP. Agency estimators had been using 7 percent of a Federal employees' salaries as Government's insurance fringe benefit. OFPP is now correcting this percentage to 31.7 percent—almost four times the previously used amount—7 percent contributed by the employee and 24.7 percent contributed by Government. Through these promulgations, we are beginning to learn more about the full taxpayer's cost to pay for Federal employees.

Removing Federal employees who perform industrially equivalent jobs does not mean that joblessness will increase. The Administrator for Procurement Policy has said that jobs removed from Government payrolls will very likely be picked up by private payrolls, for Government will continue to need the products and services. But once on private payrolls, employees become part of competitive private enterprise where the setting of sales price is arrived at by competition. When industrially equivalent commercial and industrial activities are instituted within Government, as I have already pointed out, it is anyone's guess as to what total cost is being paid by the taxpayers. By contrast, a contract with an industrial or commercial firm clearly states the total price to be paid.

I am sure that OFPP is looking into another large gap in comparative costs.

The CASB has promulgated standards governing industrial plant and equip-

ment depreciation cost acceptable as cost elements in Government contracts. Because of previous IRS rules and the CASB promulgations, contractors are not permitted to "expense off" capital investments on Government contracts in the year incurred. However, Government capital acquisitions are expensed off in the year incurred, and Government's plant and equipment acquisition costs no longer appear in subsequent years as a taxpayer's cost for Government to do business. Thus, in making comparative industry/agency cost estimates, the cost of Government performance should include a cost markup equivalent to industrial plant and equipment depreciation. Otherwise, comparative cost data will be unfair and in fact inaccurate, because the taxpayer contributes to "buying" ownership or pays the whole bill if owned by Government.

The other gap is the requirement imposed upon industry to put aside a reserve for Federal taxes out of profit accumulations. Paying taxes on corporate profits produces revenue for the United States. Federal operations obviously are tax exempt; they simply do not produce tax revenue. In their not paying taxes, we all have to pay more, because they do not pay any. It would be unfair to not include an industrially equivalent tax payment in agency cost estimates. Paying taxes on profits reduces a company's discretionary resources to enlarge its business, hire more people, and achieve profitable growth. These Federal tax payments are a real cost of doing business from a private company's point of view, and having Government perform the identical activity is a real cost to the taxpayer in lost revenue.

The CASB could constructively apply their indepth knowledge of industrial cost accounting systems to the construction of industrially equivalent Federal cost accounting systems. I would like to see the CASB take some initiative in this area and set up Federal cost accounting standards on an industrially equivalent basis. Agency management and the GAO could then check and balance the agency's numbers put into such a system, as they are used in justifying make-or-buy decisions. All of us, including the agency, would benefit.

I am neither an accounting or costing expert, so I make no representation that the two obvious cost areas I have described are all that remains to be added. I have heard of "general and administrative" expenses which contractors must recover in product prices in order to stay in business, and I wonder if Federal costing should include an equivalent amount. The combined CASB and GAO wisdom should surely be able to provide relative cost comparison clarity, not only to the executive branch but the legislative as well.

The other OFPP executive circular is also make-or-buy related. This is a new circular issued last April providing executive policy in the aquiring of major systems.

Because no typical major systems are specified, I presumed on first reading that it would apply to only Department of Defense and National Aeronautics and Space Administration weapons and space systems. But, surprisingly, it applies to all agencies, both civil and defense, whether they acquire systems for their own use or not.

This is an entirely new viewpoint on the Federal make-or-buy policy which is currently limited to "commercial or industrial products and services for government's own use."

The circular obviously has to do with Federal research and development, whether the new products and services, which come out of such expenditures, are ultimately bought by Government for its own use, or ultimately bought by private buyers for their use and not Government's.

I advise my colleagues to read and understand this new circular. In recent days, hearings were held before the Subcommittee on Federal Spending Practices, Efficiency, and Open Government of the Senate Committee on Government Operations, chaired by Senator LAWTON CHILES, as to the agencies' progress in implementation. The Energy Research and Development Administration, the Department of Transportation, NASA, and DOD testified. I am told that all agencies responded positively and are in the process of taking implementation actions and full implementation planning.

Why is this executive directive so important to our domestic economy?

You have to go back to a 1972 commission to get the answer. This was the Commission on Government Procurement, proposed by our former colleague, Congressman Chet Holifield of California, and established by Public Law 91-129 in 1969. The Commission took 2½ years to complete its assignment, analyzing all Federal procurement, including several special studies such as acquisition of major systems and Federal make-or-buy policy and practice. The work of the Commission was concluded in December 1972.

Remarkably, the report of this Commission, unlike most other commission reports, is alive and healthy today. Action on its 149 recommendations is closely monitored by the GAO. The OFPP is a consequence of the Commission. And Senator CHILES' subcommittee is exceptionally active in monitoring executive response and progress.

Of the 149 recommendations, 12 dealt with system's acquisition. The sense and thrust of these 12 have been faithfully captured by the April 1976 OFPP circular.

That circular sets policy for agencies to procure ideas and design concepts from both private and public sources.

In the past, agencies had procured partially completed designs that were specified by in-house technical groups. Quoting on partially completed Government designs cost a lot of money, so smaller and newer firms could not compete with the big ones. Now, with this new policy in place, a new or small firm should be able to compete equally with a much larger one, based on the relative value of their ideas in fulfilling an agency need. Because conceptual designs and ideas are significantly cheaper to propose than prototype or engineering designs, the small firm should be able to challenge big ones and profitably grow based on competitive merit. The circular tells how this is to be done.

Responsive implementation by civil agencies will probably cause the most trauma. Most civil agencies have mirrored DOD in setting research and development policies and practices. But since the civil agencies usually do not procure and use what their R. & D. sponsors, these agencies need to innovate different R. &. D. policies than DOD and NASA which do procure and use what their R. & D. sponsored. It appears to me that civil agencies will need to devise Federal incentives which will bring private innovators into contact with private, local, and State buyers, and the private financial community. I think it is a diversion to retain DOD R. & D. policies within civil agencies, policies which motivate private innovators to fly to Washington to get Federal R. & D. funds, as defense contractors have to do, flying over their real marketplace while they are on their way.

So when we close back to make-or-buy policy, I see significant change in relative agency versus industrial R. & D. performance. First of all, a careful reading of the new circular shows that a contractor with an acceptable idea owns the idea. It can no longer be taken out of his proposal and put into a larger procurement specification which only the larger firms can bid on. However, the contractor will have to prove out his representations within a competitive environment. The performance of proof out R. & D. will be managed by the private company, not split up between multiple industrial and agency performers. This has obscured responsibility for new product innovations in the past, leading to severe contractural difficulties.

This clear management responsibility for competitive product innovations will impact upon those Federal scientific and engineering employees who in the past did much of their work noncompetitively during the preparation of procurement specifications. Competition was entered into at a later time, when the specification was released to industry to build what government had designed.

As I understand it, product diversity should come about during R. & D. Once R. & D. is passed, the opportunity for optional choice is narrowed, if not eliminated.

Members of Congress have been presented too often with a fait accompli—the agency need and a strongly recommended single solution, all in one package. For example, we were given little understanding or information on the existence or progression of alternative ways to solve the strategic offense Triad mission need. When the solution was given to us, it came in the form of R. & D. requests to innovate a single approach and now in a $22 billion investment and operating package, there were no alternatives to the B-1 bomber. I have and will continue to support the B-1 bomber, because I believe in a strong defense, but I do not think we can overlook the reality that it came to us as the only choice to meet an important national security

need about which Members should have known the array of choices.

I think we who serve in Congress could act more wisely, if we were more thoroughly informed about the wide-span ideas to meet a common need during early R. & D. phases and were provided with information about their relative progress. We would understand also a great deal more about how the executive arrives at such expensive investment and operating packages. A part of the new circular provides us with this important visibility.

I am not equipped nor are most of my colleagues to debate relative merits of alternative design concepts during their early design phases, nor do I believe we should force a premature choice on the executive. But I do believe that wide-span competitive alternatives should be put fully before us as a precondition for R. & D. authorization.

If a need comes to Congress with only one solution or some design variations of the same solution, I think we should regard it for exactly what it is: a nationalized program. I also think we should insist that a phaseout plan be attached to dissolve the ad hoc private-public arrangement when the job is done. I know that, from time to time, there will be compelling arguments for such a venture, so I am not ignoring that reality. The circular makes provision for such programs, and I find no disagreement when treated on an "exception" basis as the circular advises.

How this executive circular will impact Federal make-or-buy policy, if at all, remains to be seen. But by its implication, a new balance between agency and private company R. & D. performance will very likely be sought with product diversity permitted and competition during R. & D. made effective. I also look toward seeing some recognition of civil product and defense product marketplace distinctions. It is not clear to me that a policy for products and services for Government's own use still applies, particularly considering the significant rise of civil product R. & D. expenditures.

For those two bold initiatives, OMB and OFPP are to be commended. I can not help but believe that effective agency implementation will lead to business setting back into business, and government getting out of it.

PILOT TELEVISION INFORMATION NETWORK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. BROOKS) is recognized for 10 minutes.

leagues will be interested in a demonstration project now being developed by the House Commission on Information and Facilities. The project, if successful,

Mr. BROOKS. Mr. Speaker, our col-

will bring directly into their offices much earlier than previously anticipated the important daily benefits of the Commission's experimental summary of proceedings and debate.

As many Members know, the summary project is an existing part of the Commission's Member Information Network—a computer-assisted system which allows terminals in 30 offices to access directly, both in printed form and on the terminal's cathode ray tube or screen, several kinds of legislative information: The bill status system of the House Information Systems, the six data files of the Library of Congress "Scorpio" system, and the summary of proceedings and debate.

The summary project, as the title suggests, transmits to the 30 terminals a running summary of everything that occurs on the floor while the House is in session: The morning notices, the legislative program, announcements, debate, calls of the House, and votes. This information generally reaches the terminal within 5 to 15 minutes of the time the action took place. In the case of quorum calls and rollcalls, the purpose of each is transmitted to the terminal within a minute or two of the bells.

Chairman FRANK THOMPSON of the Committee on House Administration and Chairman CHARLIE ROSE of the Computer Subcommittee have been assisting in this project and at present are seeking ways to extend the network to all Members.

Members participating in the information network have found that the summary project is especially useful. It enables them to leave their offices fully informed of the status of debate or of the nature of an amendment or a motion. With the help of the printer attached to the terminal, Members can take with them to the floor a printed copy of as much, or as little, of the summary as they choose. Consequently, Members are much better prepared to vote or to join in the debate when they arrive on the House floor.

Since it may be some time before all Members' offices can be equipped with the terminals necessary to obtain the floor summary, the Commission has been exploring possible ways of communicating this information in some other usable form. The most feasible way of accomplishing this appears to be the use of ordinary commercial television sets which most Members already have in their offices.

The Commission, therefore, is presently reviewing several possible methods of utilizing available channels on existing television receivers—on a closed circuit basis—to transmit all or selected portions of the running summary of floor proceedings.

The Commission is hopeful that it will be possible to demonstrate such a process prior to the final adjournment of the House for this session. This will depend, in large measure, on the availability of the needed equipment. In any event, the initial demonstration will have to be limited to offices in the Rayburn Building, because it is the only House Office Building now equipped to receive signals directly from the Capitol Building.

Nevertheless, we believe that a successful demonstration of the capacity of inexpensive television receivers to function as a significant medium for the internal communication of information within the House can greatly expand needed services to Members and committees at relatively little cost.

FED ALLOWS COVERUP OF DEALER KICKBACKS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ANNUNZIO) is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, the sweetheart relationship between auto dealers and financial lenders which has long perpetuated under-the-table kickbacks has now been endorsed by the Federal Reserve Board in a proposed regulation for the Truth in Lending Act.

I wrote Federal Reserve Board Chairman Dr. Burns yesterday to express my dismay at this regulation which does not require disclosure of any dealer participation fee to consumers who are about to sign auto loans.

The participation fees usually occur when a dealer fronts for a financial institution by suggesting to the consumer that he finance his auto through the dealer. The dealer is rewarded by the bank by receiving either a portion of the interest rate charged the consumer or in the most outrageous cases, the bank sets an interest rate and tells the dealer that he can keep anything over that amount. And with the way the regulation reads, consumers need know nothing about this.

Instead of requiring the loan disclosure which the consumer needs to make an informed decision when he buys a car, the Board has decided that such charges need not be separately described and, therefore, in my opinion, it has given the go-ahead to these dealer-lender deals.

The effect of this proposed regulation can only be to perpetuate the practice of under-the-table kickbacks which have cost consumers literally millions in the past few years without their ever knowing about it.

The enactment of this regulation would also make it very difficult to enforce the Federal Trade Commission's new rule of preservation of consumers' claims and defenses, a ruling which now makes financial institutions responsible for goods they are financing should those goods prove inferior. Unless it can be proven that the dealer and the lender had a "business arrangement" it will be very difficult to provide consumers with the protection against shoddy products bought on time that the FTC felt was necessary when it enacted this rule.

The Federal Reserve Board is supposed to enforce the Truth in Lending Act which was enacted so that consumers would have all of the information necessary to comparatively shop among different financing options. But instead of requiring that the complete picture of the cost of credit be provided to the consumer, the Board is permitting a coverup of this dealer/lender relationship.

Absolutely no justification for this blatantly anticonsumer stance has been offered by the Board. Disclosure of the

dealer participation fee would not materially lengthen or complicate other disclosures. And certainly, finder's fees are not outlawed by their being disclosed.

I believe strongly that if the consumer has to pay the dealer for his service to the loan institution of bringing a new customer in, then the customer ought to know about it. With this knowledge, he could then check to see if he could get a lower finance charge through direct financing. But with the way this regulation is written, a consumer would have to hire a lawyer to avoid the hidden charge of a dealer-participation fee.

FEDERAL TRANSPORTATION POLICIES THREATEN FOOD PRODUCTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas (Mr. ALEXANDER) is recognized for 15 minutes.

Mr. ALEXANDER. Mr. Speaker, today the Rail Services Planning Office of the U.S. Interstate Commerce Commission held a hearing in Little Rock, Ark., on the railroad classifications and designations proposed by the U.S. Secretary of Transportation under the Railroad Revitalization Act of 1976. Because of my legislative responsibilities here I was unable to personally participate in the hearing but have submitted a statement to be made a part of the RECORD.

I am deeply concerned about the implications the Secretary's proposals, and other Federal transportation policy trends, have for the future of our Nation's food production and distribution system and countryside regions. At this time I would like to make my statement a part of the CONGRESSIONAL RECORD and urge my colleagues to carefully review the issues which I have raised:

STATEMENT SUBMITTED BY HON. BILL ALEXANDER, UNDER INTERSTATE COMMERCE COMMISSION DOCKET NO. 329 IN CONNECTION WITH EX PARTE HEARING ON RAILROAD CLASSIFICATION UNDER PROVISIONS OF THE RAILROAD REVITALIZATION ACT OF 1976 CONDUCTED IN LITTLE ROCK, ARK., SEPTEMBER 16, 1976

Under the Railroad Revitalization Act of 1976, which has prompted this classification hearing, the Secretary of Transportation is directed to propose classifications based on level of usage and the probable economic viability of the rail lines under examination. Sec. 503 of the Act specifically allows the Secretary to take into account and make allowances for the differences in operation among railroads or groups of railroads.

In studying "Preliminary Standards, Classification, and Designation of Class I Railroads in the United States", Vol. 1, prepared by DOT, it appears to me that the Department has made insufficient use of the usage flexibility provided to the Secretary and has placed inordinate emphasis on use of service to "major markets" in establishment of its classifications.

This classification and designation of railroads process is laying the foundation for decisions on which of the Nation's communities will continue to receive rail service. It is the initial step toward increased abandonment of lines and service to food producing regions whose resources are vital to the continued survival of the Nation.

The alternative to this abandonment is for the States and localities to raise taxes to pay for railroad improvements and continuation of service or to improve highways which can serve to move this food and other natural resource products to the U.S. and international markets which must have them.

It is true that for a period of five years the States would receive financial aid from the federal government to carry on rail service and railroad improvements. But, this aid is to be provided in smaller and smaller shares. Not only does the State's responsibility increase annually, but in 1981 the State must begin to pay the whole cost of this service to the Nation.

States like Arkansas cannot afford the costs which are being thrust on them by this rail program and other similar transportation policies which are biased in favor of greater federal aid for urban dwellers and less and less for countryside communities.

It is gross discrimination for the Nation's transportation policy makers to expect countryside residents not only to produce the food city residents must have, but to pay the increased transportation costs as well. That is what the proposed railroad classification and designation scheme does.

To give more and more dollars to upgrade and improve the transportation systems basically benefiting the Nation's cities while continually reducing the dollars going into transportation for countryside areas is to work directly against the best interests of the Nation.

But, that is exactly what is happening under all existing federal transportation policies, rail included. By ignoring the legitimate claims countryside regions have to federal transportation assistance federal policy makers are laying the tracks over which the Nation is speeding toward an economic and food collision of catastrophic proportions.

To make decisions about railroad service without taking fully into account their impact on other transportation systems, such as highways, is to indulge in irresponsible foolhardiness. Yet, that appears to be exactly what is happening.

In these hearings on railroad classification and designation, we are dealing with a program expressly designed to bring about rail line abandonment. The inevitable result will be increased use of our rural highway system by heavier and heavier trucks, many operated by railroad conglomerates.

At the same time, in other federal actions, more than 100,000 miles of rural highways have been dropped from the federal-aid highway system. This means that the State and local governments must take over their upkeep and any improvements that are made. Even though the whole Nation benefits from the food and other products which move over these highways it is the local taxpayer who has to bear the burden.

In addition, the changes in the rules governing highway funding made by the Federal-Aid Highway Act of 1976 can be expected to mean further reductions in federal aid to rural highways. This law allows more and more money to be used in heavily populated areas and less and less in countryside regions.

