SENATE—*Monday, September 26, 1977*

(Legislative day of Thursday, September 22, 1977)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by Hon. JAMES ABOUREZK, a Senator from the State of South Dakota.

PRAYER

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

Eternal Father:

"Thy love divine hath led us in the past;
In this free land by Thee our lot is cast;
Be Thou Ruler, Guardian, Guide, and Stay;
Thy word our law, Thy paths our chosen Way."

—Daniel C. Roberts, 1876.

O Lord, watch over us this new week. Guard our speech. Control our lips. Sharpen our minds. Protect our hearts from evil that our service may be pure and holy.

For Thine is the kingdom and the power and the glory. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 26, 1977.

To the Senate:

Under the provisions of Rule I, Section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JAMES ABOUREZK, a Senator from the State of South Dakota, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

Mr. ABOUREZK thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Journal of the proceedings of Saturday, September 24, 1977, be approved.

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

TRANSACTION OF ROUTINE MORNING BUSINESS THROUGHOUT THE WEEK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the CONGRESSIONAL RECORD daily throughout the week be open for the usual transaction of routine morning business.

The PRESIDING OFFICER (Mr. NUNN). Is there objection? Without objection, it is so ordered.

STATEMENT ON COSPONSORSHIP OF SENATE RESOLUTION 268

Mr. ROBERT C. BYRD. Mr. President, on Saturday, September 24, on behalf of the distinguished minority leader and myself, I offered Senate Resolution 268 concerning television and radio coverage of the Panama Canal Treaties debate in the Senate.

At that time, I asked unanimous consent that any Senators who may wish to join in cosponsoring the resolution may have the privilege of doing so before the resolution is printed, until 3 p.m. on Monday, September 26, today. I wish to state that this request to hold the resolution, however, is not to be considered a precedent. I feel it necessary to make this statement now, because I realize that the practice of holding bills and resolutions for cosponsors by unanimous consent, if permitted, will soon prove objectionable.

Senators have often spoken out against cosponsoring bills and resolutions generally, with efforts being made through submission of resolutions and amendments to amend the Senate rules prohibiting the practice with certain exceptions.

To date, such efforts have been unsuccessful, but the prohibition against holding the printing of measures for cosponsors has been enforced by objection on every occasion when such requests were made. These objections date back to February 16, 1967, when the late great distinguished Senator Everett Dirksen, from Illinois—incidentally the father-in-law of the distinguished minority leader—attempted by amendment to the Legislative Reorganization Act of 1967 to generally prohibit cosponshorship.

His effort failed, but after the vote rejecting his amendment was over, he made the following statement:

Mr. DIRKSEN. Mr. President, if I may have the attention of the Senate, I want to let the Senators know that this is not the last they will hear of dual sponsorship. There will be objection on every occasion when a bill is left on that table for sponsors. I hope that Senators will take heed and respect the notice. If I am not present on the floor, Senators may take advantage of me by leaving bills at the desk if they want to do so.

I will see that the floor is monitored and there will be no more bills left on the desk to plague the clerks of the Senate by leaving bills there for days and weeks to get sponsors and thus make every Senator a target for these outside pressures.

COMMITTEE MEETINGS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Energy Committee and the Finance Committee be authorized to meet daily during the days of this week.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished majority whip.

SENATE STATESMANSHIP AND THE PANAMA CANAL TREATIES

Mr. CRANSTON. Mr. President, John Averill, veteran Capitol Hill reporter for the Los Angeles Times, wrote an excellent article over the weekend about Senate prospects for the Panama Canal Treaties, which also appeared in the Sunday Washington Post.

I want to say that despite the excellence of the article, I emphatically disagree with an unidentified Senate aide whom he quotes as saying:

I fear we won't see many statesmen around here when the vote comes.

If correctly quoted, that unidentified Senate aide did a disservice to the Senate and a disservice to the advise-and-consent process of the Senate in connection with the Panama Canal Treaties. I have no desire to ascertain who that person may be. He may remain anonymous as far as I am concerned.

I have, as my colleagues know, been working hard over the past several months to help steer the treaties through the Senate.

I have probably talked, at one time or another, with well over two-thirds of the Senate about the treaties. So I think I talk from intimate, firsthand knowledge when I say that Mr. Averill's anonymous Senate aide is way, way off base.

I do not believe I have ever seen in my years in the Senate such serious, careful deliberation on one issue by so many Senators.

All are very much aware of the heavy crush of mail they are getting opposing the treaty, even though much of the mail is obviously the result of an organized campaign rather than a spontaneous outpouring from their constituents.

Nonetheless, Senator after Senator I have talked with is clearly determined to find out all he can about pros and cons of the treaties and to make his final decision on the merits of the case.

That is one of the reasons for the delay in the treaties coming to the floor.

Most Senators have been following carefully the course of the debate so far—in the press and on the floor of the Senate.

They will be following perhaps even more carefully the Foreign Affairs Committee hearings that begin today.

They want time to read and to reflect on this vital national issue. They very correctly don't want to be rushed into a decision. And they will not be.

Most of my colleagues know by now how strongly I feel about the treaties. The treaties are—in my view—essential to our Nation's national security interests in Latin America.

But that is my view. Other Senators may disagree; some already do. But I have never had cause to question their motives or their sincerity. The burden is on those of us who favor the treaties to prove our case.

This much I am already convinced of: That when the final vote for ratification comes, every Senator will be voting his conscience—and his sincere view of the national interest—and not his mail.

It may be a hard vote for some. While I see the merits of the case overwhelmingly in favor of the treaties, others may see it as rather a close call, one way or another. I respect that view.

But win or lose, I am convinced the decision will be a decision of statesmen, of Senators who make up their own minds about right and wrong and who are not swayed—in a matter as vital as this—by outside pressures and fears about the next election.

Indeed, they know that so-called conventional wisdom is often wrong, and that the voters are far more likely to reward courage, integrity, and the strength of a man's conviction.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. CRANSTON. Yes, I yield.

Mr. ROBERT C. BYRD. Mr. President, I subscribe completely to what the distinguished majority whip has just said. I also want to say that I have very high regard for John Averill and the same high regard for the Los Angeles Times.

Now and then statements of aides are allowed to color the stories in all publications. I want to say that the Senate has never been devoid of statesmanship, and it has never been devoid of courageous men. Whatever our viewpoints are, when the time comes for the Senate to show down on the issue, I have faith in the courage and the integrity of every Senator who will cast his decision.