The result, if these federal transportation policies are not reversed, will be increased local taxes, higher consumer food prices, reduced farm income, and reduced exports of U.S. food products. Reduction of food exports will hurt the U.S. balance of trade position and our efforts to control inflation.

Taking into account the implications of increased rail abandonment in countryside areas and recent developments in federal highway assistance programs, I would urge the Rail Services Planning Office to include in its recommendations to the Secretary of Transportation the recommendation that more flexibility be employed in classifying and designating rail lines serving the Nation's regions where food is produced. These regions are essential to national survival and adequate transportation systems are critical to the effective operation of our food production and distribution system.

STUMBLING ON SYNTHETIC FUELS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. HAYES) is recognized for 10 minutes.

Mr. HAYES of Indiana. Mr. Speaker, the serious economic drawbacks of H.R. 12112, the synthetic fuel loan guarantee bill are detailed in an excellent Louisville Courier-Journal article concerning this remarkable piece of special-interest legislation. I urge my colleagues to seriously consider Mr. Sinclair's apt remark, "As sometimes happens on major policy issues, Congress virtually stumbled onto the loan-guarantee issue last year," and resist stumbling on it this year:

[From the Louisville (Ky.) Courier-Journal, Sept. 14, 1976]

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SYNTHETIC FUEL PLANTS ONLY NEED LOTS OF MONEY

(By Ward Sinclair, Courier-Journal Staff Writer)

(Ward Sinclair is the Courier-Journal's bureau chief in Washington and has been covering energy issues for many years:)

WASHINGTON.—Federal planners foresee a day when 100 or more plants around the country would convert enough coal to synthetic gas and petroleum to supply much of the nation's fuel needs.

The coal and the technology are available to achieve the goal of energy self-sufficiency proposed by Presidents Nixon and Ford to free the United States from dependency on foreign oil.

And coal-wealthy states such as Kentucky, Ohio and Illinois, are eager to land new industry, and they have invested considerable effort and money to attract the synthetic-fuels producers.

But the big hangup is economics.

Each commercial conversion plant costs more than $1 billion. Lenders are wary of underwriting a product too expensive to compete with imported petroleum. Social and environmental costs are uncertain.

The Ford Administration, still clinging to its goal of American energy independence by 1985, is trying to persuade a skeptical Congress that private industry must have federal aid to get the synthetic fuels program in gear.

The centerpiece of the administration's program is a $100 billion energy-independence authority that would disburse huge federal grants to private entrepreneurs to build the synthetics plants.

Because of the vast sums of money involved, the politically popular idea of making a quick-fix on energy problems and because of the public and private interests that come into conflict, the subject of synthetic fuels has been intensely debated here for more than a year.

With that background, the struggle to determine the extent of federal involvement in synthetic fuel development will come to a head this week.

The House Rules Committee is scheduled to meet tomorrow to decide whether to send to the floor a bill that would get the program going by authorizing $4 billion in federal loan guarantees for construction of synthetic-fuel plants.

If the committee approves the bill (a close vote is expected), it could reach the floor for debate before the end of the week. Prospects for final passage there do not seem good. A similar proposal was defeated overwhelmingly last December.

Support and opposition on the legislation break down this way:

Supporters claim the legislation is only for research and development on commercially sized plants, rather than outright subsidization through loan guarantees. But they say the cost of each plant is so high that construction will be possible only with federal support.

Opponents say the bill is the first step in what could turn out to be a massive raid on the federal treasury in which the public assumes the risk by guaranteeing loans and private industry takes what profits there are. They say the first guarantee would be for plants using already outdated technology.

These arguments have been raised many times in more than 30 hearings this year held by four committees involved in drawing up pending legislation.

That four committees are involved underlines the political sensitivity of the synthetic-fuels issue. The Science and Technology, Interstate and Foreign Commerce, Banking, Currency and Housing and the Ways and Means committees all have claimed jurisdiction and have played a role in shaping the bill.

Adding to the sensitivity, both sides have invoked the name of Democratic presidential nominee Jimmy Carter to make their case. Opponents say Carter opposes the legislation, supporters say he does not.

Carter was drawn into the debate last week when the Rules Committee began consideration of the bill. Opponents led by Rep. Richard Ottinger, D-N.Y., said that Carter is strongly on record against the concept of federal loan guarantees for commercial synthetic fuel plants.

But Rep. Olin Teague, D-Tex., chairman of the Science and Technology Committee and a supporter of the bill, said that he had heard Carter did not oppose the bill—quoting a report he had as recently as Aug. 29 from former Massachusetts Gov. Endicott Peabody.

Carter headquarters in Atlanta said the candidate has taken no position on any pending legislation, but stands by an earlier-stated energy position, which roundly rejected the loan-guarantee concept for commercialization of synthetic fuels.

Peabody, reached in his Washington law office, said Carter has no position on the bill because, as Peabody put it, it is for research "demonstration," rather than the full-scale commercialization Carter was talking about.

Peabody, incidentally, is a representative of the Western Gasification Co. (WESCO), one of two companies in line for the first of any loan guarantees. The company wants to build a high-BTU coal gasification complex in New Mexico.

He said he talked to Carter last month, not as a WESCO representative but as a longtime supporter of the former Georgia governor's presidential candidacy. He said he has supported Carter since February.

As sometimes happens on major policy issues, Congress virtually stumbled onto the loan-guarantee issue last year. The Senate, with no hearings or debate, quietly attached a $6 billion loan-guarantee amendment to a pending Energy Research and Development Administration (ERDA) bill.

Sens. Henry Jackson, D-Wash., and Jennings Randolph, D-W. Va., sponsors of the amendment, assured their colleagues they had worked out all the earlier problems and that the program needed to begin quickly.

But it ran into trouble in the House, where Ottinger and Reps. Ken Hechler, D-W. Va., Phil Hayes, D-Ind., and Tim Wirth, D-Colo., were waiting in ambush. They forced House hearings on the issue and then succeeded in getting the full House to kill the guarantee program.

That is where action resumed this year. More hearings were held and the Jackson-Randolph scheme was scaled down and altered by the House committees that took up the issue.

As it emerged from Science and Technology, the bill would provide $4 billion in loan guarantees for coal gasification, coal liquefaction and shale oil conversion plants, plus money for other energy development processes.

The Commerce Committee came up with its own version—a $2 billion in loan guarantee authority, plus a new kind of regulatory program to help private industry finance high-BTU synthetic gas facilities by removing Federal Power Commission controls from the new fuels.

Still another provision establishes a program that would let ERDA enter into price-guarantee agreements for nonregulated synthetics and contracts for federal purchase of the liquids—in other words, a price-support program.

The congressional skirmishing comes on a backdrop of divided support for the bill within the administration and the energy industry. It also comes on the heels of two General Accounting Office (GAO) studies this year that raised serious questions about the loan-guarantee approach.

GAO said that given the high cost of the synthetics (some would cost nearly twice the price of imported oil) and the risk involved in plant construction, the government would be better advised to key its energy program on strict conservation measures.

Even the Commerce Committee, scaling down the loan-guarantee authorization, has noted that the pending bill would "demonstrate" a synthetic-fuels technology that ERDA itself has conceded will not be the basis for future commercial production.

And the critics—from the Commerce Committee to Hechler, Ottinger and Hayes— have contended that ERDA's pleading that the program will help study social and environmental impacts from commercialization is just "a cover" to get the loan-guarantee plan going.

Ottinger, one of the most vocal critics, put it this way: "Putting the full faith and credit of the federal treasury behind a series of white elephants hardly seems an appropriate fashion in which 'to do something about the nation's energy situation.' "

THE FORD-NIXON RECORD ON THE HANDICAPPED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BRADEMAS) is recognized for 5 minutes.

Mr. BRADEMAS. Mr. Speaker, for many years, members of Congress, acting not as partisans but as makers of law for a great nation, have exercised our responsibility as elected representatives of the American people, to write legislation aimed at enriching the lives of the most vulnerable members of our society, the physically, mentally, and emotionally handicapped. As a member of the Committee on Education and Labor and as chairman of the Subcommittee on Select Education, I count it a privilege to have been part of these efforts, particularly as they relate to the education of handicapped children and the rehabilitation of our adult handicapped.

I am sure that all those who share a commitment to the wellbeing of handicapped Americans have been deeply concerned over the record in this area of the administration of Richard Nixon and Gerald R. Ford. For example, the irresponsible use by President Ford of both the veto and rescission powers to attempt to kill or seriously weaken Federal programs of assistance to the Nation's handicapped has been nothing less than alarming.

Mr. Speaker, it must be obvious from the record that there is a deep division between the President and Congress on legislation to deal with the problems that confront handicapped people in our society, a division which is readily demonstrated by contrasting the intent of Congress in passing or extending legislation to benefit the handicapped with President Ford's continued efforts to frustrate such objectives. One can only conclude from the record—not the rhetoric—that Gerald Ford is no friend of handicapped Americans. Neither was his predecessor, Richard Nixon.

EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Mr. Speaker, examples of the Ford administration's insensitivity to the handicapped are not difficult to find. I need not remind you that the most significant education measure enacted into law during the first session of the 94th Congress was the Education for All Handicapped Children Act, legislation which represented an historic advance in meeting the challenge of educating America's handicapped children. Yet at the time this legislation was under consideration it was consistently opposed by the Ford administration despite the testimony of a diverse group of witnesses that less than half of the 8 million handicapped children in the United States are receiving an education appropriate to their needs and that 1 million of these children, usually the most severely handicapped, are receiving no education at all. President Ford continued his attempt to block this legislation despite the broad bipartisan support it enjoyed in Congress and despite a pattern of increasing decisions by courts across the land and by State legislatures holding that handicapped children have a constitutional right to an education responsive to their special needs.

Faced with an overwhelming vote for the bill of 404 to 7 in the House and a similar margin, 87 to 7, in the Senate, Mr. Ford was constrained to back down from his widely reported threat to veto the legislation. He made it all too clear, however, that he was signing the bill with the greatest reluctance and he accused its supporters—nearly 500 elected Members of the House and Senate—of "falsely raising the expectations of the groups affected," presumably the 8 million young handicapped Americans and their families, although Mr. Ford voiced his "strong support for full educational opportunities for our handicapped children," at the same time he complained bitterly that we could not afford to help educate the handicapped children of our country.

Although he felt compelled to sign the bill, Mr. Ford remains determined to undermine the law so overwhelmingly approved by Congress. Indeed, after Congress this year voted to make available an additional $90 million for the program, the President, on July 28, 1976, asked that the $90 million to benefit handicapped children not be spent.

Unfortunately, Mr. Speaker, this was not President Ford's only attempt to use his executive power to weaken programs for the education of the handicapped. Earlier, on January 30, 1975, he requested that $52.5 million for educating the handicapped be withheld from the fiscal 1975 budget and that $50 million be withheld from the fiscal 1976 budget. On November 18, 1975, a second request to withhold funds for this purpose was issued, this time for $36.375 million.

Mr. Speaker, given his own history of grudging support for handicapped programs, it is no wonder that President Ford said that we were "raising false hopes." For while Congress was calling for a dramatic increase in fiscal 1977 funds to educate the handicapped, Mr. Ford asked for absolutely no increase in funding for the State grant program for this purpose.

Everyone who is concerned about educating handicapped children must be pleased that Congress did not agree to President Ford's recommendations and, moreover, that a Senate-House conference agreed upon $205 million more than Ford's request for the State grant program. Indeed, the Senate-House conference accepted a figure $231 million higher than the administration's fiscal 1977 request for all education programs for the handicapped.

The actions of President Ford, Mr. Speaker, and the distorted priorities which they represent, are hard evidence of this administration's callous disregard for America's disabled youngsters and demonstrate blatant unconcern for the millions of parents and their handicapped children who are being denied adequate educational opportunities.

While Mr. Ford's rhetoric on behalf of the handicapped is eloquent, his actions reveal a determination to obstruct rather than to assist. I am reminded of the words of another Republican, former Attorney General John Mitchell, who, you will recall, said watch not what we say, but what we do. I can assure this administration no one who watches the actions rather than the words of the administration of Gerald R. Ford on programs to serve the handicapped can fail to be distressed by the wide gap between the record and the rhetoric.

FORD'S VETO OF EDUCATION APPROPRIATIONS

Mr. Speaker, I need not also remind you of President Ford's veto last December of the education appropriations bill which, if successful, would have slashed funds not only for education for the handicapped but also for a number of other vital education programs such as bilingual education, education for the disadvantaged, vocational education, higher education, and libraries. Congress, however, demonstrated the profound extent to which it disagreed with the President by overriding Mr. Ford's veto with an overwhelmingly bipartisan vote of 379 to 41 in the House and 88 to 12 in the Senate.

VOCATIONAL REHABILITATION ACT

Mr. Speaker, let me mention, too, the hostility which has beset the vocational rehabilitation program during the Nixon-Ford years. Such programs have for over half a century helped provide handicapped persons the opportunity to support themselves and, therefore, to maintain their pride and their sense of self-worth. For example, persons who were rehabilitated in fiscal year 1975 received annual earnings of $1.385 billion, a net increase of $1.129 billion over their earnings at the time they entered rehabilitation. Clearly the benefits of rehabilitation programs are many times their cost. One finds it hard, therefore, in either human or economic terms, to understand the determined opposition of President Ford to these bipartisan congressional initiatives to strengthen vocational rehabilitation programs.

The Rehabilitation Amendments of 1972, which were designed to continue and expand the program of Federal assistance to State vocational rehabilitation services that for so many years have helped handicapped people with training and assistance in securing employment, were pocket vetoed by President Nixon before the 1972 election and vetoed again early in the next session. Richard Nixon's action was supported fully by Congressman Gerald R. Ford, then House minority leader. And Senator ROBERT DOLE, who wants to become our next Vice President, disappointed advocates of the handicapped by voting to sustain the Nixon veto.

Mr. Speaker, this important measure, which was finally enacted in September of 1973, also contained new provisions to guarantee employment opportunities to handicapped people and to protect the handicapped from discriminatory practices. In view of what I have already said, Mr. Speaker, about the hostility of the Nixon and Ford administrations to the handicapped, you will not be surprised to learn that the administration attempted to delay implementation of the law and to fragment the program it authorized.

For example, more than a year elapsed before the first of the regulations governing the Vocational Rehabilitation Act were published, and even as I speak, we are still awaiting publication of some of the regulations—nearly 3 years after enactment of the legislation.

Moreover, the regulations drafted by the administration have been, at every step of the process, less than responsive to the intent of Congress as expressed in the law. Indeed, there has been a concerted effort by the administration to utilize the regulations to evade and circumvent the intent of the language which Congress wrote to guarantee the rights of the handicapped.

Mr. Speaker, these obstructionist tactics did not stop with the regulations, for the administration also took fully 16 months to appoint a Commissioner of the Rehabilitation Services Administration, the person charged with administering this crucial program.

With the resignation of Richard Nixon, Mr. Speaker, many of us had hoped for an administration which would prove to be more concerned about and sensitive to the needs of the handicapped. Very early in his administration, however, Gerald Ford offered proof that he shared Mr. Nixon's attitude toward the handicapped Americans. When Congress once again, in 1974, sought to strengthen the vocational rehabilitation effort, President Ford, soon after taking office, vetoed the new bill. Had his veto been sustained, it would have resulted in a tragic diminution of rehabilitation services. But Congress again refused to follow the administration and voted to override the Ford veto—by the largest override vote in the history of the United States; 398 to 7 in the House and 90 to 1 in the Senate.

In a similar display of unconcern for the Nation's handicapped, last January President Ford vetoed yet another appropriations bill, this one containing $40 million more than the President sought to assist in the rehabilitation of our handicapped.

CARING FOR SOCIETY'S VULNERABLES

Mr. Speaker, the Nixon-Ford record on programs for the handicapped reinforces the conviction that we need a President of the United States who not only vigorously supports such programs but who acknowledges the close connection between advancing the well-being of the vulnerable persons in our society and the general health of the Nation.

Mr. Speaker, there is a responsible majority in Congress—composed of both Democrats and Republicans—who, working together, are committed to support programs to serve the handicapped. It makes no sense, to repeat, in either human or economic terms to turn our back on handicapped children, abused children, or older persons, or adults in need of rehabilitation. I must conclude—and I do so with no particular pleasure—that the commitment of the Congress of the United States to helping meet the needs of these vulnerable of our fellow citizens is not shared by the person who today holds the highest office in our land.

Mr. Speaker, let me note that I am commenting here on only one area under the jurisdiction of the subcommittee that I have the honor to chair. The subcommittee's responsibilities extend to a number of other fields, including child care and programs for the older adult; a close examination of the Ford-Nixon record in these areas would reveal a similar pattern of indifference or obstruction.

Mr. Speaker, I hope the time will not be long when we will have a President in the White House who shares the commitment of the elected representatives of the American people to support the services—such as vocational rehabilitation and the education of the handicapped—that are so crucial to the lives of so many.

IN SUPPORT OF THE SECOND CONGRESSIONAL BUDGET RESOLUTION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. DODD) is recognized for 5 minutes.

Mr. DODD. Mr. Speaker, I rise in support of Senate Concurrent Resolution 139, the second congressional budget resolution for fiscal year 1977.

The resolution we have before us clearly demonstrates that the new budget process is sound in both concept and practice. It is a real victory for Congress, for the American taxpayer, and for the economy, and I would like to commend the members and staff of the House and Senate Budget Committees for the outstanding job they have done in this, the first year that the Budget and Impoundment Control Act has been fully implemented.

I was particularly impressed with the efforts of the distinguished chairman of the House Budget Committee, my good friend from Washington (Mr. ADAMS). Under his guidance, we have installed a budgetary system which will allow us to better see the total picture of Federal spending, to better determine our economic priorities, to relate revenues to outlays, and in the near future, to balance the budget. The Congressional Budget Act has been called, deservedly, the single most important legislative initiative in many decades. Under the leadership of the gentleman from Washington we have seen this initiative become a reality.