There will be those who will vote against, and there will be those who will vote for. I myself am keeping a completely open mind. I am determined that the Senate have an opportunity at some point to reach its decision, and I think that we owe it to the President and we owe it to the country, in the meantime, to have enough time to get over the emotional hump, lay out the facts, let Senators and the American people take a good look at those facts, and let Senators make their decisions on the basis of the facts that have been adduced.

Now, there may be some Senators who have already decided one way or the other. I do not question their judgment, their integrity, their courage, or their dedication as being just as good and high as mine. But this business of basing a story on a Senate aide's observations, I think, is a rather bad way to go about reaching a judgment as to what the Senate will do. We have to have our aides; we could not do without them. They perform a very important service to Senators and the Senate.

But as far as I know, Senators are accessible to the press. The leadership on both sides of the aisle is very accessible to the press, and any time the press wishes to speak with the leadership or any Senator to get their viewpoints, we are accessible, and the press knows that.

I would just hope that in a matter of such vital importance, either way one views it, if one is for the treaties or if one is against them, nevertheless it is a subject of such moment, such far-reaching significance, and such importance that Senators ought to be able to make up their own minds and have time to do so. I think they are capable of expressing their sentiments, they are capable of being statesmen, and they are capable of showing courage where courage is required. I have no doubt that the Senate will reach one of its finest moments when the time comes.

I am glad that the distinguished majority whip took the floor and the occasion to say what he said. I subscribe to it thoroughly. Let us be done with this business of Senate aides prognosticating and predicting what the outcome will be and how little courage there will be, and how devoid of backbone 100 Members of the Senate may be. I have absolute faith, confidence, and trust that this Senate will make the right decision when it is made, and I do not doubt any Senator's courage and dedication when it comes to the point of putting his country's interest first.

All of us are politicians; there is no question about that. We all get heavy mail, many times on many subjects. In connection with some subjects more than with others, I think, a degree of statesmanship is called for. But when it comes to something like the Panama Canal Treaty, watch the Senate. I dare say there will be many Senators who will cast votes that will cost them, politically, insofar as their constituents' support back home is concerned.

We reach issues from time to time when, any way one votes, one is going to disappoint some constituents. I cannot satisfy all my constituents without voting two ways on the treaties—one for and one against. But each of us has only one vote and we all realize that. When the time comes to cast that vote, I believe that every Senator is going to cast his vote in what he sees as the best interests of the Nation. Partisanship should have no part in this matter, in my judgment, whether we are Democrats or Republicans, whether we are for or against.

I hope that that, may I say to my friend from California, will help to supplement his fine statement.

Mr. CRANSTON. That is a superb statement. I welcome it. I agree with every bit of it. I want to stress, as the majority leader did, my recognition of the right of the press and my respect for the ability of the press to cover our doings and what is said and done by the Senate.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STEVENS. I shall be happy to yield a portion of our time to the Senator.

Mr. CRANSTON. I specifically admire John Averill for ferreting out the Senate aide who gave him that quote to spice his article, along with all else he wrote. I do not admire the wisdom of that Senate aide at that particular moment.

Mr. ALLEN. Will the Senator yield?

Mr. STEVENS. Yes, I yield some time.

Mr. ALLEN. I commend the majority leaders for their statements. I, too, feel that there will be statesmanship shown by Members of the Senate on this issue. I might stress, too, that the side that the Senator votes on does not necessarily indicate whether he is a statesman or not. I think statesmen will appear on both sides of the isuue.

Mr. CRANSTON. Of course.

Mr. ALLEN. I think there are pressures from many, many quarters that will be evident as this debate goes on. But I do not feel that only those who vote "aye" on the treaties will be regarded as statesmen. I think those who feel that it is in the best interests of the country to vote "nay" can, equally well, be regarded as statesmen.

Then, too, I commend both leaders on stating that this matter will be allowed to be debated at length here in the Senate so that Senators can be fully informed and so that the Nation can be informed as to these issues.

Speaking for myself, I assure the leaders that there will be no filibuster, as such, on this treaty. As soon as legitimate arguments have been made, and legitimate amendments to the treaties and the reservations have had an opportunity to be considered here, in the Senate, I shall certainly be ready to vote.

I do feel that the treaty needs to be amended at a number of points, and there need to be reservations where amendments are not regarded as being a proper vehicle. But it should be debated at length and I am confident that there will be no obstructionist tactics used in connection with the treaty.

While the debate will be extended, it will not rise to be a filibuster. I think that is the sentiment on both sides.

Mr. CRANSTON. Will the Senator yield me 30 seconds?

Mr. STEVENS. Yes.

Mr. CRANSTON. I want to say that I welcome the statement of the Senator from Alabama, and I assure him that, of course, I recognize that there are and will be statesmen on both sides of this issue.

Mr. ALLEN. I might state that I plan to offer an amendment to the treaty that will leave the present treaty in full force and effect except as to the increase in the amount of annuity paid to Panama. If that amendment is adopted, that being the sole provision of the treaty, then I should be willing to support the treaty. But I think that is what we need to do here in the Senate. An amendment will be offered along that line, to raise the annuity, but let that be the only change in the treaties.

Mr. CRANSTON. I look forward to statesmanlike debates on the merits of this case on another occasion.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished acting

minority leader for his courtesy in yielding to us on this side.

Mr. STEVENS. I thank the majority leader. I am happy to cooperate. If the minority leader were here, I am sure he would echo the sentiments of the majority leader.

For myself, I state again that this is no time for haste. I commend the majority leader for indicating that time will be taken to explore thoroughly all of the ramifications of these treaties and that the Senators will be given an opportunity to return to their homes to discuss the issues involved and to be part of the process of national education which must take place if these treaties are to be voted upon by an informed Senate.

I even believe that it ought to be a duty of each Member of the Senate to go to Panama, to see what we are talking about, and to be fully informed of the total consequences of the approval of these treaties. That, in and of itself, will take time. If that time is taken, I think the final judgment of the Senate will be the proper one.

If we have any further time, Mr. President, I yield it back.