The President has often accused this Congress of being "spendthrift." The budget we will act on today provides ample evidence that this is simply not the case.

We have reduced the Federal deficit for fiscal 1977 to $200 million below what we had expected it would have to be, and we have brought the public debt down $13.1 billion from what was expected. These are major accomplishments considering our continuing, high rate of unemployment.

Had the President not been totally lacking in concern for the 8 million people in this country who cannot find jobs, and for the American taxpayers who will be supporting them until they do, the budget deficit could have been reduced even more. Instead, the President demonstrated blatant disregard for the unemployment situation in this Nation, and its effect on the economy, by attempting to block almost every major antirecession measure passed by Congress.

Mr. Speaker, the President says we cannot afford to take measures to bring down unemployment. Considering the cost of unemployment to the American taxpayer—each percentage point of unemployment above 4.5 percent costs over $16 billion in lost revenues and additional outlays—I believe we cannot afford not to take these measures.

We have before us a budget resolution which will allow us to bring unemployment under control—and will accomplish this without being "spendthrift."

Outlays in the congressional budget are only slightly higher than what the President had requested—in fact, about 3.5 percent higher—but one which will allow us to continue as the strongest nation in the world—economically, militarily, and politically.

I think it is important to consider, Mr. Speaker, what programs come under this additional 3.5 percent in the congressional budget which, to the President, makes this a spendthrift Congress. If we look at the record, we see that he has proposed:

Reductions in programs for older Americans, including major cuts in funding for the hot meals program and home health services;

Reductions in existing jobs and jobs training programs, as well as vetoes of legislation to bring down unemployment;

Reductions in educational programs, including a $100 million cut in elementary and secondary educational assistance, and a $200 million cut in funds for higher education;

Reductions in energy programs, including a $37.5 million cut in FEA programs for energy conservation and environmental protection, and an $11.5 million cut in regulatory programs designed to keep consumer prices down; and other reductions in alternative energy programs, despite his claim that his administration is seeking energy independence;

Reductions in housing programs, including a veto of legislation designed to provide temporary assistance to middle-income families seeking to purchase homes;

Reductions in veterans' programs, including a proposal to forget about this year's cost-of-living increase for veterans receiving pensions.

Congress, in passing the budget resolution we have before us, will not be ignoring these important areas, and will still be keeping spending—and the deficit—at a minimum. We will be providing realistic levels of spending to promote the economic recovery and the sustained well-being of the Nation, and we will be doing so with a deficit which is approximately $15 billion less than the one we had last year. We will be providing adequate funding for programs which will enable us to further reduce the budget deficit in the years ahead, and eventually, eliminate the need of a deficit altogether.

It is doubtful that this kind of long-range planning would have been possible without the installation of the new budget process. It is truly a landmark piece of legislation, and one which will produce positive results—budgets which are consistent with the public interest—for many years to come.

I want to again commend the Budget Committee, its distinguished chairman, members, and staff, for their excellent job in guiding us through this first year of reformed budgeting, and for bringing before us a budget which is both penny wise and pound wise. I urge all of my colleagues to join me in supporting this important step on the road to economic recovery.

LEGISLATION TO FOCUS NEEDED ATTENTION ON MEDICARE PROGRAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. ROSTENKOWSKI) is recognized for 10 minutes.

Mr. ROSTENKOWSKI. Mr. Speaker, I am introducing today two bills designed to focus much needed attention on two significant problems in the medicare program—the lack of adequate medicare coverage for health services furnished to beneficaries living or traveling outside the United States; and the limitations on medicare reimbursement for services rendered by qualified physician extenders in rural health facilities. I am introducing these bills now in the hope that they will elicit the analyses and refinements needed to design equitable and administratively feasible solutions to these problems.

Under present law, medicare coverage is available, with a few very limited exceptions, only for hospital and medical services rendered within the United States. These exceptions involve only cases in which the beneficiary needs emergency hospital services while traveling in Canada between the 48 States and Alaska, or needs hospital services because of a problem that arose while traveling or residing within the United States near the border, and a Canadian or Mexican hospital was more accessible than the nearest U.S. hospital. This limitation of medicare coverage to services rendered within the United States was originally included in the law to avoid problems that might otherwise arise in assuring the quality of care and in determining the appropriate amount of reimbursement for services furnished in foreign countries.

I believe that the time has come for a fresh examination of this restrictive provision in the hope that a way around the administrative difficulties can be found. While the number of beneficiaries affected—approximately 150,000 individuals—is not large in the context of the total medicare population, it is a distressing fact that the protection which they have earned through contributions during their working lives is summarily denied to them. Without minimizing the substantial administrative problems involved, it does seem to me that some reasonably effective solution can be found.

The approach incorporated in the bill I am introducing involves the use of bilateral agreements with those foreign countries willing to establish reciprocal arrangements with the United States. This approach would provide a measure of flexibility in meeting the widely varying conditions in different countries and would allow for the development of acceptable controls over the provision of and reimbursement for services in foreign countries.

The problem with respect to the services of physician extenders in rural health clinics is that reimbursement, under present law, can be made for such services only when they are provided under the direct personal supervision of a physician. However, a great many rural health clinics are in areas where, because of limited medical resources and the isolated character of the communities, physicians' services are generally inaccessible. In such areas rural health clinics, relying almost exclusively on physician extenders, have achieved noteworthy success in providing access to needed primary care and in establishing appropriate referral arrangements to other

specialized medical services when necessary.

To the extent that medicare does not pay for services rendered by qualified physician extenders in the setting of a rural health clinic providing primary care, innovative uses of such personnel and facilities to help meet the pressing problems of rural communities is hampered. Under the bill I am introducing, reimbursement would be provided for services rendered in rural health clinics under the supervision of a physician, but the physician would only be required to assume responsibility for the care provided and would not have to be physically present at the time the care is rendered. This should facilitate greater use of such medical personnel in rural areas and encourage the further development of rural health clinics.

Under the bill, physician extender services provided in rural health clinics meeting specified requirements would be covered under part B of medicare. Payment for such services would be made to the rural health clinic on the basis of charges reasonably related to the costs incurred in providing the services. To assure that such services are of high quality, the bill specifies requirements relating to clinic arrangements for overall physician supervision, periodic physician review and certification of services rendered by extenders, preparation of medical orders and physician availability for referral and assistance in medical emergencies.

Specific requirements are also provided for the clinics to assure both the quality and effective delivery of services. These requirements include: a formal arrangement with hospitals in the area for referral and admission of patients requiring further diagnosis and treatment; maintenance of clinical records on all patients; provision of necessary routine diagnostic services and appropriate facilities for storing and dispensing drugs.

The bill also recognizes the absence of uniformity in the nomenclature used in State laws to describe physician extenders. Thus, under the bill the term would include those individuals trained and variously described as physician assistants, nurse practitioners, or medics who are authorized under State law to perform specified medical procedures.

I am not certain that these bills provide the most effective or most desirable approaches to the problems I have identified; nor am I committed to them. However, I do believe that they represent approaches that warrant careful consideration and I welcome, therefore, the comments and suggestions of all interested parties on their feasibility and possible refinement.

ANNIVERSARY OF MEXICO'S DECLARATION OF INDEPENDENCE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. KAZEN) is recognized for 5 minutes.

Mr. KAZEN. Mr. Speaker, I am pleased to call the attention of my colleagues to the fact that today, September 16, is the anniversary of the Declaration of Independence for our neighbor nation to the south, the Republic of Mexico. It is the Mexican equivalent of our Fourth of July.

During the period when our Nation gained its independence from Britain, Mexico was ruled by Spain. Mexico was the heart and center of Spanish holdings in the New World, but the exploitation of its resources became increasingly abhorrent to the proud people. Army officers and private citizens talked of a rebellion. A small group of them enlisted a priest from Dolores in their cause, and Miguel Hidalgo y Costilla became a key figure in the effort. Many of us in this body have seen the statue of him which was recently erected near our Department of State here in Washington.

Father Hidalgo was a progressive priest, interested in the welfare of his people, but even as he encouraged new industry and agricultural progress, he also recognized the need for political freedom. A revolt was planned for December 8, 1810, but word leaked out, some planners were arrested, and on the night of September 15, Ignacio Allende, an army officer, rode out to meet with Father Hidalgo. Another officer had already arrived, so Allende wanted to warn the priest and Juan de Aldama that their secrecy had been compromised.

The three men decided on immediate action, and at midnight on September 15, they rallied their people with the so-called Grito de Dolores. The message was clear: "Long live our Lady of Guadalupe, and death to the gachupines" or Spaniards. It ended "Viva Mexico."

The next morning, with a band of 600 poorly armed Indians, they set out for San Miguel, where Allende's forces were garrisoned. Recruits streamed to their cause, so that their army numbered 50,000 when the first battles began. The forces of freedom won some significant towns, but the forces of Spain were too much for them. All three of the leaders were captured and put to death. But the spark of freedom glowed on, and in 1821, the last Spanish governor negotiated the terms of the Treaty of Cordoba and the United States of Mexico became a free nation.

I am one of the Members of this House who is privileged to represent a district that was part of that new nation at the time. Mexico's culture and traditions have blended with ours; the Spanish language is spoken throughout that area. We have been good friends and neighbors for a long time, and we who are privileged to live on the border have never considered the Rio Grande a boundary that separates us but rather a link in the chain of friendship, understanding and mutual respect that binds our two nations and our people.

Mr. Speaker, it is with a great deal of pleasure that I stand on the floor of this House today and wish our friends in Mexico a happy birthday.

HOUSE SELECT COMMITTEE ON AGING ADOPTS REPORTS RECOMMENDING SPRINKLERS IN NURSING HOMES AND ASSISTANCE TO ELDERLY WHO NEED MEDICAL APPLIANCES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. PEPPER) is recognized for 15 minutes.

Mr. PEPPER. Mr. Speaker, I am pleased to inform our colleagues that the House Select Committee on Aging today approved two reports of the Subcommittee on Health and Long-Term Care, on which I have the privilege to serve as chairman. The first report concerns "medical appliances and the elderly." The second covers "the tragedy of nursing home fires." Both reports are based on recent subcommittee hearings on these subjects and supplemental research.

The majority and minority worked together in drafting these reports. I wish particularly to thank our good friends, Hon. WILLIAM J. RANDALL, chairman of the full House Select Committee on Aging, and Hon. H. JOHN HEINZ III, ranking minority member of the subcommittee on Health and Long-Term Care, for their help and support, as well as the other members of the Subcommittee on Health and Long-Term Care for their assistance—IKE ANDREWS, ED BEARD, JIM FLORIO, MARILYN LLOYD, BILL COHEN, and BOB WILSON, who also serves as ranking minority member of the full committee.

The reports adopted today discuss subjects which are very meaningful to the elderly of the Nation.

I. MEDICAL APPLIANCES AND THE ELDERLY

The first report is entitled "Medical Appliances and the Elderly: Unmet Needs and Excessive Costs for Eyeglasses, Hearing Aids, Dentures, and Other Devices."

An earlier subcommittee report, "New Perspectives in Health Care for Older Americans," recommended that medicare part B, the optional provision paid for partly by premiums, be extended to cover hearing aids, eyeglasses, and dentures for the elderly. This report restates that recommendation and provides further documentation of its urgency.

The report is based largely on testimony presented to the subcommittee at its June 23 and 24 hearings on medical appliances for the elderly. Subcommittee members will also remember receiving at the hearings a preliminary issue brief on this subject, prepared by the subcommittee staff in consultation with the Library of Congress.

Witnesses at the hearings included senior citizens consumer organizations; manufacturers and distributors of hearing aids, eyeglasses, dentures, and other devices; a panel of the Nation's leading health insurance company representatives; the Federal Trade Commission; HEW; the Food and Drug Administration; and the Veterans' Administration.

Additional information was obtained from numerous Federal, State, and local agencies, health organizations, and congressional committees, all of which are enumerated in the memorandum at the beginning of the report. In addition, the Library of Congress provided invaluable continued assistance.

Our investigation demonstrated that in the area of medical appliances, the elderly are simply not receiving the high-quality health care that they are entitled to and that they so desperately need. For example, according to the National Cen-

ter for Health Statistics, 5 million elderly Americans are wearing glasses which need correction. There are 3.4 million elderly Americans over 65 who have dentures which need to be replaced or refitted. And 1.5 million elderly Americans are unable to hear words that are spoken in a normal voice and need either hearing aids or medical help.

In theory, public and private health benefit programs were created to meet this type of sever health need. However, in the area of appliances, these programs have been of only the most limited help. The report shows that medicare does not cover the cost of eyeglasses, hearing aids, or dentures. Medicaid does cover these devices, but only in some of the States—25 States provide eyeglasses, 36 States cover dentures, and only 11 States cover hearing aids. Moreover, the number of States covering any or all of these services is declining as many States strive to cut back their expenditures. Finally, private health insurance policies rarely cover eyeglasses and hearing aids and cover dental costs only occasionally.

In short, elderly people who need medical appliances must either pay for them out of their own pockets or simply do without them. As nearly one-half the elderly are near or below the poverty line—the largest segment of any age group—the latter is all too often the case.

Among the barriers to the purchase and proper use of these devices are serious evidence of abuse and overpricing. For example:

Serious evidence of abuse came from a survey by the New York City Department of Consumer Affairs, which demonstrated that one out of five eye examinations by optometrists resulted in unnecessary prescriptions.

Numerous surveys of retail firms selling eyeglasses show a 200 to 300 percent variance in the cost of identical eyeglasses.

Identical dentures, including identical fitting procedures, range in price from $100 to $1,000.

The hearing aid delivery system, as presently structured, fosters a clear and continuing conflict of interest that pits the profit orientation of the businessmen who sell hearing aids against the health and economic interests of elderly consumers. Studies have demonstrated that the result of this system of allowing the hearing aid dealers, rather than physicians, to determine the need of elderly consumers for aids, is frequent recommendations by dealers for hearing aids that cannot help buyers and neglect more serious medical problems.

The cost of hearing aids is excessively high—2½ times the wholesale price—and represents a formidable barrier to those elderly people who need the devices.

The subcommittee heard evidence from the Federal Trade Commission of numerous instances of misrepresentation and anti-trust violations such as price fixing in the hearing aid industry, including consent orders issued by the FTC against attempting territorial control and price fixing by three of the largest seven hearing aid companies. Two additional cases against two others of the largest seven companies are also pending.

Furthermore, the subcommittee received testimony from Government programs which made use of volume contract purchasing of eyeglasses, hearing aids, and dentures. The Veterans' Administration was able to save $145 per hearing aid—paying $205, including the related audiological test, instead of $350—under such a program. Likewise, glasses which sell on the open market for $26 to $50 a pair are purchased by the Defense Department and the Veterans' Administration for $7 to $8 a pair, by the General Services Administration for $18 a pair, and by the State of Arizona for $15 a pair.

As a result of these distressing findings, the report makes the following recommendations:

First, pending any national health insurance program which might lie ahead, the optional part B section of medicare should be extended to cover eyeglasses, hearing aids, and dentures and medical care related to fitting those items. With this extension, elderly people who chose to enroll in the voluntary part B program would be covered for 80 percent of the reasonable charges for these health expenses once they had spent more than $60 in that year on covered part B medical care expenses.

To pay for the additional benefits, part B monthly premiums and the Federal contribution to the medicare program would be increased slightly, in accordance with the apportionment system used in 1977 to divide total part B costs between the Federal Government and the elderly paying the premiums. Thus, the effect of the proposal would be an increase of $2.66 a month in premiums and an increase of $1.9 billion in the Federal share of the program during the first year of the medicare extension. It is important to note that the cost of the Federal share and of the premiums would decline by as much as $1 billion a year after the fifth year of the program since the enormous backlog of elderly people who desperately need medical appliances will be reduced by that time.

The subcommittee has found that the medicare part B extension could be quickly implemented by making use of the existing medicare administrative mechanisms. The additional coverage would represent no extra burden to these mechanisms.

The subcommittee found that an anomaly exists in medicare failing to provide coverage of oxygen tents and other durable medical equipment to patients in nursing homes while elderly people living outside institutions receive coverage. The report recommends correcting this anomaly, a change which HEW has estimated tentatively would cost between $1 million and $2 million per year.

Second, in view of the findings of cost-effectiveness of existing contract purchasing programs, the report recommends that contract purchasing of eyeglasses, hearing aids, and dentures be utilized wherever feasible by the Department of Health, Education, and Welfare to provide these appliances to those elderly people who opt to receive the part B coverage. HEW should begin to experiment with contract purchasing immediately. Within 5 to 10 years, it should be the official HEW policy that contract purchasing be utilized wherever feasible in the purchase of eyeglasses, hearing aids, and dentures for those covered. The subcommittee also recommends that States consider making use of contract purchasing of medical appliances as part of their medicaid programs. Existing Government contract purchasing programs are conclusive proof that this recommendation would result in a reduction in the actual cost of medical appliances from the excessively high levels of the present.

Under contract purchasing, HEW would, on the basis of competitive bidding, award contracts to a number of manufacturers—the current VA hearing aid program uses 14 manufacturers.

Third, because of evidence of abuses and inadequacies in the present pricing and delivery systems of medical appliances, it is urgent that a series of major safeguards be enacted to protect elderly consumers from the kinds of abuses that they suffer today.

The subcommittee recommends that safeguards be implemented by Federal and State agencies including continued and increased scrutiny by the Federal Trade Commission and the Food and Drug Administration, in order to end anticompetitive practices and antitrust violations.

Action is also recommended to the States individually and the Federal Trade Commission nationally to remove the bans which bar price advertisements of medical appliances. According to the Federal Trade Commission's Bureau of Consumer Protection, these bans "reduce competition, restrict consumer access to information, and allow higher than competitive prices to exist."

The subcommittee also recommends HEW actions to reduce those medicare expenditures which are excessive and unnecessary. HEW should immediately implement leasing and other economical methods of obtaining medical equipment. Legislation authorizing this was passed 4 years ago. The subcommittee can see no reason for the delay. Second of all, HEW should limit its payment for such devices as pacemakers to "reasonable charges," as provided under the social security statute. The subcommittee found that medicare pays for pacemakers virtually regardless of price.

There is a particularly severe need for additional safeguards specifically directed at ending the inadequate and overpricing of the present hearing aid delivery system. These include Federal Trade Commission regulations that would guarantee that hearing aid purchasers have the right to return hearing aids, end misrepresentation in hearing aid advertising, and would bar high-pressure techniques in the sale of hearing aids. In order to eliminate the widespread sale of unnecessary hearing aids, the subcommittee believes that the Food and Drug Administration should implement regulations which would require that everyone, except those allowed specific exemptions, be examined by a physician, preferably a hearing specialist before purchasing a hearing aid. The subcommittee believes that the regulation that has been proposed by the FDA which would require only persons under

the age of 18 to have the examination is not adequate. Finally, the subcommittee believes that increased HEW assistance to encourage continuing education and training programs for hearing specialists, clinical audiologists, and physicians is needed in order to improve the quality of the hearing care they provide. Similarly, State and local public health departments should be encouraged to provide greater hearing care to the elderly including a network of examination and treatment sites.

Finally, the subcommittee recommends that all people purchasing medical appliances utilize consumer discretion to avoid overpricing and unnecessary services so that they will have eyeglasses, hearing aids, and dentures of the highest possible quality and the lowest possible price. The subcommittee has listed suggestions at the conclusion of the report.

What happens if the elderly go without these necessary devices because of abuses and overpricing, or because of the lack of coverage by public or private insurers?

Nelson Cruikshank, president of the National Council of Senior Citizens, answered this question in his testimony before our subcommittee. He said:

> They pay but not in dollars. They pay in the quality of life. Some cut down on food requirements. Some go without the proper type of shelter. Some cut off their social life. Many just do without (eyeglasses, hearing aids, and dentures) and fall back into more and more seclusion and live a restricted life because these appliances are not available to them as they should be.

II. "THE TRAGEDY OF MULTIPLE DEATH NURSING HOME FIRES"

The second report approved today by the Select Committee on Aging is entitled "The Tragedy of Multiple Death Nursing Home Fires: The Need for a National Commitment to Safety."

In February of this year in Chicago, 32 senior citizens lost their lives and 28 were injured in two nursing homes which had no sprinkler systems

In June in Roanoke, Va., four elderly residents were killed and 28 were injured in a nursing home which did not have a sprinkler system.

Members of the subcommittee, that makes 36 senior citizens in the nursing homes of this country who were killed, and at least 78 who have been injured, in fires in nursing homes without a sprinkler system. The fiscal damage is equally staggering. In 1974 alone, over $5.9 million was lost in damages from 9,300 nursing home fires.

As you know, our subcommittee and the Senate Subcommittee on Long-Term Care held a joint hearing on recent nursing home fires. At our subcommittee's request, the U.S. General Accounting Office examined this issue in substantial depth. GAO concluded that "Federal fire safety requirements do not insure life safety in nursing homes" and recommended "that the Congress enact legislation which will require that all nursing facilities be fully protected with an automatic sprinkler system." The digest of the GAO report is reprinted as appendix III in our report.

Witnesses before the subcommittee reported that there has not been a single instance of multiple loss of life by fire in nursing homes which had sprinklers. The National Fire Protection Association, the General Accounting Office, and other experts indicate that no other fire protection device now required—smoke or heat detectors, smoke doors, alarms, fire-resistive construction, or other methods—have a similarly effective record. The fires and deaths in Chicago occurred in facilities which were—quote—"fire resistive"—unquote. Yet 8,000 of the Nation's 16,500 medicare/medicaid nursing homes are not protected against fire by automatic sprinklers.

During our investigation, we found that nursing homes require special consideration because many residents are frail or disabled, and neither staff nor time is available to evacuate all residents during a fire.

As a result of the Chicago fires, the city of Chicago enacted a city ordinance requiring all Chicago nursing facilities to install automatic sprinkler systems.

The Roanoke County fire coordinator said that if the Roanoke facility had been sprinklered, there would probably have been not more than one fatality in that fire.

In addition to the lack of sprinklers, financing of sprinklers and other fire safety equipment has been extraordinarily difficult for facilities. The current loan insurance program, enacted in 1974, gave joint authority to HEW and HUD. The report indicates how bureaucratic tangling between these two giants, including a "Catch 22" situation of excessive processing time and a prohibition against loan insurance after work has begun, has resulted in the approval of not a single loan anywhere in the country. The program has been totally ineffective.

Concerning the question of cost, the General Accounting Office found the cost of requiring all nursing homes to be fully protected with automatic sprinkler systems at between 10 and 19 cents per patient with the total national cost estimated from $256 to $476 million, or approximately $10 to $20 million per year divided over a 20-year loan repayment period for the 8,000 unsprinkled medicare and medicaid facilities.

The report states the belief that the cost to facilities is low enough to be extremely feasible economically and is badly needed.

The report states that a safe environment is of critical importance in providing adequate health care. As was pointed out that the June 3, 1976, hearings, fire safety is one of the single most important psychological factors leading to the emotional well-being of an elderly person in a nursing home. Nursing home residents in facilities visited by subcommittee staff related "fear of a fire" as one of their greatest concerns. Virtually all residents had seen television or newspaper accounts of the many recent tragic fires.

As Chicago Fire Prevention Chief Francis Murphy said at the committee's August 12 field hearing concerning the Chicago fires:

> Gentlemen, you know, your mother, my mother, your father, can we put a price on their body? There is no money in this world that can put a price on their body.
>
> So I say let us go the full route. And the best thing that I know of is a sprinkler system which is 98 percent. So why fool around and why not go for the best.

As a result of these findings, the report makes the following recommendations:

First. The Congress should immediately enact legislation which will require that all nursing facilities participating in medicare or medicaid be fully protected with an automatic sprinkler system.

Second. The Congress should enact legislation providing a revolving fund by which the Department of Health, Education, and Welfare may make direct loans to nursing facilities for the purchase, construction, and installation of automatic sprinkler systems. Such loans should provide for interest at a rate not to exceed 6 percent, thereby matching the amount the Government pays for money through savings bonds but at the same time providing a low enough rate to encourage use of the fund to install sprinklers. In addition, by this loan procedure, there will be no direct cost to the Federal Government.

Third. The Congress should enact legislation requiring the Department of Health, Education, and Welfare to establish minimum requirements which must be met by any nursing facility before a waiver of the automatic sprinkler requirement is issued. These minimum requirements should reasonably assure that a waiver from the automatic sprinkler requirement would not adversely affect the health and safety of the patients; and that such waiver would only be issued when enforcement of the sprinkler requirement would result in an unreasonable hardship on a facility.

Fourth. All States should take action to require complete automatic sprinkler protection in all group homes caring for the elderly, whether certified for medicare or medicaid. This requirement should extend to all forms of institutional elderly housing regardless of their institutional classification, whether skilled nursing facilities, intermediate care facilities, nursing homes, homes for the aged, or custodial facilities.

A TRIBUTE TO CHARLES GORRY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. O'NEILL) is recognized for 5 minutes.

Mr. O'NEILL. Mr. Speaker, Charles Gorry, Associated Press photographer who covered wars and upheavals across Asia for the Associated Press and ended his career as one of the best known and best liked newspapermen on Capitol Hill, died last night after a heart attack.

Gorry was on the fighting fronts in Okinawa and Iowa Jima during World War II, met Mao Tse-tung in the caves of China and covered the American landings in Japan at the end of the war.

He covered guerrilla uprisings in Malaya, the beginning of the Korean war and insurgencies in Malaya and Morocco.

For the last decade, at his own request, he was assigned to the House. His high professional standards of ethics, his good nature and friendliness made him welcome in innumerable offices, from those of the party leaders to the newest Members.

His photographs won numerous awards. In August the Washington Press Club put on exhibit a collection of his most famous pictures. It is still on display in the club room in the Sheraton-Carleton Hotel.

The opening of the exhibit was the occasion for Charlie's last public appearance. It drew an overflow crowd and congratulatory messages from House leaders and President Ford.

Charlie is survived by his wife Pat and several children and grandchildren.

Funeral arrangements have not yet been made.

MEXICAN INDEPENDENCE DAY

(Mr. FASCELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. FASCELL. Mr. Speaker, today marks the anniversary of the independence of our great neighbor and sister republic, Mexico. In the years since the Mexican people severed their ties with Spain they have achieved a new and unique society combining the most noble elements of their Indian and Spanish heritages. It is a strong and dynamic society whose accomplishments in science, the arts, agriculture and industry are proof of the creativity, energy, and determination of the Mexican people.

From a long history of frequently hostile relations between the United States and Mexico our two nations in recent years have moved into an era characterized by a spirit of mutual cooperation. In my judgment the continuation of close and friendly ties must have high priority in both governments if both our peoples are to continue to prosper and to work out their separate national destinies in an age of interdependence and in such close proximity to one another.

Mr. Speaker, any American who has had the privilege which I have enjoyed of traveling in Mexico can attest to the uniqueness and strength of Mexico's national self awareness. One can see the effects of Mexican nationalism in virtually every aspect of her society. It has been Mexico's successful transformation of her own heritage and values into a truly independent and flourishing society that have won her wide respect among the nations of the world and especially among the other developing nations. This uniqueness has, however, had some unfortunate side effects in certain quarters in the United States who seemingly have misunderstood the nature and direction of Mexico's revolution.

Mr. Speaker, I have not hesitated to criticize Mexico when I thought it justified, as with respect to the treatment of U.S. citizens imprisoned in Mexico. I would, however, like to take this opportunity, on Mexican Independence Day, to state that recent charges of rampant communism in Mexico are unfounded and based, in my judgment, on a lack of comprehension of Mexico's history and the nature of her uniquely Mexican revolution. In this connection I would like to call to the attention of the House an excerpt from testimony before the International Political and Military Affairs Subcommittee of the International Relations Committee by Deputy Assistant Secretary of State William H. Luers on June 15, 1976. In his statement Mr. Luers commented on charges of Communist influence in Mexico:

EXCERPT FROM A STATEMENT BY WILLIAM H. LUERS DEPUTY ASSISTANT SECRETARY OF STATE FOR INTER-AMERICAN AFFAIRS BEFORE THE SUBCOMMITTEE ON INTERNATIONAL POLITICAL AND MILITARY AFFAIRS OF THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

With regard to Mexico, we believe that recent allegations that the Mexican Government is taking Mexico down the Chilean and Cuban road to socialism are unfounded. Those who make these allegations cite what they characterize as government supported land seizures, policies directed against foreign investment and the influence of Chilean exiles on government policies.

In discussing Mexico, it must be borne in mind that Mexico is a proudly independent country. The tenacity with which it holds to its independence is heightened by geography—it is our neighbor and highly sensitive to us and signs of any designs to undermine its independence. Decisions Mexico takes to respond to what it perceives as its internal problems are purely Mexican decisions. It does not seek or accept influence from foreign sources or proponents of alien ideologies. Its political system, which has evolved over the 66 years since the Mexican Revolution, is eclectic and unique.

The allegation that Chilean exiles are influential in the development of Mexican policy and actions can be looked at in context. Mexico has a long record of liberalism in granting political asylum. At the end of the Spanish Civil War, Mexico accepted many Republican exiles. It did the same after 1960 in accepting anti-Castro Cuban exiles, and following the overthrow of the Allende Government in Chile it accepted more than 100 prominent Chileans, plus a large number of their dependents, and assisted them in finding gainful employment.

Some of these exiles were given government positions. But there is no evidence that these or any other foreign advisors have significantly influenced the policies or programs of this large and resourceful nation. Mexico has a highly organized governing political party and a vast reservoir of educated technicians who are fully competent to run the nation.

With regard to internal far leftist organizations in Mexico, Communist and radical Marxist parties are legal but are small and weak. The government party—the PRI—has been successful in encompassing a wide spectrum of political thought and activity. Because Mexico's own revolutionary tradition is expressed by the PRI, it is difficult for the Marxist parties to build a following.

The Mexican Communist Party (PCM) has only an estimated 5,000 members, not enough under Mexican law to qualify for registration. Since 1968 when the Russians invaded Czechoslovakia, the PCM has followed a line relatively independent of Moscow. There is also evidence of strain within the party over the issue of the degree of support to be given to student activism.

The Popular Socialist Party (PSS) is a loosely organized party which claims 75,000 members. It has carefully refrained from advocating violence or opposing the goals of the Mexican Revolution. It has endorsed the PRI presidential candidate since 1958, while running some of its own congressional and gubernatorial candidates.

The PCM and the PPS have disavowed terrorism. The principal terrorist organizations in Mexico are the 23rd of September Communist League (which has been disavowed by the PCM), the Poor Peoples' Army, and the Peoples Armed Revolutionary Army. Strong Mexican government anti-terrorist measures resulted in an abatement of terrorism during 1975.

The 23rd of September Communist League is apparently the only group still active. They have claimed credit for several bombings, the murder of a police patrolman, and the recent kidnapping of the Belgian Ambassador's daughter. The 23rd of September League is an irritant to the GOM but not a threat to political stability. We know of no current Cuban connection to these terrorist groups.

Allegations that recent measures and actions by the Government of Mexico are "communist inspired," and against private domestic and foreign investment, do not hold up under scrutiny. There has, of course, been some controversy within Mexico over some of the government's recent proposals, a phenomenon that is inevitable in an open society in which various sectors do not always have identical interests.

With regard to alleged attacks on private property, the Government of Mexico has made it clear that it does not accept or tolerate violence as a means of furthering land reform any more than it will tolerate private land holdings in excess of the limits imposed by its Constitution. It has also acknowledged that the so-called "land invasions" are in part a result of the frustration of small farmers over their lack of adequate land. In a visit to Sonora on April 21, President Echeverria forcefully stated that the Government of Mexico would not tolerate land invasions and reaffirmed his government's commitment to the rule of law in regard to both squatters and property owners. The same theme has been sounded by Jose Lopez Portillo, the Presidential candidate of the ruling Institutional Revolutionary Party (PRI). Thus, while there have been land invasions, on occasion stimulated by leftist agitators, there is no official endorsement of such invasions.

Those who allege a drift towards Communism in Mexico also cite recent Mexican legislation—a Law on Human Settlements, which was opposed by some sectors in Mexico as an unconstitutional attack on private property. This law essentially gives authority to the government to regulate exploding urban growth through land use planning measures accepted in some industrialized countries. The Government of Mexico, in heeding the criticism expressed by some groups in Mexico, proposed some modifications of the original proposal by expressly stating that the law would not be used to expropriate private residences; by creating mechanisms to afford relief to property owners who might be affected; by excluding retroactivity; and by reaffirming its commitment to the concept of private property.

With regard to the general question of foreign investment, the Government of Mexico has made it clear that it wants and needs foreign investment that will be of benefit to Mexico's economy and development, but does not want investment that does not meet its needs. Foreign investors, including U.S. investors, continue to find investment attractive in Mexico, under the ground rules established by the Mexican Government. Mexico has a healthy and mixed economy with both private and public enterprise. The

private sector within Mexico accounts for the largest part of total industrial production apart from petroleum, and the government continues to encourage its mixed economy. The long-range trend in Mexico, as in many countries of Western Europe, may well be toward greater state involvement in the dominant sectors of the economy. But we see little chance of dramatic shifts and anticipate that the private sector will continue to play a key role.

With regard to allegations that an "amnesty" of persons jailed as a result of student riots in 1968 is evidence of a trend towards Communism, it should be noted that most of the several hundred persons apprehended at that time have long since been released from jail on bail. The amnesty legislation was welcomed by both the left and right in Mexico as a measure which finally put the tragic events of 1968 to rest.

In discussing Mexico, it should be mentioned that some people allege that the United States is attempting to "destabilize" Mexico. This allegation is, of course, totally false. Mexico's interests, as well as ours, are best supported by a stable and economically prosperous Mexico, and we are supportive and understanding of efforts by the Government of Mexico to come to grips with the problems it perceives the need to solve to assure its economic and social advancement.

As a final note, relations between the United States and Mexico are excellent. We have engaged in effective consultation and cooperation on numerous questions of mutual interest. And, when bilateral problems arise, as they inevitably must when two sovereign countries share 2,000 miles of border, we have been able to discuss these problems in a frank and friendly manner, and together seek mutually acceptable solutions. We do not foresee any change in this mutually advantageous relationship.

H.R. 15579, MILITARY TRANSPORT FOR DONATED GOODS

(Mrs. MINK asked and was given permission to extend her remarks at this point in the RECORD and to include extraneous matter.)

Mrs. MINK. Mr. Speaker, I have introduced legislation which will permit State Governors to request military transport of donated goods, on a space-available basis, to a foreign area following a natural disaster.

My bill will not cost the American public anything. I propose the use of military planes on a space-available basis. Americans have traditionally been generous and compassionate in responding to natural disasters abroad. But much of our charity in recent years has literally never gotten off the ground. Through religious and other charitable groups we have collected food, clothing, and supplies to help victims cope with earthquakes, floods, and famines.

In many instances, however, the high cost of transporting these goods has stymied our charitable impulse and collected goods never leave this country. This is a tragic waste of our potential for timely humanitarian assistance. The problem clearly lies with transporting donated goods; there has never been a dearth of needed goods.