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Rhode Island (Mr. PELL), I ask unanimous consent that Mr. Robert Faust of his staff be accorded the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSE CONCURRENT RESOLUTION 361 AND H.R. 3 ORDERED HELD AT DESK

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when H. Con. Res. 361 and H.R. 3 are received from the House, that they be ordered held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION—PROTOCOL TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to consider Executive A, with 5 minutes each to the Senator from Alabama and the Senator from New Jersey, with vote thereon to occur immediately thereafter.

The clerk will state the resolution of ratification.

The resolution of ratification was read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Protocol Signed at Montreal October 16, 1974, Relating to an Amendment to Article 50(a) of the Convention on International Civil Aviation (Ex. A, 95–1) without reservation.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time that was allotted to Mr. SPARKMAN and Mr. CASE be given to the distinguished acting Republican leader and myself.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

ALLOCATION OF TIME—S. 2104

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, as in legislative session, that the one hour under rule XXII be under the control of the majority and minority leaders or their designees, and be equally divided.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Mr. President, reserving the right to object, may I just ask the majority leader if the understanding is that those of us who are opposed to the cloture motion will be accorded an opportunity on that matter?

Mr. ROBERT C. BYRD. Yes, no question about it. My purpose in getting this consent was to avoid a situation where one Senator might be foreclosed.

Mr. METZENBAUM. I thank the Senator.

Mr. MATHIAS addressed the chair.

Mr. ABOUREZK. Mr. President, reserving the right to object——

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. The Senator from Maryland has asked to be recognized.

Mr. MATHIAS. Mr. President, further reserving the right to object, I just wondered if under the procedure that the majority leader has outlined he could predict what time the vote on cloture would occur.

Mr. ROBERT C. BYRD. Let us approach it like this, the vote on the treaty would begin circa 12:30 p.m. today—it might be 12:35. The vote would extend about 15 minutes. After that vote, the 1 hour under the cloture rule would begin running, which would mean it would be about 10 till 1, perhaps.

About 10 till 2, give or take a little bit, there is a necessity for the establishment of a quorum under the rule which might take 15 minutes and put us over until 5 or 10 after 2, and then the cloture vote would occur.

Mr. MATHIAS. I thank the Senator.

Mr. ABOUREZK. Mr. President, reserving the right to object, was the request by the majority leader for division of time on the cloture debate?

Mr. ROBERT C. BYRD. No, on the hour.

Mr. ABOUREZK. On the hour.

Mr. ROBERT C. BYRD. That precedes.

Mr. ABOUREZK. Yes.

I do not know if it is a rule or a tradition, would the majority leader be willing to agree that half of the time be for the opponents for cloture for debate, a unanimous-consent request to share?

Mr. ROBERT C. BYRD. If the Senator will allow me, I will assure the Senator that, from the 30 minutes I will have under my control, the opponents will have half of it.

Mr. ABOUREZK. We will have 30 minutes that he will designate us?

Mr. ROBERT C. BYRD. I will assure the Senator he will have 15 minutes of my 30.

I assume the distinguished assistant Republican leader will say for his leader and himself that the opponents will be given half of that time.

Mr. STEVENS. I think basic fairness would require each side be given an equal opportunity. The majority leader's request is a normal one, that this time be equally divided.

Mr. ROBERT C. BYRD. That will not make any difference.

Mr. ABOUREZK. Traditionally, when both majority and minority floor managers of the bill are for the bill, the other part of the time, at least half, or could be under the time agreement, is accorded the opponents—even if they are not floor managers.

If the Senator could guarantee us half of the time, that is all we are asking.

Mr. ROBERT C. BYRD. If the Senator will accept my word, he may end up getting more than that.

Mr. ABOUREZK. I thank the Senator.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CONSIDERATION OF NOMINATIONS

Mr. ROBERT C. BYRD. Mr. President, without the time being charged against either side on the treaty, I ask unanimous consent that the Senate, while it is in executive session right now, proceed to the consideration of nominations on the calendar which all have been cleared.

Mr. STEVENS. There is no objection.

The PRESIDING OFFICER. The nominations will be stated.

MISSISSIPPI RIVER COMMISSION

The second assistant legislative clerk read the nomination of Maj. Gen. Robert Creel Marshall to be a member and president of the Mississippi River Commission.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The second assistant legislative clerk read the nomination of Brig. Gen. William Edgar Read to be a member of the Mississippi River Commission

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ENVIRONMENTAL PROTECTION AGENCY

The second assistant legislative clerk read the nomination of Marvin B. Durning, of Washington, to be an assistant administrator of the Environmental Protection Agency.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The second assistant legislative clerk read the nomination of David G. Hawkins of the District of Columbia to be an Assistant Administrator of the Environmental Protection Agency.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CALIFORNIA DEBRIS COMMISSION

The second assistant legislative clerk read the nomination of Col. Donald Michael O'Shei to be a Member of the California Debris Commission.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROTOCOL TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The Senate continued with the consideration of Ex. A (95–1).

Mr. ROBERT C. BYRD. Mr. President, I have a statement by Senator SPARKMAN which I shall read. I ask unanimous consent that the record show the statement as having been read by Mr. SPARKMAN. It is an explanation of the protocol on which the Senate is about to vote. The reason Senator SPARKMAN cannot be here to deliver this statement himself is a very simple one. He is conducting the foreign relations hearings at this very moment on the Panama Canal Treaty.

For that reason, I am sure everyone will understand the fact that he cannot be in both places at once and they will understand where he is that he is conducting the business of the Senate on a very important matter. For that reason, I ask that the record show Mr. SPARKMAN as having delivered this statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPARKMAN. Mr. President, this protocol resulted from a 1974 proposal to the Assembly of the International Civil Aviation Organization to increase the membership of the Council of the Organization from 30 to 33. The Council is the administrative and financial agency of the ICAO. The United States was the only State to vote against the proposal. The membership of the Council had been increased from 27 to 30 in 1972, and the United States felt the increase to 33 was not desirable so soon after the 1972 increase.

The State Department and the Committee on Foreign Relations now feel that the United States should ratify the protocol. Fifty-two of the necessary 86 States have ratified the protocol and it is expected that the protocol will become effective in any event. The Department of State feels that U.S. relations with the Organization will be best served by ratification. There is no current opposition to ratification.

The committee has prepared a report detailing the protocol and its history, and I ask unanimous consent to have this report printed in the RECORD.