Over recent months, we have witnessed several massive natural disasters, including a terrible earthquake and tidal wave in the Philippines. In my home State of Hawaii, citizens have readily responded to the needs of the hungry and homeless victims of the Philippines earthquake but there has been no inexpensive means of transporting these donated goods to the Philippines. The commercial cost of shipping the materials by air is prohibitively expensive.

In order to furnish timely assistance and inexpensive transport, I urge that military planes be allowed to be used on a space available basis. This would be at no cost to the taxpayer and would provide a fast, effective means of transport for the goods.

Theoretically this could be done under existing law by the President. In reality, however, this power is rarely exercised. In a case such as the Philippines' recent earthquake, the motives of the Federal Government would in fact be suspect as the Government is currently engaged in very sensitive negotiations with the Philippine Government over the future of its military bases there.

In the interests of timely response to a natural disaster and to assure that the thrust of the effort is humanitarian rather than political, I propose that State Governors be given the authority to request the transport of donated goods on military planes on a space available basis. Where a local community is eager to provide assistance, such as the great compassion evidenced in Hawaii over the Philippines' needs, my legislation will give the Governor the flexibility to respond to the situation quickly and effectively.

In view of the seeming increase in natural disasters worldwide and the American people's evident willingness to help, I urge my colleagues to give their support to this legislation.

DOD SCHOOLING FOR CERTAIN AMERICAN CHILDREN OVERSEAS

(Mrs. MINK asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mrs. MINK. Mr Speaker, I am introducing legislation today which will provide tuition-free schooling for certain American children overseas who have tragically been denied an American education.

Over the past several years numerous cases have been brought to my attention of American children of Asian mothers and American DOD-employed fathers who remain abroad but are, under current law, unable to enroll in DOD schools.

These children are American citizens. Many of them were already enrolled in DOD schools when their American fathers died or divorced or deserted their Asian mothers. The absence of their fathers left these children ineligible for tuition-free education in DOD schools; few if any of their Asian mothers could afford the tuition, which runs around $1,500 annually.

Many of the cases I have received have been referred by social workers at DOD schools. They are impressed by the willingness of these mothers to make enormous sacrifices for their children's American education. But many are subsisting on social security payments or meager incomes and can not possibly meet the burden of educating one or more children on a tuition basis.

The situation is a particularly tragic one for the children. Social workers report that these children, many of whom speak only English, are very reluctant to enter local schools where they will encounter great language difficulties and often face taunts and discrimination in a society not as racially mixed as our own.

My efforts to help these children through administrative means have been consistently thwarted by current laws which forbid the granting of tuition waivers, even in cases as desperate as these certainly are. Current law simply is too restrictive to deal with the urgent human needs of these children.

For this reason I am prosposing legislation which will grant tuition waivers where the child is an American citizen not residing in the United States and when the parent with custody has been determined to have insufficient means to afford tuition. My bill would further specify that the child must have had a parent who is or was employed by DOD and who is now deceased, separated, or divorced from the parent with custody to be eligible for a tuition waiver.

I believe this tuition waiver is vitally important if these children are to have a fair chance of obtaining an American education. From the background information I have received their Asian mothers are ill-equipped to come to America themselves. Often they do not have a good command of English, have no marketable skill and fear the very real isolation of being in the United States without their American spouse or family.

But they are anxious to see their children receive an American education and have demonstrated their willingness to sacrifice a great deal to provide that education. I believe the American Government can and should provide these children with an education comparable to that which would have been given them freely if circumstances had permitted them to be raised in the United States.

The alternatives these children face are often tragic. I have received reports of children who were turned out of DOD schools and sought work rather than enter local schools. The children's mixed blood often places them on the fringes of society there; with minimal education there are few respected professions open to them. In one instance a 14-year-old Asian-American girl has entered professional wrestling after being dismissed from a DOD school for her mother's inability to pay the school's tuition.

There is clearly a small but distinct group of American children abroad who need our help. I urge you to give your support to this measure providing tuition-free education to these children.

A BILL TO AUTHORIZE MEDICARE PAYMENTS TO STATES AND LOCALITIES SERVING ELIGIBLE INDIVIDUALS

(Mrs. MINK asked and was given permission to extend her remarks at this

point in the RECORD and to include extraneous matter.)

Mrs. MINK. Mr. Speaker, I have today introduced a bill, H.R. 15540, which authorizes payment to States and localities under the medicare program for services furnished otherwise eligible individuals in public institutions.

The medicare program currently reimburses patients and physicians; it does not reimburse individuals if they themselves are under no obligation to pay for medical services. Under current law, there is no reimbursement where medical services are provided to eligible persons by a governmental entity.

For example at the Kalaupapa leprosy settlement in the State of Hawaii, the State is the provider of medical services. The cost of medical care for these elderly patients at Kalaupapa is very high. Most would be eligible for medicare coverage if they were not living at Kalaupapa. Notably these patients are no longer required to remain at Kalaupapa but do so by choice. That being the case, the State cannot recoup the costs of medical care it provides the patients over 65 years of age.

My bill would allow medicare reimbursements to be made to State and local governments which furnish such medical care to otherwise eligible individuals where the care is provided in public institutions such as Kalaupapa.

WHY DOES NEW YORK CITY DRAG ITS HEELS IN INSTITUTING PREPAID HEALTH CARE FOR MEDICAID PATIENTS?

(Mr. KOCH asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. KOCH. Mr. Speaker, the failures, the maladministration, and the abuses of the medicaid program by patients and providers alike have been documented and extensively reported on in the press in recent weeks. Estimates of the Federal, State, and local tax money squandered as a result of mismanagement and abuses range from $900,000 to more than $1 billion nationwide each year. This is not a new problem. Congress has been aware of the deficiencies of the medicaid program and has been searching for solutions for several years.

New York City accounts for a very substantial portion of all medicaid expenditures each year. Unlike most municipalities, the city, itself, contributes approximately 25 percent of each medicaid dollar expended. It is currently spending nearly one-half billion dollars annually of its own tax revenues to pay for medical and hospital care provided medicaid enrollees. Clearly the city has a stake in the program and, in light of these circumstances, it is reasonable to suppose that the city would be in the forefront of assuring its efficient management and in developing solutions to its major problems. Regrettably, this has not been the case; in fact, since the inception of the medicaid program 10 years ago, New York City has lost $1 billion.

Over 18 months ago, in January 1975, I introduced a bill, H.R. 1325 which would amend the title XIX of the Social Security Act to waive the existing requirement that medicaid enrollees have complete freedom of choice to select physicians and treatment facilities in instances in which municipalities elected to provide medical and hospital care to medicaid enrollees in their own health facilities. New York City operates the largest municipal hospital system in the United States with 17 hospitals virtually all with ambulatory as well as inpatient acute care facilities. Professional care in these hospitals is provided, under affiliation agreements, by physicians from some of the leading teaching hospitals and medical schools in the Nation. The system suffers occupancy problems, but the management has forcefully stated that it is the particular role of the municipal hospitals to treat those who have nowhere else to turn. Nonetheless, it is apparently not up to the job. Two letters which follow, one to the editor of the New York Times which appeared on Sunday, September 12, 176, and the second by the Regional Commissioner of the Department of Health, Education, and Welfare's Social Rehabilitation Service, explain why.

The letter to the editor, written by a friend and a constituent, Mr. Richard W. Nathan who is a consultant and expert in the field of health care in New York City points out that for a variety of reasons medicaid patients prefer to go to shared health facilities—usually known as medicaid mills—rather than to municipal hospitals due to the fact that the care provided in the medicaid mills is cheaper, and that it is not necessarily any worse than that provided in the municipal hospitals and elsewhere. The letter from the Regional Commissioner from the Department of Health, Education, and Welfare largely substaintiates Mr. Nathan's points with respect to the cost of the city's municipal hospitals relative to the medicaid mills. What a poor commentary on the management and efficiency of the New York City Health and Hospitals Corp. I never thought the day would come when I would think that medicaid mills might be better than any other type of health care facility.

Aware of the high cost of providing quality health care in the City's municipal hospitals, New York City Mayor Abraham Beame reported at a conference on health care costs last January that the city was working on a prepayment acpitation plan for 100,000 medicaid enrollees that could potentially save the city "million of dollars" each year through preventive care and incentives to control cost. Under such a program, medicaid recipients would be enrolled in a prepaid health maintenance program—HMO—plan. Estimates made by Mr. Jack Bigel of program planners for the health insurance plan of New York which was negotiating with the city on the prepayment plan, indicate that medicaid costs would be cut in half, from $529.66 a year for each welfare family enrolled to $265.72. The annual savings for the initial 100,000 medicaid enrollees would total $26,394,000 including an approximate $7 million savings for the city and the State with the remainder going back into the Federal Treasury.

The National Medical Capital Foundation recently concluded a study which evaluated the feasibility of enrolling medicaid patients in a prepayment—HMO—program. The results indicated significant and consistent decreases in all four categories of utilization—physician encounters, drug utilization, hospital admissions, and hospital days. Overall ambulatory physician encounter rates decreased 15 percent, drug utilization was down 18 percent, hospital admissions decreased 30 percent, an hospital days declined 32 percent after enrollment in the prepaid group—HMO—program. Congress has appropriated funds to support the development of health maintenance organization—HMO's which are based on the prepayment concept. Prepayment plans have proven highly successful, the Kaiser-Permanente plan in California, and the health insurance plan for municipal employees in New York City have succeeded in delivering quality health care at reasonable cost. With proven accomplishments in other parts of the country an organization in New York City experienced in prepaid care and the Federal development funds which are available, it would not appear to be speculative or difficult to assume that New York City could institute this program for medicaid enrollees. Nonetheless, more than 9 months after the mayor discussed this proposal, the medicaid bills are going up and up, and the program will not be started up in the near future.

Mr. Speaker, it is exceedingly distressing to me that the New York City government, with the substantial resources and experience at its command, can neither sufficietly reform its own system of health care to make it competitive with nonpublic sources of health care for medicaid patients nor devise an alternative system which can provide quality health care at a reasonable cost to its citizens.

In conclusion, Mr. Speaker, let me say that it is incredible that New York City is not able to provide high quality management appears to be the order of care at reasonable cost and that misthe day in the operation of the Health and Hospitals Corp. Is it possible that Puerto Rico, the Virgin Islands and Guam have a public health hospital system which is properly managed and that New York City is simply incompetent to do an equally good job without massive fraud and a waste of taxpayers' moneys? And why is it that when the mayor says in January that a new program will be entered into with the health insurance plan, that 10 months later the program is still on paper, and the mismanagement and corruption in our delivery of health care continues?

I am appending the correspondence that I have had on this subject:

U.S. CONGRESS,
Washington, D.C., June 23, 1976.

Mr. WILLIAM TOBY, JR.,
Deputy Regional Commissioner, Regional Office II, Social and Rehabilitation Service, Federal Plaza, New York, N.Y.

DEAR MR. TOBY: I understand that the Virgin Islands, which is under your regional jurisdiction, is implementing it's medicaid program somewhat differently than the rest

of the United States in that Medicaid clients are forced to patronize a few select "medicaid facilities" and that their free choice in the selection of treatment facilities has been waived.

I would like to learn more about the operation of this system, and how it is working. I would also like to solicit your personal opinion about that system, and specifically, how you think it woud function in a place such as New York City—also in your jurisdiction.

I would appreciate hearing from you at your earliest convenience.

Sincerely,

EDWARD I. KOCH.

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
New York, N.Y., July 2, 1976.

Hon. EDWARD I. KOCH,
House of Representatives,
Washington, D.C.

DEAR MR. KOCH: This is in reply to your letter of June 23, 1976, relating to the Medicaid program in the Virgin Islands and the freedom of choice issue.

Since Public Law 90–248 was enacted in 1967, the Title XIX requirements in Puerto Rico, Virgin Islands and Guam have been somewhat different than for the States.

Public Law 90–248, Section 227, amended the Social Security Act and added paragraph (23) to Section 1902(a) as follows "(A State Plan for Medical Assistance must:) provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such service." This amendment was applicable with respect to calendar quarters beginning after June 30, 1964 except in the case of Puerto Rico, the Virgin Islands, and Guam where it applied only with respect to quarters beginning after June 30, 1972.

Public Law 92–603, Section 271(a) amended Section 227(b) of the Social Security Amendments of 1967 (PL 90–248) by striking out "June 30, 1972" as applied to Puerto Rico, the Virgin Islands and Guam and inserted in lieu thereof, "June 30, 1975."

Public Law 94–48, enacted on July 1, 1975, permanently exempts Puerto Rico, Virgin Islands and Guam from the Medicaid provision that requires freedom of choice of provider of service.

The elimination of the legislative mandate for freedom of choice in the Virgin Islands was in recognition of the unique features of the Medicaid program in these jurisdictions. Section 1108 of the Social Security Act limits Federal financial participation in Virgin Islands to one million dollars a year whereas in the States there is open ended Federal financial participation in the Title XIX program.

Also, in the Virgin Islands, health care delivery for the indigent and medically indigent, historically, has been through a public health program. There are no voluntary or proprietary hospitals on the Islands and a large majority of the medical practitioners are government employed.

As you know, free choice of providers of health care is a legal right of every Title XIX recipient, except in Puerto Rico, the Virgin Islands and Guam, the purpose of which is to allow Medicaid recipients the same opportunities to choose among available providers of covered health care and services as are generally offered to the general population. With the exemption of free choice in the above-named jurisdictions, a State Plan for Title XIX must provide that any individual eligible for Medicaid under the plan should obtain the services available under the plan from any institution, agency, pharmacy, or practitioner, including an organization which provides such services or arranges for their availability on a prepayment basis.

You may be interested in a pilot project, currently being prepared by the New York City and State Medicaid officials. In keeping with the judge's opinion in *Bay Ridge Diagnostic Lab., Inc. et al* v. *James R. Dumpson, Commissioner of Social Services, New York City*, the pilot project is to determine through a Section 1115 Demonstration Project of the Social Security Act whether (1) "a designated carrier system" for laboratory services rendered to Medicaid eligibles in the borough of Queens is cost effective and (2) existing statutes should be amended to exclude clinical laboratories from the freedom of choice provisions.

In view of the uniqueness of the health care delivery system in the Virgin Islands and its major and substantial differences from the New York City and all other Medicaid systems in the Continental United States, it would be exceedingly difficult and counterproductive to waive the freedom of choice provision for all services on a New York City-wide basis.

Sincerely,

DENNIS CAUGHLIN,
Acting Regional Commissioner.

U.S. CONGRESS,
Washington, D.C., July 14, 1976.

WILLIAM TOBY,
Acting Regional Commissioner, Social Rehabilitation, Health, Education, and Welfare, Federal Plaza, New York, N.Y.

DEAR COMMISSIONER: It was very good of you to brief me on the medicaid proposal that I had offered which would allow the City to substitute its clinics for the current free choice. I recognize the validity of your analysis, and opposition to the proposal. But, wouldn't those objections be overcome if instead of using City hospitals, medicaid coverage were provided by HIP and not private doctors?

I understand that there is something already being done with HIP, and I'd appreciate knowing what the experience is, and the extent of the coverage, and any other details you can provide on that matter.

Sincerely,

EDWARD I. KOCH.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
New York, N.Y., July 27, 1976.

Hon. EDWARD I. KOCH,
Member, U.S. House of Representatives, Federal Plaza, New York, N.Y.

DEAR MR. KOCH: This is in reply to your letter of July 14 which was a follow-up to our recent discussion on the validity of waiving the requirement of free choice of providers for Medicaid eligibles in New York City. Your letter asks whether our objection of your initial proposal might be overcome if "Medicaid coverage were provided by the Health Insurance Plan (HIP) and not private doctors."

The rapidly rising costs of health care not only present a growing burden to Federal and State governments which pay a large portion of such costs, but also may constrain the scope and quality of health services received by those covered by such programs as Medicaid. It is, therefore, important that we seek means of increasing both the efficiency and effectiveness of the health care delivery system and its financing. We believe that the concept of health maintenance organizations (HMOs) is one of the most promising approaches. The Department of HEW considers that HMOs are an able alternative for Medicaid recipients, with potential for cost effectiveness and quality.

A recent study of an HMO in Washington, D.C., supported by the Social and Rehabilitation Service, showed significant cost savings and better utilization of preventive care, both characteristic of HMOs. Significant and consistent decreases in all four categories of utilization (physician encounters, drug prescriptions, hospital admissions and hospital days) were reported. Overall ambulatory physician encounter rates decreased 15%, drug utilization was down 18%, hospital admissions decreased 30%, and hospital days declined 32% after enrollment in the prepaid group (HMO) practice.

For the same benefit package, annual prepaid costs for Medicaid enrollees reflected a sizable 37% savings when compared to Medicaid fee-for-service costs over the same period. The chief reason for the reduced costs of the prepaid plan as concluded in the report seems to have been the lower hospital utilization rate of the study group enrolled in the HMO which was 40% lower than the Medicaid fee-for-service universe.

The New York City Department of Social Services has had an agreement with HIP to provide ambulatory care to Medicaid recipients since 1967. Since that time, New York City has been concerned with the quality of care provided through this agreement, and HIP has been concerned about the declining Medicaid enrollement levels. The City and State Departments of Social Services have supported the renegotiaion of this contract in order to promote a more positive on-going administrative relationship between the City and HIP, expand the range of benefits available to Medicaid recipients under the contract, improve quality assurance mechanisms and acountability, and incorporate recent State and Federal policies and requirements pertaining to prepaid (HMO) contracts with Medicaid.

At the present time, the City and HIP have resolved all of the contract issues and final contract language is being drafted. A capitation rate for the new contract is being developed and will be submitted to the New York State Department of Health for review and approval.