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

PROTOCOL TO THE CONVENTION ON INTERNATIONAL CIVIL AVIATION

The Committee on Foreign Relations, to which was referred the Protocol, signed at Montreal October 16, 1974, relating to an amendment to Article 50(a) of the Convention on International Civil Aviation (Ex. A., 95–1), having considered the same, reports favorably thereon without reservation and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

This Protocol, signed in Montreal October 16, 1974, amends Article 50(a) of the Convention on International Civil Aviation to increase the membership of the Council of the International Civil Aviation Organization (ICAO) from 30 to 33 Contracting States.

BACKGROUND

The ICAO, a specialized agency of the U.N. develops principles and techniques of international air navigation and fosters the planning and development of international civil aviation transportation in order to insure its safe and orderly growth.

The ICAO conducts its work through an Assembly in which every Contracting State is entitled to representation. The Assembly elects every three years representatives to the ICAO Council as per Article 50. The Council is ICAO's governing body and also administers ICAO's finances and collects, examines and publishes data about air services, safety, regulations, et cetera.

Since 1947 when the Convention came into force, ICAO's membership has greatly expanded; from 26 to 86 by 1961, when the Council's membership was first augmented to 27. By 1972 the ICAO had 119 members and Belgium proposed that Council membership be increased to 30. The U.S. at first abstained, but finally joined in order that the Assembly Resolution could be passed unanimously. In 1974, ICAO had 129 Contracting States and Belgium again proposed adding between 3 to 6 members to the Council. A 3-member increase was carried 91–1 (and one abstention) with the U.S. casting the only negative vote because it felt further expansion unnecessary so soon. Now it appears that it will come into force anyway so the U.S. considers it in its own best interest to ratify the Protocol.

PRINCIPAL PROVISIONS

1. ICAO Council membership will be increased from 30 to 33. 2. The Proposed Amendment will enter into force when 86 Contracting States have ratified it (See (3) (d) of the Protocol).

COMMITTEE ACTION

The Protocol was submitted to the Senate and referred to the Committee on Foreign Relations on January 12, 1977.

On July 26, 1977, the Committee held a public hearing on the Protocol, receiving the testimony of the Honorable Herbert J. Hansell, Legal Adviser of the Department of State. In expressing the position of the Department of State, Mr. Hansell said:

"The United States was the one nation which voted against the Amendment. However, 52 [of the necessary 86] governments have ratified the amendment, and it is clear that it will enter into force in the near future. In this circumstance, we would like to ratify the amendment."

Mr. Hansell also stated, in response to questioning, that there would be no additional costs to the United States as a result of ratification and there was no opposition to U.S. ratification.

The Committee met on September 13, 1977, and ordered the Protocol to be reported favorably to the Senate for its advice and consent.

COMMITTEE COMMENTS

Although the Committee has determined that for reasons of effective U.S. participation and good relations in the International Civil Aviation Organization the Protocol should be ratified, the Committee would encourage resistance to future increases in the Council of the Organization. Should the Council be enlarged to too great a membership, it could become unwieldly and the very worthwhile work of the Organization accordingly be hampered.

BUDGETARY IMPACT STATEMENT AND COST ESTIMATE

The Protocol will have no budgetary impact and ratification will not require the authorization or appropriation of any additional funds. The dues and other payments of the United States to the International Civil Aviation Organization will not be affected by the Protocol.

CHANGES IN EXISTING LAW

In compliance with paragraph 4 of Rule XXIX of the Standing Rules of the Senate, the Committee reports that Article 50(a) of the Convention on International Civil Aviation signed in Chicago on December 7, 1944, would be amended to read as follows:

(a) The Council shall be a permanent body responsible to the Assembly. It shall be composed of [thirty] *thirty-three* contracting States elected by the Assembly. An election shall be held at the first meeting of the Assembly and thereafter every three years, and the members of the Council so elected shall hold office until the next following election.

EVALUATION OF REGULATORY IMPACT

As required by Rule XXIX of the Standing Rules of the Senate, the Committee has evaluated the regulatory impact of the Proto-

col and has determined that there would be no impact as a result of ratification.

Mr. STEVENS. Mr. President, I ask unanimous consent that if there are further statements submitted by members of the Foreign Relations Committee or other interested Senators that they be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum with the time charged to both sides on the treaty.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I make this request because there are some extenuating circumstances which I do not wish to explain here.

I ask unanimous consent that the rollcall vote on the protocol be a 20-minute rollcall vote, with the warning bell to be sounded 7½ minutes from the end of the vote.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Who yields time?

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

Mr. STEVENS. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the resolution of ratification on Executive A, 95th Congress, 1st session, Protocol to the Convention on International Civil Aviation?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Iowa (Mr. CULVER), the Senator from Maine (Mr. HATHAWAY), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from West Virgiana (Mr. RANDOLPH) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY), and the Senator from West Virginia (Mr. RANDOLPH) would vote "yea."

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

I further announce that, if present and voting, the Senator from Illinois (Mr. PERCY) would vote "yea."

The yeas and nays resulted—yeas 90, nays 0, as follows:

[Rollcall Vote No. 407 Ex.]

YEAS—90

Abourezk	Glenn	Moynihan
Allen	Goldwater	Muskie
Anderson	Gravel	Nelson
Baker	Griffin	Nunn
Bartlett	Hansen	Packwood
Bellmon	Hart	Pearson
Bentsen	Haskell	Pell
Biden	Hatch	Proxmire
Brooke	Hatfield	Ribicoff
Bumpers	Hayakawa	Riegle
Burdick	Heinz	Roth
Byrd, Harry F., Jr.	Hollings	Sarbanes
	Huddleston	Sasser
Byrd, Robert C.	Inouye	Schmitt
Cannon	Jackson	Schweiker
Case	Javits	Scott
Chafee	Johnston	Sparkman
Chiles	Kennedy	Stennis
Church	Laxalt	Stevens
Clark	Leahy	Stevenson
Cranston	Long	Stone
Curtis	Lugar	Talmadge
Danforth	Magnuson	Thurmond
DeConcini	Mathias	Tower
Dole	Matsunaga	Wallop
Domenici	McClure	Weicker
Durkin	McGovern	Williams
Eagleton	McIntyre	Young
Eastland	Melcher	Zorinsky
Ford	Metzenbaum	
Garn	Morgan	

NAYS—0

NOT VOTING—10

Bayh	Humphrey	Randolph
Culver	McClellan	Stafford
Hathaway	Metcalf	
Helms	Percy	

The ACTING PRESIDENT pro tempore. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to the consideration of legislative business.

COMPREHENSIVE NATURAL GAS POLICY

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the unfinished business S. 2104, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 2104) to establish a comprehensive natural gas policy.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. The 1 hour provided for under rule XXII will now begin.

Who yields time?

Mr. ROBERT C. BYRD. Mr. President, does the Senator from South Dakota (Mr. ABOUREZK) wish to be recognized at this moment? Does he wish time?

Mr. ABOUREZK. Yes.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator such time as he may desire up to a maximum of 15 minutes with the understanding that he may be allowed to utilize that 15 minutes by farming it out to other Senators if he wishes.

Mr. President, I further ask unanimous consent that the 15 minutes be divided equally between the Republican leader and myself at this point.

Mr. ABOUREZK. Does the majority leader mean the remainder of the 15 minutes of his time?

Mr. ROBERT C. BYRD. No; I am saying the Senator will have 15 minutes now to farm out as he wishes and that that 15 minutes will be charged equally against the two leaders.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABOUREZK. I thank the majority leader.

Mr. President, in about an hour from now there will be a vote on cloture. I think the issue really goes beyond the cloture vote itself. The issue now consists of statements made over the weekend by President Carter that he would veto a deregulation bill if it came to him, combined with the statement by the Speaker of the House of Representatives the other day and, of course, the action of the House of Representatives in rejecting deregulation 2 years in a row. I see it now as a total act of futility for the forces of deregulation of natural gas to continue to press the various amendments, the Ford and Pearson-Bentsen amendments, that deal with deregulation of natural gas in any form.

Whether or not the Senate votes cloture today, I think it should be made clear that those of us who oppose deregulation of natural gas are interested in seeing those deregulation amendments tabled, and once they are tabled I think we can get on to the Senate dealing with whatever gas legislation that the Senate might wish to work its will on, keeping in mind that deregulation will get absolutely nowhere.

So I remind the Members that it goes beyond the issue of cloture. If the Senate does not see fit to table or recommit the deregulation amendments, I suspect that we still will be here for quite a long time even if cloture is voted, and I urge on the Members a vote not specifically on cloture at this time but a vote to reject the deregulation amendments for the reasons I have stated.

Does the Senator from Ohio wish to speak at this point?

Mr. METZENBAUM. Not at this point.

Mr. ABOUREZK. Mr. President, I reserve the remainder of the time designated to our side by the majority leader and if the other side wants to speak we will just let them go.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, if there be no request for time, I suggest the ab-

sence of a quorum and ask unanimous consent that it be charged against both sides equally.

Mr. ABOUREZK. Did the minority leader ask that it be charged against both sides equally?

Mr. STEVENS. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ERDA AUTHORIZATION ACT OF 1978

Mr. JACKSON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1811, the ERDA Authorization Act of 1978.

This morning, the House of Representatives completed action on legislation to authorize appropriations for fiscal year 1978 to the Energy Research and Development Administration. In July of this year the Senate passed S. 1811 which authorized appropriations for ERDA. There are a great many differences between the measure passed by the House and Senate, and consequently, the House has already asked for a conference with the Senate.

Mr. President, I move that the Senate insist on its amendment to S. 1811 and agree to the conference asked for by the House.

The PRESIDING OFFICER. I am advised that the message the Senator referred to has not been received by the desk.

Mr. JACKSON. Maybe we can get the carrier pigeon to go over and find it.

I withdraw my request at this time.

ORDER OF BUSINESS

Mr. STEVENS. Mr. President, I ask that the time consumed by the Senator from Washington be charged equally to both sides. I suggest the absence of a quorum.

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum, the time to be charged equally to both sides.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. METZENBAUM. Mr. President, objection.

The PRESIDING OFFICER. Who yields time?

Mr. METZENBAUM. Mr. President, I yield myself 5 minutes. The majority leader has control of the time.

Mr. STEVENS. Mr. President, we have yielded 15 minutes to the control of the Senator from South Dakota.

The PRESIDING OFFICER. The Chair is advised that the Senator from South Dakota has the time.

Mr. STEVENS. The opponents' time of 15 minutes has been yielded to the Senator from South Dakota for allocation amongst those who want to speak against the motion.

Mr. METZENBAUM. Is it not correct that there will be an additional 15 minutes available?

Mr. STEVENS. If it is requested by opponents of cloture after the time yielded to the Senator from South Dakota is exhausted, I am sure we will carry out our original intent to yield time.

Mr. METZENBAUM. I thank the Senator.

COMPREHENSIVE NATURAL GAS POLICY

The Senate continued with consideration of S. 2104.

Mr. METZENBAUM. Mr. President, I have been examining the record with respect to the use of the so-called filibuster, or extended debate, procedure. I have gone back a number of years into the records of the Senate to determine on which occasions and under what circumstances this procedure has been utilized. Almost with no exception, the extended debate rights provided by the Senate rules have been used by those who have opposed consumer interests, by those who have opposed civil rights legislation, by those who have opposed District of Columbia home rule legislation, by those who have fought against the repeal of the right-to-work law, or 14(b) which authorizes it.

It has been used on occasions when the present Vice President, then Senator MONDALE and Senator Dirksen, the leader of the Republican side at that time, attempted to bring to a conclusion the vote with respect to open housing. It has been used with respect to the Equal Employment Opportunity Act. It has been used time and time again with respect to the Consumer Protection Agency, a piece of legislation directly concerned with the rights and needs of the consumers of this country and their ability to be represented in an advocacy position at the administrative level. In fact, in 1972, on three separate occasions, there was an attempt to terminate that debate and, on three separate occasions, that failed. Therefore, the bill failed.

It has been used against the voter registration bill in 1972 and 1973. It has been used against the legal services bill in 1973. In 1974, it was again used. On four separate occasions, there was an effort to bring debate to a close and there was an inability to do so, and the Consumer Protection Act again failed.

It has been used to attempt to defeat supplemental appropriations with respect to a school rider measure. It was used again in 1975 against the Consumer Protection Act. It was used in 1976 against the Antitrust Improvements Act, when, on two separate occasions, one beginning on May 27 and ending on June 10, there was extended debate; the second beginning on August 31 and ending on September 8.