While it is too early for an evaluation of the specific HIP contract, to which you refer, we point out that, among your concerns, all HMO contracts must specify the voluntary covered population and procedures for enrollment/re-enrollment. The covered population should be defined both in terms of eligibility characteristics and in terms of population characteristics necessary to compute an actuarially based rate. The regulation 45 CFR 250.30(b)(4) Reasonable Charges states: "The upper limit for payment for services provided on a prepaid capitation basis shall be established by ascertaining what other third parties are paying for comparable services under comparable circumstances. The cost for providing a given scope of services to a given number of individuals, under a capitation arrangement shall not exceed the cost of providing the same services while paying for them under the requirements imposed for specific provider services."

If we can be of further assistance, feel free to contact this office.

Sincerely,

DENNIS J. CAUGHLIN,
WILLIAM TOBY,
Acting Regional Commissioner.

[From the New York Times, Sept. 13, 1976]

MEDICAID 'MILL' DEFENSE

To the Editor:

Amid the hue and cry concerning the evils of Medicaid mills, four points ought not be overlooked:

Medicaid enrollees go to Medicaid mills of their own free will. In many instances, they prefer to go to mills rather than hospital outpatient clinics or emergency rooms. A majority of Medicaid patients interviewed in connection with a study I completed earlier this year for H.E.W. said they prefer to go to Medicaid mills because the mills were closer

to their homes, the doctors and staff of the mills treated them with greater respect and dignity and in mills they seldom had to wait several hours for treatment.

Medicaid mills are far cheaper than most alternative forms of ambulatory care. Average first visit costs at Medicaid mills are reimbursed by Medicaid at less than $25 per visit, compared with $40 per visit at the city's municipal hopsitals and over $60 per visit at some major teaching hospitals.

Ambulatory care provided by physicians in private practice or by hospitals is not necessarily any better or more honest. Medicaid mills are not alone in making wrong diagnoses or conducting unnecessary or inappropriate tests.

If Medicaid mills are driven out of business, many in doctor-short poor areas of the city will have nowhere else to turn for care. Only about 25 percent of physicians practicing in New York, thanks to Medicaid administrative red tape, will now accept Medicaid patients. The answer is not to drive the mills out of business, but through rigorous, effective regulation to see that they do the job that needs to be done and that they are best equipped to do.

RICHARD W. NATHAN.

New York, Sept. 5, 1976.

MEXICO CELEBRATES 166TH YEAR OF INDEPENDENCE

(Mr. DE LA GARZA asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. DE LA GARZA. Mr. Speaker, today the people of our sister Republic of Mexico celebrate the 166th year of their independence. I respectfully ask you and my colleagues in the House of Representatives to join me in extending to them our best wishes on such an historic date in their lives.

I think it might be well to mention some of the events of our own independence, Mr. Speaker, for there are so many similarities. Further, a great part of what is now the United States of America was then a part of New Spain, hence independence for them began with the "Cry of Dolores" at that little hamlet in the state of Guanajuato.

In 1776 when Washington, Jefferson, Madison, Franklin and the many other patriots who joined to give us "government by the consent of the governed" and all the other blessings of liberty, they also lit in the hearts of many of their contemporaries throughout our hemisphere, the same yearning for freedom. And so it was but a few years later that cries for independence were being echoed throughout the New World. We then heard of Bolivar, Marte, and in what is now the Republic of Mexico, a priest by the name of Don Miguel Hidalgo y Costilla who led the move for independence.

Something which I think is of interest is the fact that independence at Philadelphia was announced by the ringing of the Liberty Bell. So it was in Mexico with the ringing of a church bell at Dolores Hidalgo.

We now have cordial relations with the government of Mexico. Our links of friendship, with mutual respect, and frank dialog are daily in existence between our governments. More important is the fact that there exists great love, admiration and respect between our two peoples, many of us being brothers from the days before independence of both our countries.

Therefore, Mr. Speaker, I personally and in behalf of those who would join me, extend our best wishes and sincere greetings to the government and people of Mexico, with the hope that their future will continue to be one of good health and prosperity.

Finally, Mr. Speaker, I would like to mention that Mexico has honored us with sending always the most able and distinguished Mexicans as ambassadors to our country. The present Ambassador, His Excellency Don Jose Juan Olloqui, has been no exception, and we attribute a great part in keeping our present relations at such a high level, to his very able representation of the best interests of his country with the proper respect and understanding of our institutions.

We take this opportunity, therefore, to extend to Doctor Olloqui our best wishes and respectfully request that he transmit to the proper authorities in Mexico this our humble but very sincere wish on such an important day.

ADMINISTRATION EVASION OF EXPORT CONTROL ACT MUST BE PUT TO AN END

(Mr. MELCHER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MELCHER. Mr. Speaker, in the past 2 years, the executive branch has imposed various so-called voluntary restraints on U.S. grain exports, in disregard of the Export Administration Act. These restraints have included a "prior approval" export system instituted by the Department of Agriculture in the fall of 1974, an embargo on grain sales to the Soviet Union in the summer of 1975, and the conclusion of an agreement with the U.S.S.R. in October of 1975 regulating Soviet purchases of U.S. grain over the next 5 years.

We have recently heard public assurances from the Ford administration that these Executive restraints are a thing from the past. We are told that a grain embargo will not happen again. Well, it should not have happened the first time. Not only was the 1975 embargo ill-conceived—hurting the American producer and the U.S. balance of payments—but it was also contrary to the law that we have under discussion.

The Constitution vests in the Congress, not the President, the power to regulate commerce, which includes the power to determine whether, and to what extent, exports shall be restricted. Under that power, Congress enacted the Export Administration Act, which delegates to the President certain limited powers to control exports. Section 4(f) of the act generally prohibits export controls of any agricultural commodity if the supply of that commodity is in excess of the requirements of the domestic economy. An exception to this prohibition exists only where overriding considerations of national security or fulfillment of U.S. international responsibilities are concerned and the President makes a finding to that effect.

In imposing the 1975 embargo and other restraints on grain sales and exports, the executive branch ignored the Export Administration Act. Not only were these export restraints unauthorized, but they also were directly inconsistent with section 4(f) of the act.

There can be little question that the export sales moratorium instituted by the administration last year was imposed purely for domestic political purposes. More than adequate supplies of grain existed to satisfy U.S. requirements and to make additional sales to the Soviet Union and other foreign buyers. Since the conditions for imposing controls under the act were not met, the administration circumvented the law by inducing exporters to withhold sales to the Soviet Union for a period of approximately 3 months.

The executive branch has argued that the Export Administration Act is irrelevant when so-called voluntary restraints are applied. I cannot agree, and I do not believe this House can agree. The President's power to impose controls on agricultural exports under the act was carefully circumscribed so that agricultural exports would not be restricted or limited except when the stringent standards of the act were met. By imposing export restraints without legislative authorization, the President has acted outside his authority, and has invaded the constitutional prerogative of the Congress to regulate foreign commerce. If such action by the Executive is condoned, then the carefully considered standards adopted by Congress in the act will have little meaning, as the 1975 embargo demonstrates.

Moreover, to call these restraints voluntary is somewhat misleading. One can only speculate why the grain exporters agreed not to conduct their normal business of making sales. Maybe their agreement was voluntary. However, the embargo was not voluntary for those Americans most directly affected—the Nation's grain producers. They were not consulted, nor were they given a voice in the embargo decision. Yet they are ones who suffer.

The action to withhold export sales came during a critical marketing period for our farmers, and brought about drastic declines in farm prices. Moreover, it has been reliably estimated that the United States lost some 5 to 7 million tons of grain sales while the Ford administration's embargo was in place. Where did these sales go? A member of the Australian Wheat Council said that the U.S. moratorium on wheat sales to the U.S.S.R. doubled Australian wheat sales to Russia. And a representative of the Canadian Wheat Growers Association indicated that Canada also benefited, when he said:

> We ought to give your President Ford a placque for helping the Australian farmer sell more wheat.

That statement was made in Billings, Mont., on January 17, at a meeting of the National Wheat Growers Association, which I attended. I insert in the RECORD a news story from the Billings Gazette of

January 19, on the speech at the end of these remarks.

Our producers lost the income from these diverted sales, and our Nation lost the significant balance-of-payments earnings that they would have brought. And this is not all. The administration's embargo also resulted in a heavy and needless increase in our carryover stock, which has continued to depress prices. So, even today, producers are still bearing the burden of the Executive's unjustified and illegal intervention into the export grain market.

This fiasco would not have occurred had the administration simply followed the law, since the Export Administration Act would not have permitted export controls to be imposed on U.S. grain exports under the circumstances surrounding the 1975 embargo. I also think the administration should have been sensitive to the antitrust implications of the moratorium, where a handful of companies, acting in collusion with executive branch officials, took action that financially injured our grain producers.

Immediately upon announcement of the 1975 moratorium, I protested to the President that the embargo was in violation of the Export Administration Act. Now that we are extending the President's authority to control exports under the act, it is appropriate to again remind the President that we expect him to follow the law. While I would think that this was already apparent from the language of the act and the Constitution itself, the point bears repeating, in light of the recent executive branch export restraints on grain.

The most absurd alibi that I have heard for the grain embargoes was one given by Secretary Butz to a farm audience that if the administration had not done it the Congress would have.

There was no hint of any such congressional action. If Congress had done it, it would have at least been legal, but I heard absolutely no suggestion here that we violate our own export control policy.

This is another of those figments of a partisan imagination characteristic of the Secretary of Agriculture.

Mr. Speaker, in addition to the clipping from the Billings Gazette on Australian appreciation of the wheat market we turned over to them—a speech also reported in the Farm Journal—I include in the RECORD a letter I wrote Chairman MORGAN of the International Relations Committee on the problem of requiring administration adherence to the Export Act and a chronology of administration interferences in foreign agricultural trade.

The articles follow:

[From the Billings Gazette, Jan. 19, 1976]

U.S. WHEAT MORATORIUM AN AUSTRALIAN WINDFALL

A member of the Australian Wheat Council told members of the Western Wheat Associates in Billings on Saturday that the U.S. moratorium on wheat sales to the USSR early last fall provided a windfall for farmers of his nation.

The meeting was held preliminary to the national convention of the National Association of Wheat Growers, which begins Sunday in Billings. Members of the eight-state wheat associates group will meet through Thursday with other delegates to the NAWG's 26th annual meeting.

Wheat farmer Les Price of Australia said the moratorium doubled Australian wheat sales to Russia, adding that, "Even so I do sympathize with you as a farmer."

Price said harvesting of Australian grain in Australia is nearly finished. The continent nation, located in the southern hemisphere, has seasons which are the reverse of lands north of the Equator.

The Australian crop received some weather damage, but should total 400 million bushels—nearly double the average, he said.

In response to a query about beef prices, Price said prime beef sold for 10 cents a pound last spring.

"It is double that now, about 20 cents a pound," he said.

He said he doubts that feedlot operations would be profitable in Australia because "you can graze animals to fat conditions for almost nothing a pound."

In other wheat associated business, Jim Minnyard of the federal Foreign Agricultural Service said some four million tons of wheat has been allocated for export shipment by July 1.

Of this quantity, some two million tons already had been organized for shipment, he said. Minnyard said the service is looking into the sale of wheat in Africa and South America as well as in other countries.

HOUSE OF REPRESENTATIVES,
Washington, D.C., September 1, 1976.

Hon. THOMAS E. MORGAN,
Chairman, House Committee on International Relations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I understand that the International Relations Committee is completing work of H.R. 7665, an act to amend and extend the Export Administration Act. I believe it is important that the Committee, in reporting out the bill, emphasize that Congress disapproves of certain recent circumventions of the Act by the Executive Branch.

In the past two years, the Executive Branch has imposed various restrictions on U.S. grain exports, without following the standards or the procedures set forth by Congress in the Export Administration Act. These Executive Branch actions included a "prior approval" system imposed by the Department of Agriculture in the fall of 1974, an embargo on grain sales to the Soviet Union in the summer of 1975, and the conclusion of an agreement with the USSR in October 1975 regulating Soviet purchases of wheat and corn from the U.S. over the next five years.

The Constitution vests in the Congress, not in the President, the power to regulate interstate and foreign commerce. Congress has exercised this power to regulate exports by enacting the Export Administration Act, which carefully defines, in Section 4(f), the limited circumstances in which export restrictions can be imposed upon agricultural commodities. The purpose of the Congress in enacting a special provision with respect to agricultural commodities was to ensure that agricultural exports not be restricted, except where the overriding considerations set forth in Section 4(f) are present.

In limiting grain sales and exports to the Soviet Union, the Executive Branch acted in contravention of the Export Administration Act. These export restraints were unauthorized under the Act and were inconsistent with the limitations on regulation of agricultural exports contained in Section 4(f). Indeed, Administration spokesmen have admitted that the Export Administration Act was not followed in imposing the embargo.

The Congress cannot afford to ignore these Executive circumventions of the Export Administration Act. By imposing export restraints without legislative authorization, the President has acted outside his authority and has invaded the Constitutional prerogative of the Congress to regulate foreign commerce. If such action by the Executive is condoned, then the carefully considered standards adopted by Congress in the Export Administration Act will have little meaning, as the 1975 embargo demonstrates.

Immediately upon announcement of the 1975 embargo, I protested to the President that the embargo was in violation of the Export Administration Act. Now that the Congress is in the process of extending the Act, I hope that the Committee will stress in its report on H.R. 7665 that export restrictions outside the Act are not consistent with the will of Congress. While I would think that this was already apparent from the language of the Act and the Constitution, the point bears repeating in light of the recent Executive Branch export restraints on grain.

Sincerely,

JOHN MELCHER.

CHRONOLOGY OF GOVERNMENT INTERVENTION IN MARKETPLACE

June 13, 1973—Department of Commerce announces export reporting system requiring all exporters to report anticipated sales of soybeans and other commodities.

June 27, 1973—Secretary of Commerce Frederick Dent imposes an embargo on the export of soybeans, cottonseeds, and various oil and meal products. Action received approval of Agriculture Secretary Butz, in accordance with Export Administration Act.

July 2, 1973—Soybean and cottonseed embargo replaced by system of validated export licenses. License requirement lifted on other commodities, but warning issued that restrictions would be placed on these commodities if exports reached "unacceptable levels".

October 4, 1974—Wheat and corn sales to Soviet Union totaling 3.2 million metric tons "held in abeyance" at request of President Ford. The contracts were made between the Soviets and Continental Grain Co. and Cook Industries.

October 5, 1974—Cook and Continental Grain met with Secretary of the Treasury Simon, Special Trade Representative Eberle, and President Ford. Cook later testified before Permanent Investigations Subcommittee of Senate Government Operations Committee that, based on the October 5 meeting, no sales could be made to the Soviet Union, Communist China or oil producing nations. Neither the Soviets or the U.S. firms "canceled" the grain sales agreements, but terms of the agreement were said not to be in effect.

October 8, 1974—Notice sent by Foreign Agricultural Service of USDA to all exporters establishing a "prior approval" system of export management. Exporters were requested to obtain USDA approval prior to making export sales.

October 19, 1974—Secretary of the Treasury Simon announces conclusion of agreement between U.S. and Soviet Union whereby USSR agreed to limit its total grain purchases from U.S. to 2.2 million tons. The additional 1 million tons contracted by grain companies with the USSR was to be delivered by exporting countries other than the U.S.

July 24, 1975—USDA asks grain companies to report all pending sales to USSR.

August 11, 1975—Agriculture Secretary Butz announces that grain exporting companies have been asked not to make additional Soviet sales commitments until Government has better assessment of U.S. grain crops. Prior to announcement, USDA asked exporters for a moratorium on sales and immediate notification of additional Soviet purchase interest.

September 4, 1975—Agriculture Secretary Butz states that the hold on Soviet grain sales would continue until the longshore-

men's refusal to load Soviet grain purchases ends.

September 9, 1975—President Ford announces agreement with AFL-CIO to end loading boycott. U.S. to seek multi-year Soviet grain supply agreement. Moratorium on new sales to the USSR extended for one month.

September 22, 1975—Ban on grain sales expanded to include Poland.

October 10, 1975—Polish ban lifted.

October 20, 1975—President Ford announces U.S.-Soviet grain agreement Moratorium ends.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. RISENHOOVER (at the request of Mr. O'NEILL), for today, on account of official business.

Mr. HELSTOSKI (at the request of Mr. FLORIO), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. MYERS of Pennsylvania) and to revise and extend their remarks and include extraneous matter:)

Mr. RHODES, for 5 minutes, today.

Mr. CLEVELAND, for 60 minutes, today.

Mr. HEINZ, for 5 minutes, today.

Mr. STEELMAN, for 5 minutes, today.

Mr. ASHBROOK, for 5 minutes, today.

Mr. KEMP, for 10 minutes, today.

(The following Members (at the request of Mr. HAYES of Indiana), to revise and extend their remarks, and to include extraneous matter:)

Mr. BROOKS, for 10 minutes, today.

Mr. BAUCUS, for 10 minutes, today.

Mr. GONZALEZ, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. ALEXANDER, for 15 minutes, today.

Mr. HAYES of Indiana, for 10 minutes, today.

Mr. BRADEMAS, for 5 minutes, today.

Mr. DODD, for 5 minutes, today.

Mr. ROSTENKOWSKI, for 10 minutes, today.

Mr. KAZEN, for 5 minutes, today.

Mr. PEPPER, for 15 minutes, today.

Mr. O'NEILL, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. REES and to include extraneous matter.

Mr. KAZEN and to include extraneous matter.

(The following Members (at the request of Mr. MYERS of Pennsylvania) and to include extraneous material:)

Mr. BOB WILSON in two instances.

Mr. GILMAN in two instances.

Mr. MCCLORY.

Mr. CLEVELAND.

Mr. STEIGER of Arizona.

Mr. HEINZ in two instances.

Mr. SCHULZE.

Mr. RHODES.

Mrs. HOLT.

Mr. CONABLE.

Mr. ASHBROOK in two instances.

Mr. SNYDER.

Mr. MOSHER.

Mr. HYDE.

Mr. TREEN.

Mr. KEMP.