What is so terrible about the same procedure being used in behalf of the consumers of this country? This is a piece of legislation that will cost the American people $10 billion a year. I am not certain that I thought in the past that that right of extended debate should be used to defeat legislation. But if the right is to be used to defeat legislation that inures to the benefit of the consumers and the people of this country, then maybe the time has come when those of us who recognize the havoc that would be caused by the Pearson-Bentsen amendment, or total deregulation, ought to use this free right of debate in order to bring to the attention of the people of this country what the impact will be.

If we deregulate natural gas prices, the Speaker of the House has indicated that the House will not accept the bill. If we deregulate natural gas prices, the President of the United States has indicated he will veto the legislation.

There are those who argue that it is time that we have an energy bill. I subscribe to that concept, but I believe it ought to be an energy bill that reflects the concerns of all of the people of this country and not just the concerns of those who are worried about the economic welfare of the oil companies and the utility companies of this Nation.

Therefore, Mr. President, I say now that I do, indeed, expect to debate this issue and offer those amendments that I think will improve a bad bill, with bad amendments. If that does, indeed, take some time, then I do not think the time will be lost.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. METZENBAUM. I yield myself 1 additional minute.

I think it is time that we recognize that this procedure does not belong to just a select few, that the procedure of extended debate and amendments to pending legislation should be used for all of the people of this country. I declare, Mr. President, that I am prepared to offer such amendments and bring up such amendments for a vote as may be necessary in order that the Nation may be made aware of what will occur to the economy of this country if we enact this legislation as presently suggested and as indicated in the Pearson-Bentsen amendment.

Mr. STEVENS. Mr. President, I yield to the Senator from Texas (Mr. TOWER) 10 minutes of the time allocated to the minority leader.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. TOWER. Mr. President, we have heard during this debate on the natural gas pricing bill a great deal of strident talk about the allegedly "huge" and "obscene" profits of the major oil companies. Clearly, the facts do not support the conclusion that oil company profits are excessive but those facts are generally ignored or forgotten during debates on energy legislation in this Chamber.

The oil and gas industry has made great efforts to present an accurate picture of oil company finances. Financial institutions such as the Chase Manhat-

tan Bank and studies by major universities have made similar efforts. For the most part, however, those studies which have concluded that oil industry profits are not excessive have generally been received with a great deal of skepticism.

I have obtained a study of oil industry finances which can hardly be criticized as having a pro-industry bias. The study was prepared in June of this year by the Federal Energy Administration. The study is entitled "A Summary of Aggregate Financial Data and Key Composite Annual Comparisons of 40 Major Oil Companies." It is, essentially, a financial profile of the 40 largest oil companies and it has been prepared under the auspices of an administration which often talks of "excessive" and "windfall" profits by the major oil companies. Put quite simply, this FEA study finds that oil company profits are not excessive. To the contrary, it suggests that higher profits are necessary.

I became aware of the possible existence of this report several weeks ago. I asked the FEA Administrator to confirm the existence of this important report and to provide me with a copy. FEA has done neither.

In the meantime, a copy of the draft FEA report has been made available to me from other sources. I call upon the Carter administration to make this important report available to the public now. In the meantime, I intend to make it available to the Senate.

I have prepared a summary of some of the key findings and conclusions of the FEA report. I ask unanimous consent that this summary, together with the report itself, be printed in the RECORD at this point.

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

SOME KEY FINDINGS AND CONCLUSIONS OF THE (DRAFT) SUMMARY OF AGGREGATE FINANCIAL DATA AND KEY COMPOSITE ANNUAL COMPARISONS OF 40 MAJOR OIL COMPANIES PREPARED BY FEA, JUNE 1977

"Net income (lines 1 and 2 of Table I). Prior to the 1973 oil embargo, net income had been almost flat since 1967. Extraordinarily large profit increases in 1973 and 1974 were due primarily to nonrecurring inventory earnings caused by major increases in OPEC crude prices. By contrast, the sharp 1975 profit decline was caused by lower world demand due to economic recession, an abnormally warm winter and disappearing inventory profits. The 1976 rebound was due in large part to the U.S. economic upturn which increased demand, plus higher prices in certain cases." (Page 4)

"It should be noted that energy company profits cannot be accurately viewed in a vacuum but rather must be studied in relation to capital expenditures for energy development (lines 7 and 8), returns to stockholders (lines 9, 10, and 11), return on stockholders equity (lines 18 and 19), and outside borrowing and debt ratios (lines 13, 14, 15, and 16)." (Page 4)

"Cash flow (lines 5 and 6). Cash flow, the sum of net earnings and depreciation, generally represents total internally generated funds for financing energy development (capital expenditures) and rewards to stockholders (dividends) for risking their capital. Any shortfall (line 12) in cash flow below capital expenditures must be made up by borrowing (lines 13, 14, 15, and 16). *The consistent monetary shortfall noted in line 12 has resulted in steady increases in debt ratios (line 15).*" (Emphasis added) (Page 5)

"Capital and exploratory expenses (lines 7 and 8). These are the funds expended to develop new energy resources (except for scattered investments in non-energy fields). These expenditures, unadjusted for inflation, (line 7) have increased markedly since the 1973 embargo. Group capital expenditures for the post embargo years (1973–6 inclusive) amounted to $102.7 billion compared to $57.9 billion for the immediate pre-embargo years (1969–72 inclusive). During the post embargo years, dividends increased from $4 billion to $5.28 billion, while the pre-embargo years dividends increased from $3.65 to $3.78 billion. Historically, the oil industry has financed exploration and expansion mostly from internally generated cash flow (line 1), but *the particularly heavy and increasing expenditures in 1973, 1974, 1975 and 1976 (line 7) have forced heavy outside borrowing (lines 13 and 14) and an accelerating increase in debt ratios* (lines 15 and 16)." (Pages 5–6) (Emphasis added)

"Dividends paid and dividend payout ratio (line 9, 10 and 11) represent reward to the stockholder for risking his money. Gradually increasing dividends are necessary to attract new capital. Historically, the payout ratio has amounted to about 50 percent of net income (profits) (line 11) with the other 50 percent being plowed back into the business. Line 11 indicates that since the 1973 embargo, a significantly lesser share has gone to the investor with an increasing share of profits being plowed back into the business (line 7)." (Page 6)