(The following Members (at the request of Mr. HAYES) and to include extraneous matter:)

Mr. JOHNSON of California.

Mr. GONZALEZ in three instances.

Mr. ANDERSON of California in three instances.

Mr. SARBANES.

Mr. CLAY.

Mrs. MINK.

Mr. YATRON.

Mr. MAZZOLI.

Mr. BRINKLEY.

Mr. CHARLES H. WILSON of California.

Mr. OTTINGER.

Mr. EDWARDS of California.

Mr. DELLUMS in two instances.

Mr. MILFORD.

Mr. MCDONALD in three instances.

Mr. HAWKINS.

Mr. EARLY.

Mr. JONES of Oklahoma.

Mr. HARKIN in two instances.

Mr. ROE.

Mr. FARY.

Mr. BINGHAM.

Mr. ROSENTHAL in two instances.

Mr. DINGELL.

Mr. ALEXANDER.

Mr. DODD.

Mrs. KEYS.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 3664. An act to amend the Securities Exchange Act of 1934 to require issuers of securities registered pursuant to section 12 of such Act to maintain accurate records, to prohibit certain bribes, and for other purposes; to the Committee on Interstate and Foreign Commerce.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 2184. An act to authorize appropriations for the winter Olympic games, and for other purposes.

ADJOURNMENT

Mr. HAYES of Indiana. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 20 minutes p.m.), under its previous order, the House adjourned until tomorrow, Friday, September 17, 1976, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4030. A letter from the Director, Defense Civil Preparedness Agency, transmitting a report on Federal contributions to States for civil defense equipment and facilities during fiscal year 1976, pursuant to section 201(i) of the Federal Civil Defense Act of 1950, as amended [50 U.S.C. 2281(i)]; to the Committee on Armed Services.

4031. A letter from the Assistant Secretary of the Interior, transmitting a draft of proposed legislation to authorize the appropriation of $12.4 million at July 1976 prices for rehabilitation and resettlement of Enewetak Atoll, Trust Territory of the Pacific Islands, and for other purposes; to the Committee on Interior and Insular Affairs.

4032. A letter from the Executive Director, Federal Communications Commission; transmitting a report on the backlog of pending applications and hearing cases in the Commission as of July 31, 1976, pursuant to section 5(e) of the Communications Act, as amended; to the Committee on Interstate and Foreign Commerce.

4033. A letter from the Administrator, Federal Energy Administration, transmitting an amendment to the mandatory petroleum price regulations exempting naphtha jet fuel (energy action No. 6), pursuant to section 12 of the Emergency Petroleum Allocation Act, as amended (89 Stat. 951) (H. Doc. No. 94-614); to the Committee on Interstate and Foreign Commerce and ordered to be printed.

4034. A letter from the Administrator, Federal Energy Administration, transmitting an amendment to the mandatory petroleum allocation regulations exempting naphtha jet fuel (energy action No. 7), pursuant to section 12 of the Emergency Petroleum Allocation Act, as amended (89 Stat. 951) (H. Doc. No. 94-615); to the Committee on Interstate and Foreign Commerce and ordered to be printed.

4035. A letter from the Chairman, National Mediation Board, transmitting the 41st annual report of the Board, including the report of the National Railroad Adjustment Board, covering fiscal year 1975, pursuant to sections 4, second, and 3, first (w), respectively, of the act of May 20, 1926, as amended; to the Committee on Interstate and Foreign Commerce.

4036. A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting a request for the withdrawal of the order suspending deportation of Virginia Mendoza, A17 547 448, previously submitted pursuant to section 244(c) of the Immigration and Nationality Act; to the Committee on the Judiciary.

4037. A letter from the Administrator of Veterans' Affairs, transmitting a draft of proposed legislation to amend title 18, United States Code, with respect to the protection of certain officers or employees of the United States, and for other purposes; to the Committee on the Judiciary.

4038. A letter from the Chairman, Federal Election Commission, transmitting the Commission's appropriation request for fiscal year 1978, pursuant to section 437(d)(1) of Public Law 94-283; jointly, to the Committees on House Administration, and Appropriations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HALEY: Committee on Interior and Insular Affairs. H.R. 3078. A bill to authorize the establishment of the Chattahoochee River National Recreation Area in the State of Georgia, and for other purposes; with an amendment (Rept. No. 94-1568). Referred to the Committee of the Whole House on the State of the Union.

Mr. HALEY: Committee on Interior and Insular Affairs. H.R. 11887. A bill to amend the act approved August 18, 1970, providing for improvement in the administration of the national park system by the Secretary

of the Interior and clarifying authorities applicable to the national park system, and for other purposes; with an amendment (Rept. No. 94–1569). Referred to the Committee of the Whole House on the State of the Union.

Mr. HALEY: Committee on Interior and Insular Affairs. H.R. 11891. A bill to authorize the establishment of the Congaree Swamp National Preserve in the State of South Carolina, and for other purposes; with amendments (Rept. No. 94–1570). Referred to the Committee of the Whole House on the State of the Union.

Mr. PERKINS: Committee on Education and Labor. H.R. 15246. A bill to amend the Service Contract Act of 1965 to provide that all employees, other than bona fide executive, administrative, or professional employees, shall be considered to be service employees for purposes of such act, and for other purposes (Rept. No. 94–1571). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. H.R. 15499. A bill to distinguish Federal grant and cooperative agreement relationships from Federal procurement relationships, and for other purposes; with amendments (Rept. No. 94–1572). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. H.R. 15390. A bill to establish an Office of Inspector General within the Department of Health, Education, and Welfare, and for other purposes; with an amendment (Rept. No. 94–1573). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SULLIVAN: Committee on Merchant Marine and Fisheries. H.R. 15445. A bill to save the gray whale; with amendments (Rept. No. 94–1574). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SULLIVAN: Committee on Merchant Marine and Fisheries. S. 3050. An act to authorize the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy, to lease for military purposes structures and their associated real property located in a foreign country; with amendments (Rept. No. 94–1575). Referred to the Committee of the Whole House on the State of the Union.

Mr. HALEY: Committee on Interior and Insular Affairs. H.R. 7682. A bill relating to the disposition of certain recreational demonstration project lands by the State of Oklahoma; with amendments (Rept. No. 94–1576). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SULLIVAN: Committee on Merchant Marine and Fisheries. H.R. 10841. A bill to amend the Intercoastal Shipping Act, 1933, by revising its suspension provisions and by authorizing periodic promulgation of rate of return guidelines; with amendments (Rept. No. 94–1577). Referred to the Committee of the Whole House on the State of the Union.

Mrs. SULLIVAN: Committee on Merchant Marine and Fisheries. H.R. 13585. A bill to amend the Federal Boat Safety Act of 1971; with an amendment (Rept. No. 94–1578). Referred to the Committee of the Whole House on the State of the Union.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 3647. A bill to amend the Federal Aviation Act of 1958 to permit aliens holding permanent residence visas to register aircraft in the United States, and for other purposes; with amendments (Rept. No. 94–1580). Referred to the Committee of the Whole House on the State of the Union.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 12349. A bill to amend the Federal Aviation Act of 1958 to limit under certain circumstances the discretion of the Civil Aeronautics Board in determining the rate of compensation to be paid to an air carrier for the transportation of mail by aircraft; with an amendment (Rept. No. 94–1581). Referred to the Committee of the Whole House on the State of the Union.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 12484. A bill to amend the Federal Aviation Act of 1958, to provide for expedited consideration by the Civil Aeronautics Board of applications for certificates of public convenience and necessity; with an amendment (Rept. No. 94–1582). Referred to the Committee of the Whole House on the State of the Union.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 15026. A bill to amend the Federal Aviation Act of 1958 to authorize reduced-fare transportation on space-available basis for elderly persons, young persons, and handicapped persons; with amendments (Rept. No. 94–1583). Referred to the Committee of the Whole House on the State of the Union.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 15134. A bill to amend the Public Buildings Act of 1959 in order to preserve buildings of historical or architectural significance through their use for Federal public building purposes, and to amend the act of August 12, 1968, relating to the accessibility of certain buildings to the physically handicapped; with an amendment (Rept. No. 94–1584, pt. I). Ordered to be printed.

Mr. BROOKS: Committee on Government Operations. H.R. 15134. A bill to amend the Public Buildings Act of 1959 in order to preserve buildings of historical or architectural significance through their use for Federal public building purposes, and to amend the act of August 12, 1968, relating to the accessibility of certain buildings to the physically handicapped; with an amendment (Rept. No. 94–1584, pt. II). Referred to the Committee of the Whole House on the State of the Union.

Mr. BOLLING: Committee on Rules. House Resolution 1551. A resolution providing for the consideration of H.R. 15. A bill to regulate lobbying and related activities (Rept. No. 94–1579). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 4206. A bill to designate the new Federal building in Albuquerque, N. Mex., as the Senator Dennis Chavez Federal Building (Rept. No. 94–1585). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 4847. A bill to designate the Federal office building located in Dover, Del., as the J. Allen Frear Building (Rept. No. 94–1586). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 9444. A bill to name the Federal building in Omaha, Nebr., the Glenn Cunningham Federal Building in commemoration of the many contributions of former Congressman Glenn Cunningham (Rept. No. 94–1587). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 12927. A bill to designate a Federal building and U.S. Post Office in Jasper, Ga., as the Phil M. Landrum Federal Building and Post Office (Rept. No. 94–1588). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation, H.R. 13247. A bill to name a certain Federal building in Grand Rapids, Mich., the Arthur H. Vandenberg Building (Rept. No. 94–1589). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 13727. A bill to designate the plaza area of the Federal Building, Portland, Oreg., the Terry Schrunk Plaza (Rept. No. 94–1590). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 14503. A bill to name the new post office in Youngstown, Ohio, the Michael J. Kirwan Post Office (Rept. No. 94–1591). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 14956. A bill to designate the Joe L. Evins Post Office and Federal Building (Rept. No. 94–1592). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 14977. A bill to name the Federal office building in Athens, Ga., the Robert G. Stephens Federal Building (Rept. No. 94–1593). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 15546. A bill to designate the Ray J. Madden Post Office Building (Rept. No. 94–1594). Referred to the House Calendar.

Mr. JONES of Alabama: Committee on Public Works and Transportation. H.R. 15582. A bill to name the Federal office building in Bluefield, W. Va., the Elizabeth Kee Federal Building (Rept. No. 94–1595). Referred to the House Calendar.

Mr. MOAKLEY: Committee on Rules. House Resolution 1552. A resolution providing for the consideration of H.R. 14970. A bill to extend the special unemployment assistance program for 1 year, and for other purposes (Rept. No. 94–1596). Referred to the House Calendar.

Mr. LONG of Louisiana: Committee on Rules. House Resolution 1553. A resolution providing for agreeing to the Senate amendment to the bill H.R. 13350; with an amendment (Rept. No. 94–1597). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. DOWNING of Virginia:

H.R. 15585. A bill to permit the construction and operation of facilities other than a hotel upon the Fort Monroe Military Reservation in Virginia; to the Committee on Armed Services.

By Mr. HICKS (for himself and Mr. MATSUNAGA):

H.R. 15586. A bill to provide that the October 1, 1976, pay raise for Federal officers and employees shall be 6½ percent, in lieu of the percentage determined under the pay comparability system, and to exclude Members of Congress from such pay raise; to the Committee on Post Office and Civil Service.

By Mr. JENRETTE:

H.R. 15587. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974, and for other purposes; to the Committee on Agriculture.

By Ms. KEYS:

H.R. 15588. A bill to amend title II of the Social Security Act to increase to $4,800 the amount of outside earnings which (subject to further increases under the automatic adjustment provisions) is permitted each year without any deductions from benefits thereunder, and to revise the method for determining such amount; to the Committee on Ways and Means.

By Mrs. MINK:

H.R. 15589. A bill to provide tuition-free schooling to certain dependents of Department of Defense employees and former Department of Defense employees; to the Committee on Armed Services.

H.R. 15590. A bill to amend title XVIII of the Social Security Act to authorize payment under the medicare program for services furnished to eligible individuals in certain State and local institutions not certified as

providers; to the Committee on Ways and Means.

By Mr. PERKINS:

H.R. 15591. A bill to extend and revise the commodity supplemental food program; jointly, to the Committees on Education and Labor and Agriculture.

By Mr. PRICE (for himself and Mr. BOB WILSON) (by request):

H.R. 15592. A bill to amend section 4349(a) of title 10, United States Code, to provide that the companies of the corps of cadets at the U.S. Military Academy may be commanded by commissioned officers of the Army, Navy, Air Force, or Marine Corps; to the Committee on Armed Services.

By Mr. ROSTENKOWSKI:

H.R. 15593. A bill to amend the Social Security Act to authorize international agreements with respect to social security health insurance benefits; to the Committee on Ways and Means.

H.R. 15594. A bill to amend title XVIII of the Social Security Act to provide coverage for physician extender and other services furnished by rural health clinics meeting health, organizational, and safety requirements; to the Committee on Ways and Means.

By Mr. STEELMAN:

H.R. 15595. A bill to repeal titles XV and XVI of the Public Health Service Act; to the Committee on Interstate and Foreign Commerce.

By Mr. FISHER (for himself and Mrs. SPELLMAN):

H.R. 15596. A bill to amend title 5, United States Code, to provide special allowances to certain physicians employed by the United States in order to enhance the recruitment and retention of such physicians; to the Committee on Post Office and Civil Service.

By Mr. HEBERT:

H.R. 15597. A bill to amend title 10 of the United States Code to limit the authority of the Secretary of Defense with regard to functions and powers within the Department of Defense; to the Committee on Armed Services.

By MR. HEINZ:

H.R. 15598. A bill to direct the Secretary of the Interior to establish the Legionville National Historic Site in the State of Pennsylvania; to the Committee on Interior and Insular Affairs.

By Mr. REUSS:

H.R. 15599. A bill to enact the National School-Age Mother and Child Health Act of 1976; to the Committee on Interstate and Foreign Commerce.

By Mr. CHARLES WILSON of Texas (for himself and Mr. BREAUX):

H.R. 15600. A bill for the relief of the Alabama-Coushatta Tribes of Texas and the Coushatta Tribe of Louisiana; to the Committee on Interior and Insular Affairs.

By Mrs. MINK:

H.J. Res. 1099. A resolution authorizing the President to proclaim the week of October 10 through 16, 1976, as "Native American Awareness Week"; to the Committee on Post Office and Civil Service.

By Mr. GILMAN (for himself, Mr. BADILLO, Mr. COLLINS of Texas, Mr. CONTE, Mr. DERWINSKI, Mr. DOWNEY of New York, Mr. EILBERG, Mr. FLOOD, Mr. GRADISON, Mr. GUYER, Mr. HECHLER of West Virginia, Mr. HICKS, Mr. KEMP, Mr. LEVITAS, Mr. LAGOMARSINO, Mr. LONG of Maryland, Mr. LONG of Louisiana, Mr. MIKVA, Mr. OTTINGER, Mr. RIEGLE, Mr. RUSSO, Mr. STRATTON, Mr. SYMINGTON, Mr. WAXMAN, Mr. WHITEHURST, and Mr. WOLFF):

H. Con. Res. 752. A resolution urging the President to take certain measures against countries supporting international terrorism and persons engaging in international terrorism and to seek stronger international sanctions against such countries and persons; jointly, to the Committees on International Relations and Public Works and Transportation.

By Mr. STEELMAN:

H. Con. Res. 753. A resolution expressing the sense of Congress that Hispanic Americans should receive a fair opportunity for leadership positions within the Armed Forces; to the Committee on Armed Services.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mrs. MINK:

H.R. 15601. A bill for the relief of Sadame Nagata Ishida, Satsuko Nagata Higuchi, and Noboru Nagata; to the Committee on the Judiciary.

By Mr. NATCHER:

H.R. 15602. A bill for the relief of Dr. Orlando Fufilero Bravo; to the Committee on the Judiciary.

By Mr. WIGGINS:

H.R. 15603. A bill for the relief of Habib Haddad; to the Committee on the Judiciary.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 12112

By Mr. HAYES of Indiana:

(Amendments to amendment by Mr. TEAGUE.)

On page 27909 of the CONGRESSIONAL RECORD of August 26, 1976, at the end of subsection (b)(4), insert the following: "Prior to making any guarantee or commitment to guarantee under this section, the Administrator shall determine that the underlying agreement on which the guarantee is sought contains all affirmative and negative covenants and other protective provisions which are usual and customary in loan agreements of a similar kind, including previous loan agreements between the lender and the borrower, and that such agreements cannot be amended, or any provisions waived, without the Administrator's prior written consent."

On page 27910 of the CONGRESSIONAL RECORD of August 26, 1976, strike the last sentence of subsection (f) and insert therein the following: "Subject to the conditions of the guarantee or commitment to guarantee, such a guarantee shall be incontestable in the hands of the holder of the guaranteed obligation, who obtained such guaranteed obligation for value, in good faith, and without knowledge of any fraud or material misrepresentation on the part of the borrower, and who himself did not commit any fraud or material misrepresentation."

On page 27908 of the CONGRESSIONAL RECORD of August 26, 1976, strike the third sentence and insert therein the following: "The authority of the Administrator to enter into any guarantee or to make any commitment to guarantee under this section terminates on September 30, 1981. Such termination does not affect the carrying out of any contract, guarantee, commitment, or other obligation entered into pursuant to this section prior to that date, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this section."

By Mr. MIKVA:

(Amendment to amendment by Mr. TEAGUE.)

On page 27909 of the CONGRESSIONAL RECORD of August 26, 1976, insert a period after the word "so" in subsection (d) and strike all thereafter through the period.

(Amendment to amendment by Mr. TEAGUE.)

On page 27909 of the CONGRESSIONAL RECORD of August 26, 1976, in subsection (e)(3) strike the third sentence and insert therein the following: "The Chairman of the panel shall be selected from the panel by the Administrator, but such Chairman shall not be a Federal or State employee or officer."