"Long term debt and debt ratios (lines 13, 14, 15 and 16). Previous references (paragraphs 3 and 4) have been made to the accelerated rate of debt accumulation as petroleum companies borrowed heavily to support increasing capital expenditures amounting to more than available funds from internally generated profits and depreciation/depletion. It is significant to note that the sample group long term debt has tripled (line 13) during the 1967–1976 period and long term debt ratio has moved upward from 17.2 percent to 26.4 percent (line 15). The maximum long term debt ratio sustainable without impairing credit rating and causing consequent difficulty and expense in raising debt capital will vary for different companies. . . . *However, unattributed but probably informed comments from the investment community have indicated a belief that debt ratios about 30 percent have become dangerously close to the maximum attainable without impairment of credit standings. Many smaller companies have already exceeded their maximum 'safe' ratio.*" (*Page 7*) (*Emphasis added*)

* * * *"Based on these data, it appears that a choice may have to be made between allowing higher profits or probably seeing lower capital expenditures for privately financed energy development efforts. The alternative will be increased Federal participation in energy development by subsidy or direct operational participation.*" (Pages 7–8) (Emphasis added)

"Return on average total capital (line 17). This ratio is a measure of return on total capital employed in the business and mainly consists of equity (net worth) plus long and short term debt. With the exception of the abnormally profitable years of 1973 and 1974 when returns were 12.0 percent and 14.8 percent respectively, 10 year returns have been in the 8 percent–10 percent range." (Page 8)

"Return on average common equity (lines 18, 19, and 20). Increases in the return on equity, coupled with earnings increases, are the key to investor expectation of future dividends and are a prime ingredient in common stock prices. Higher stock prices lower the costs of raising equity capital in the public capital markets.*** *In general, returns for the oil companies corresponded fairly closely with those of the non-oil company manufacturing group,* the prime exception being the year 1974, which coincided with the non-recurring oil inventory profits referred to in paragraph 1." (Pages 8–9) (Emphasis added)

1976 versus 1975—"A sample of 44 representative oil companies showed a 19.4 percent net income (profit) increase over 1975 results, compared to a 25.4 percent decline in 1975 profits from record 1974 profit levels, due in large part to non-recurring inventory profits." (Page 9) *Capital and exploration expenditures increased 7.1 percent to $28.8 billion, more than the $28.6 billion cash flow from profits plus depreciation.* (Page 11) (Emphasis added)

"To finance the cash flow shortfall, long term debt for the 44 company group was expanded 10.9 percent by outside borrowing, thereby increasing the debt to total capital ratio to 26.4 percent, a historical high. *The degree to which such large outside borrowing can continue to be obtained without lowered credit ratings (resulting in higher interest charges on debt and probable increased expense in raising additional equity capital), is uncertain.*" (Page 11) (Emphasis added)

"Return on average common equity was 14.3 percent in 1976, less than the 15.0 percent return earned by an approximate 2,000 group of non-petroleum manufacturing companies." (Page 11)

CONCLUSIONS

"While the purpose of this paper is not to present conclusions, the data suggest:

"Return on oil company stockholder equity is not excessive compared to other manufacturing industries, with the exception of 1974, which was an abnormal year.

"Oil companies have consistently been making capital expenditures in excess of available internally generated funds (consisting mainly of profits and depreciation/depletion).

"Profits have increased sharply since 1973 but are not excessive in relation to capital expenditures.

"Outside borrowing and long term debt ratios are increasing and may be approaching the limit beyond which credit ratings are impaired and more expensive financing results.

"Returns to stockholders (dividends) have increased only modestly compared to capital expenditures; dividend payments as a percent of earnings have been declining since 1973. The exception to this trend is 1975, a year of declining profits." (Pages 17–18)

SUMMARY OF AGGREGATE FINANCIAL DATA AND KEY COMPOSITE ANNUAL COMPARISONS OF 40 MAJOR OIL COMPANIES

INTRODUCTION

This brief study represents an attempt to present a balanced and factual summary of the key financial relationships governing the financial operation of an energy business over a sufficiently meaningful time period to provide perspective. It is intended to:

Provide a basic understanding of the significant interrelationships between expenditures for new energy supply, profits and cash flow, outside borrowings, and the necessity to provide sufficient stockholder return (dividends) to provide risk capital and borrowed money at reasonable rates.

Provide a reference source for answering many of the questions originating from variout governmental sources concerning oil company financial relationships.

Our basic data source is C. H. Pforzheimer & Co., New York City, for many a respected source of financial and investment related petroleum company statistics. Pforzheimer has made its data available as a service to the government.

In addition to basic individual company statistics, Pforzheimer has also maintained composite income statements and balance sheets of approximately 40 of the largest petroleum companies and has compiled historical key financial ratios and comparisons for the same companies. Table 1, "Selected Aggregate Financial Data for Approximately 40 Largest Petroleum Companies", includes many of these ratios supplemented by ERD calculations.

Net income

Depreciation-depletion

Capital and exploratory expenditures

Dividends

Dividend payout ratios (Dividends as a percent of net income)

Long term debt

Long term debt ratios (LTD as a percent of total long term capitalization)

Return on average invested capital

Return on equity (common stock)

This paper also presents selected key financial data for 25 major petroleum companies for the 10 year period including 1967–1976 (Table 2). Annual data included:

Net income

Percent annual change in net income

Earnings per share

DOMESTIC ENERGY SUPPLY AND DEMAND

Domestic consumption of energy has increased steadily while domestic supply has decreased. The May 1977 FEA Monthly Energy Review summarizes the supply and demand situation:

	1976	1975	1974	1973	1972
Total domestic consumption*	74.21	70.55	72.60	74.55	71.89
Total domestic production*	59.83	60.13	61.14	62.37	62.94
Foreign crude and product imports†	7.29	6.06	6.11	6.25	4.74
Domestic crude production†	8.12	8.38	8.77	9.21	9.44
Domestic marketed gas production‡	19.9	20.1	21.6	22.6	22.5

* Quadrillion (10^{15}) Btu.
† Million barrels per day.
‡ Trillion cubic feet.

To date, 1977 trends indicate increasing domestic energy demand and decreasing domestic supply of oil and gas. The deficit is supplied by increasing imports from 33.4 percent of domestic crude production plus foreign crude and product imports in 1972 to 47.3 percent in 1976 with a continuing 1977 upward trend.

DISCUSSION OF AGGREGATE FINANCIAL DATA

The aggregate financial data shown in Table 1 was selected from approximately forty of the largest petroleum companies, the actual number and identity of which vary somewhat from year to year. However, these variations are considered minor, and the ratios are believed to accurately reflect the financial status of the industry mainstream.