By Mrs. SCHROEDER:

(Amendments to amendment by Mr. TEAGUE.)

On page 27912 of the CONGRESSIONAL RECORD of August 26, 1976, add a new paragraph to the end of subsection (s) to read as follows:

"(5) No fulltime officer or employee of the Energy Research and Development Administration or the Secretary of the Treasury who directly or indirectly discharged duties or responsibilities under this section, and who was at any time during the twelve months preceding the termination of his employment with the Administration or the Secretary compensated under the Executive Schedule or compensated at or above the annual rate of basic pay for grade FG-16 of the General Schedule, shall accept, for a period of two years after the date of termination of employment with the Administration or the Secretary, employment or compensation, directly or indirectly, from any person, persons, association, corporation or other entity, that had entered into a cooperative agreement of guarantee or commitment to guarantee or contract with the Administrator under this section during such time as such officer or employee discharged duties or responsibilities under this section."

On page 27910 of the CONGRESSIONAL RECORD of August 26, 1976, in subsection (h) after the word "finds" insert a comma and the following: "which finding shall be published in the *Federal Register* at least 60 days prior to entering into such contract,".

On page 27912 of the CONGRESSIONAL RECORD of August 26, 1976, in subsection (p) strike "(1)" and all of paragraph (2).

On page 27910 of the CONGRESSIONAL RECORD of August 26, 1976, in subsection (i) strike the period at the end of the first sentence and insert a colon and the following proviso: *"Provided,* That the Administrator shall not receive or approve any applications for financial assistance under this section until after March 1, 1977."

On page 27912 of the CONGRESSIONAL RECORD of August 26, 1976, insert the following sentence at the end of subsection (x): "No more than 65 per centum of the aggregate amount of obligations authorized to be guaranteed under this section may be issued with respect to facilities the total cost of each of which exceeds $20,000,000."

By Mr. UDALL:

In section 19(c) of the Federal Nonnuclear Energy Research and Development Act of 1974 (as added by the first section of the amendment in the nature of a substitute offered by Mr. TEAGUE):

(1) strike out "and" at the end of paragraph (8),

(2) insert after paragraph (8) the following:

"(9) in the case of a demonstration facility which converts any coal (including lignite) from a surface mine to synthetic fuel, the Administrator has determined that regulations have taken effect under Federal legislation (applicable to surface mining operations on federally-owned and nonfederally-owned land) the principal purpose of which is the reduction and control of adverse environmental effects resulting from surface mining operation in the United States;" and

(3) redesignate paragraph (9) as paragraph (10).

H.R. 15069

By Mr. WEAVER:

Page 35, add immediately after line 20 the following new section:

SUSTAINED YIELD AND MARGINAL LANDS

SEC. 14. (a) Within two years after the date of the enactment of this Act, the Secretary of Agriculture shall, in accordance with procedures set forth in Section 553 of title 5, United States Code, promulgate regulations to insure—

(1) that the National Forest System, as such term is defined under section 10(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974, will continue to produce adequate and continuous supplies of wood, water, wildlife, wilderness, forage, and recreation by—

(A) limiting the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained yield basis. However, the Secretary may exceed the quantity sales limitation from time to time in the case of any forest so long as the average sales of timber from such forest over any 10-year period do not exceed such quantity limitations. In those cases where a forest has less than 200,000 acres of commercial forest land, the Secretary may use two or more forests for purposes of determining the sustained yield. Nothing in this subparagraph shall prohibit the Secretary from salvaging timber stands which are substantially damaged by fire, windthrow, or other catastrophe; and

(B) establishing guidelines to assure that, based on periodic surveys of the productivity of lands for commercial timber production, such production is not a management goal where the estimated cost to the United States will exceed the estimated economic return to the United States; except (1) that the estimated cost of production will include only direct timber production costs, including a prorated share of the access costs for timber harvest, (2) that such restrictions do not apply to salvage of dead or diseased trees, and (3) that such restrictions are not intended to impede the reforestation of lands for multiple-use purposes or to impede the cutting of timber specifically for the improvement of fish and wildlife habitat; and

(2) that commercial timber production is a management activity only on lands where—

(A) soil, slope, or other watershed conditions will not be irreversibly damaged;

(B) assurance is given that such lands can be adequately restocked within five years after harvest; and

(C) protection is provided from changes in water temperatures, blockages of water courses, and deposits of sediment, for streams, stream banks, shorelines, lakes, wetlands, and other bodies of water where harvests could seriously and adversely affect water conditions or fish habitat.

(b) The first sentence of section 3 of the Act entitled "An Act authorizing the Secretary of Agriculture to enlarge tree-planting operations on natural forests, and for other purposes", approved June 9, 1930 (46 Stat. 527; 16 U.S.C. 576(b)), is amended by—

(1) striking out "or" immediately before "(3)"; and

(2) striking out the colon and all that follows through the period at the end of such sentence and inserting in lieu thereof the following: ", or (4) protecting and improving the future productivity of the renewable resources of the national-forest land on a sale area, including sale-area improvement operations, maintenance and construction, reforestation, and forest habitat management."

H.R. 15377

By Mr. FINDLEY:

Page 20, immediately after line 5, insert the following new section:

SEC. 19. Section 4(f) of the Export Administration Act of 1969, as amended by section 16 of this Act, is amended by adding at the end thereof the following new paragraph:

"If the Secretary of Commerce shall prohibit or curtail the exportation of any commodity pursuant to this section, he shall immediately report such prohibition or curtailment to the Speaker of the House and the President pro tempore of the Senate setting forth his reasons therefor in detail. If the Congress shall by concurrent resolution disapprove of such prohibition or curtailment, it shall cease with the passage of said resolution."

S. 22

By Mr. OBERSTAR (for himself and Mr. FRASER):

Page 97, line 16, strike out the period and insert in lieu thereof a semicolon.

Page 97, immediately below line 16, insert the following new clause:

"(9) performance of a dramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to the persons referred to in clause (8) of this section, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of any radio subcarrier authorization referred to in clause (8)(iii) of this section."

AMENDMENT TO SECTION 111(a) OF S. 22

By Mr. ROONEY:

Page 28, insert after line 6, the following:

"(5) The right of a cable system to carry a particular signal or to operate in a particular community is pending in a proceeding before the Commission until 30 days after the issue is resolved against the cable system and the proceeding is no longer subject to appeal."

FACTUAL DESCRIPTIONS OF BILLS AND RESOLUTIONS INTRODUCED

Prepared by the Congressional Research Service pursuant to clause 5(d) of House rule X. Previous listing appeared in the CONGRESSIONAL RECORD of September 15, 1976, page 30560.

H.R. 15301. August 26, 1976. Ways and Means. Amends the Medicare and Medicaid programs of the Social Security Act to include the services of licensed professional nurses under the coverage provided pursuant to such programs.

H.R. 15302. August 26, 1976. Public Works and Transportation. Amends the Federal Aviation Act of 1958 to authorize the Civil Aeronautics Board to grant exemptions from the requirements of such Act for all-cargo operations in interstate air transportation pending consideration of an application for initial certification under such Act if such exemption is in the public interest.

H.R. 15303. August 26, 1976. Interstate and Foreign Commerce. Amends the Communications Act of 1934 to authorize the Federal Communications Commission to regulate terminal equipment.

Directs the Commission to conduct a study of the costing policies related to domestic and international satellite common carrier communication services.

H.R. 15304. August 26, 1976. Interstate and Foreign Commerce; Interior and Insular Affairs. Establishes procedures for administrative review and Presidential decision-making concerning the selection of a natural gas transportation system to deliver Alaska natural gas to other States. Details procedures for Congressional review of such Presidential decision.

Suspends various procedural requirements imposed by the Mineral Leasing Act of 1920 and the National Environmental Policy Act of 1969. Imposes limitations on judicial review of administrative actions taken pursuant to this Act.

H.R. 15305. August 26, 1976. Public Works and Transportation. Authorizes construction of the projects for Nonconnah Creek and Horn Lake Creek, in Mississippi and Tennessee.

H.R. 15306. August 26, 1976. Judiciary. Declares a certain individual lawfully admitted to the United States for permanent residence, under the Immigration and Nationality Act.

H.R. 15307. August 26, 1976. Judiciary. Declares a certain member of the Armed Forces to have been eligible for the regular reenlistment bonus to which he would have been entitled had he been on active duty on a specified date. Directs the Secretary of Defense to pay such individual a specified sum.

H.R. 15308. August 26, 1976. Judiciary. Authorizes the admission of certain individuals to the United States for permanent residence.

H.R. 15309. August 26, 1976. Judiciary. Declares a certain individual lawfully admitted to the United States for permanent residence, under the Immigration and Nationality Act.

H.R. 15310. August 30, 1976. Judiciary. Creates a Council on Judicial Tenure to receive, investigate and make recommendations on any written complaint concerning a Justice or judge of the United States.

Makes it the duty of the Judicial Conference of the United States to sit as a court to hear any cause relating to the removal, censure, or involuntary retirement of a United States judge or Justice.

Specifies grounds for removal of such judges or Justices.

H.R. 15311. August 30, 1976. House Administration. States that expenditures made for the purpose of arranging or conducting any nationally televised debate between the candidates of any major party for the office of President during the period beginning on the date of enactment of this Act and ending November 2, 1976, shall not be considered an expenditure or contribution for purposes of the Federal Election Campaign Act of 1971.

H.R. 15312. August 30, 1976. Interstate and Foreign Commerce. Repeals the National Health Planning and Resources Development Act of 1974.

H.R. 15313. August 30, 1976. Ways and Means. Authorizes semiannual computation of cost-of-living increases in Old Age, Survivors and Disability Insurance benefits under the Social Security Act.

H.R. 15314. August 30, 1976. Ways and Means. Authorizes and directs the Secretary of Labor, through the Bureau of Labor Statistics, to prepare, as part of the Consumer Price Index, the Consumer Price Index for the Aged and Other Social Security Beneficiaries designed to reflect the relevant price information for individuals, as a group, who are 65 years of age or older or are otherwise entitled to monthly benefits under the program of Old-Age, Survivors, and Disability Insurance under the Social Security Act.

H.R. 15315. August 30, 1976. Interstate and Foreign Commerce; Judiciary. Amends the Federal Trade Commission Act to prohibit the application of a per se rule of illegality under the antitrust laws in the case of certain market allocation agreements made as part of a contract or agreement (1) for the manufacture, distribution or sale of a trademarked soft drink product or (2) for the distribution or sale of a trademarked private label food product.

H.R. 15316. August 30, 1976. Education and Labor. Amends the Education Amendments of 1972 to exempt from the sex discrimination prohibition provision of such Act, musical or social programs or activities.

H.R. 15317. August 30, 1976. Armed Services. Deletes the name "American Ephemeris

and Nautical Almanac" from the publication of the Naval Observatory, under the direction of the Secretary of the Navy, which provides data to navigators and astronomers.

H.R. 15318. August 30, 1976. Public Works and Transportation. Authorizes the Secretary of the Army, acting through the Chief of Engineers, to construct a replacement lock and dam on the Mississippi River. Authorizes a study of alternative modes of freight transportation service to the upper Mississippi and Illinois water areas.

H.R. 15319. August 30, 1976. Judiciary. Revises the rules governing the writ of habeas corpus, such revisions to apply to specified motions and petitions filed on after February 1, 1977.

H.R. 15320. August 30, 1976. Post Office and Civil Service. Designates "Federal Election Day" as a legal public holiday.

H.R. 15321. August 30, 1976. Ways and Means. Amends the program of Child Support and Establishment of Paternity of Title IV of the Social Security Act to limit to 50 percent the portion of an individual's wages from Federal employment which is subject to garnishment for the enforcement of child support and alimony obligations.

H.R. 15322. August 30, 1976. Post Office and Civil Services. Prohibits carriers of Federal employee health benefits plans from reducing benefits or excluding any class of provider of health services unless the Civil Service Commission gives notice of and conducts hearings relative to the proposed change within prescribed time limits.

H.R. 15323. August 30, 1976. Banking Currency and Housing. Authorizes the Secretary of Housing and Urban Development to make grants to local agencies for converting closed school buildings into community centers, senior citizen centers, and specified educational, medical or social service centers.

Directs the Secretary to serve as a national clearinghouse to local agencies by providing information on possible alternative uses for closed school buildings.

H.R. 15324. August 30, 1976, Ways and means. Entitles taxpayers, under the Internal Revenue Code, to elect to take a deduction with respect to the amortization of any qualified school or hospital property, which was purchased from a tax-exempt organization, based on a period of 180 months.

H.R. 15325. August 30, 1976. Public Works and Transportation; Ways and Means. Authorizes the Secretary of Transportation to approve Federal participation in a State project to repair or replace unsafe bridges. Extends the Highway Trust Fund and the Land and Water Conservation Fund through fiscal year 1990. Postpones specified excise tax reductions under the Internal Revenue Code.

EXTENSIONS OF REMARKS

WHEN WILL THEY EVER LEARN?

HON. BOB WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 16, 1976

Mr. BOB WILSON. Mr. Speaker, under leave to extend my remarks, I include the following:

WHEN WILL THEY EVER LEARN?

(By M. S. Forbes Jr.)

Candidate Carter and his economic advisers are apparently giving serious thought to reimposing wage and price controls next year. Assuming he is elected, Carter probably realizes that if he fulfills only a fraction of his big spending promises, inflation will indeed be surging again.

The Carterites should take a cue from the late Chester Bowles, who for a time during World War II was the administrator of our most extensive economic controls.

Here is what Bowles had to say about peacetime controls in 1973 when Nixon was trying them a second time around: "Controls will work only in a tightly sealed, highly centralized economy. If you want them to work, you cannot have international trade (and) the Government must have complete control over the economy's production. The Government must decide what's to be produced and have the power to distribute the necessary resources."

Nixon's imposition of controls in 1971–72 did little damage because the economy had considerable unused industrial capacity. Moreover, people believed in the efficacy of controls. Those conditions did not exist in 1973. Shortages were exacerbated; inflationary forces did not abate; a recession was not avoided.

Controls next year would have the same sorrowful results. There is evidence that not very much excess capacity exists anymore, for example, in such a critical industry as steel.

The psychological impact would be devastating. Businessmen now know that surging inflation and attendant controls will invariably bring another bout of tight money followed by a recession. Capital spending plans would be shelved. Companies would hoard cash, anticipating higher interest rates and tight money. The economic recovery would be destroyed. Unemployment would surge.

President Ford has taken to heart the lessons of the early 1970s. If Carter wins, one can only hope that he will, by that time, have done the same.

When he was seeking the Democratic presidential nomination, Jimmy Carter liked to stress his reorganization of Georgia's state government, pointing out that the number of agencies was cut from 300 to 22. In today's environment, such talk scored well.

Carter has not been specific about how he would make the Federal Government more "efficient" and perhaps with good reason. The bulk of Carter's Georgia reorganization amounted to little more than a grand reshuffling of bureaucratic titles.

Contrary to the impression he once sought to portray, the number of Georgian bureaucrats increased, not decreased, under Carter's reign.

And spending jumped nearly 60% during his four-year term.

Apply that 60% to the current federal budget and you come up with $250 billion, which just about equals the size of the entire federal budget in fiscal 1973, the year when the latest bout with inflation got under way.

With an inflationary stimulus like that, no wonder Democrats are thinking of dusting off controls.

With the Republicans controlling the White House and the Democrats the Congress, we have a government of checks and balances. If the Democrats win both Congress and the White House, we will have a government of bigger checks—and smaller balances to cover 'em.

POWER GRAB IN INDIA CONTINUES

HON. JOHN M. ASHBROOK

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 16, 1976

Mr. ASHBROOK. Mr. Speaker, the descent of India into dictatorship goes on. India is a country that has received billions upon billions of dollars in foreign aid from the United States. While India cozied up with the Soviet Union, supporters of India in the Congress pushed for continued American aid under the rationale that it was the largest democracy in that part of the world.

The pretensions of India as a great democracy have fallen by the wayside. But Indira Gandhi, dictator of India, is trying to maintain a thin veneer of pseudo-legality over her dictatorship. Gandhi is now pushing a constitutional amendment to give her the dictatorial powers she has already grabbed.

Unfortunately, the present majority in Congress seems unwilling to take action to stop American tax dollars going to India. If there was such a commitment by the majority, my recent amendment to cut 40 percent of the funds for the International Development Association, which in turn gives about 40 percent of its funds to India, would have been successful.

At this point I include in the RECORD the text of an article from the Washington Star of August 31, 1976:

GANDHI OFFERS PLAN TO TAKE TOTAL POWER

NEW DELHI.—Prime Minister Indira Gandhi's government has unveiled a proposed constitutional amendment giving the executive branch virtually unfettered power.

The 20-page draft amendment rewrites the preamble and 59 articles of India's constitution. It sets forth "fundamental duties" for each citizen, bars activity the government deems "anti-national," and curtails the judiciary's right to enforce civil liberties and review legislation, including constitutional amendments.

Under the amendment, India's high courts will no longer be allowed to issue orders—including writs of habeas corpus—which might delay "a matter of public importance."

The proposed amendment also allows the president, on advice of the prime minister's cabinet, to amend the constitution himself over the next two years to take care of any difficulty arising from the constitutional overhaul.

The government said yesterday the changes are needed to help achieve a "socio-economic revolution which would end poverty, ignorance, disease and inequality of opportunity." But leading opposition spokesmen charged that it would destroy India's parliamentary democracy.

The prime minister declared a national emergency in June of last year. Since then she has restricted civil liberties, imposed news censorship and jailed thousands of political opponents. Opponents charge that the amendment would institutionalize Gandhi's authoritarian rule.

The amendment appears assured of passage since Gandhi's party has a two-third majority in both houses. It was expected to be formally introduced later this week and passed in late October.