A brief discussion of key ratios and comparisons follows:

1. *Net income* (lines 1 and 2 of Table I). Prior to the 1973 oil embargo, net income had been almost flat since 1967. Extraordinarily large profit increases in 1973 and 1974 were due primarily to nonrecurring inventory earnings caused by major increases in OPEC crude prices. By contrast, the sharp 1975 profit decline was caused by lower world demand due to economic recession, an abnormally warm winter and disappearing inventory profits. The 1976 rebound was due in large part to the U.S. economic upturn which increased demand, plus higher prices in certain cases.

It should be noted that energy company profits cannot be accurately viewed in a vacuum but rather must be studied in relation to capital expenditures for energy development (lines 7 and 8), returns to stockholders (lines 9, 10 and 11), return on stockholders equity (lines 18 and 19) and outside borrowing and debt ratios (lnes 13, 14, 15 and 16).

2. *Depreciation-depletion etc.* (lines 3 and 4). This figure normally increases annually in an expanding business and generally represents capital recovery from past expenditures. The 1975 dip was an extraordinary item in "etc." and resulted chiefly from lesser dividends than equity in earnings in Aramco.

(It should be noted that considerable discussion regarding effects of inflation is occurring in business, accounting, and government circles regarding adequacy of depreciation allowances to allow rebuilding of obsolete plants in *all* manufacturing endeavors, including petroleum).

3. *Cash flow* (lines 5 and 6). Cash flow, the sum of net earnings and depreciation, generally represents total internally generated funds for financing energy development (capital expenditures) and rewards to stockholders (dividends) for risking their capital. Any shortfall (line 12) in cash flow below capital expenditures must be made up by borrowing (lines 13, 14, 15 and 16). The consistent monetary shortfall noted in line 12 has resulted in steady increases in debt ratios (line 15).

4. *Capital and exploratory expenses* (lines 7 and 8). These are the funds expended to develop new energy resources (except for scattered investments in non energy fields). These expenditures, unadjusted for inflation, (line 7) have increased markedly since the 1973 embargo. Group capital expenditures for the 4 post embargo years (1973–6 inclusive) amounted to $102.7 billion compared to $57.9 billion for the immediate pre-embargo years (1960–72 inclusive). During the post embargo years dividends increased from $4 billion to $5.28 billion, while in the pre-embargo years dividends increased from $3.65 to $3.78 billion. Historically, the oil industry has financed exploration and expansion mostly from internally generated cash flow (line 9), but the particularly heavy and increasing expenditures in 1973, 1974, 1975 and 1976 (line 7) have forced heavy outside borrowing (lines 13 and 14) and an accelerating increase in debt ratios (lines 15 and 16). (While our data does not include short term debt, a private communication from the petroleum economics department of the First National Bank of New York indicates corresponding increase in short term debt.)

5. *Dividends paid and dividend payout ratio* (lines 9, 10 and) represent reward to the stockholder for risking his money. Gradually increasing dividends are necessary to attract new capital. Historically, the payout ratio has amounted to about 50 percent of net income (profits) (line 11) with the other 50 percent being plowed back into the business. Line 11 indicates that since the 1973 embargo, a significantly lesser share has gone to the investor with an increasing share of profits being plowed back into the business (line 7). During the post embargo years, dividends increased from $4 billion to $5.28 billion while in the 4 preceding pre-embargo years dividends increased from $3.65 to $3.78 billion. Lines 2 and 10 show the post embargo lag in dividend increases compared to earnings increases.

6. *Excess of expenditures over cash income* (line 12) has been previously discussed, paragraphs 3 and 4.

7. *Long term debt and debt ratios* (lines 13, 14, 15 and 16). Previous references (paragraphs 3 and 4) have been made to the accelerated rate of debt accumulation as petroleum companies borrowed heavily to support increasing capital expenditures amounting to more than available funds from internally generated profits and depreciation/depletion. It is significant to note that the sample group long term debt has tripled (line 13) during the 1967–1976 period and long term debt ratio has moved upward from 17.2 percent to 26.4 percent (line 15). The maximum long term debt ratio sustainable without impairing credit rating and causing consequent difficulty and expense in raising debt capital will vary for different companies would probably be imprecise. However, unattributed but probably informed comments from the investment community have indicated a belief that debt ratios about 30 percent have become dangerously close to the maximum attainable without impairment of credit standings. Many smaller companies have already exceeded their maximum "safe" ratio.

Based on these data, it appears that a choice may have to be made between allowing higher profits or probably seeing lower capital expenditures for privately financed energy development efforts. The alternative will be increased Federal participation in energy development by subsidy or direct operational participation.

8. *Return on average total capital* (line 17). This ratio is a measure of return on total capital employed in the business and mainly consists of equity (net worth) plus long and short term debt. With the exception of the abnormally profitable years of 1973 and 1974 when returns were 12.0 percent and 14.8 percent respectively, 10 year returns have been in the 80 percent-10 percent range.

9. *Return on average common equity* (lines 18, 19 and 20). Increases in the return on equity, coupled with earnings increases, are the key to investor expectation of future dividends and are prime ingredients in common stock prices. Higher stock prices lower the costs of raising equity capital in the public capital markets.

Line 18 represents equity return for the approximate 40 oil company group sampled and line 19 represents equity return for about 2,000 manufacturing companies (excluding oil companies) as compiled by the First National City Bank of New York. In general, returns for the oil companies corresponded fairly closely with those of the non-oil company manufacturing group, the prime exception being the year 1974, which coincided with the non-recurring oil inventory profits referred to in paragraph 1. Chart 1 is a graphical comparison of oil company returns to manufacturing returns for a 10 year period. In years above the trend line the sample group oil company profits exceeded those of the manufacturing group, while manufacturing profits exceeded oil profits in the years below the trend line.

KEY COMPOSITE COMPARISONS—TABLE 1

Group comparisons—1976 versus 1975:

1. A sample of 44 representative oil companies group showed a 19.4 percent net income (profit) increase over 1975 results, compared to a 25.4 percent decline in 1975 profits from record 1974 profit levels, due in large part to nonrecurring inventory profits.

2. The 1975 profit rebound from 1975 was due primarily to the United States economic upturn which caused domestic petroleum demand to increase by 6.1 percent to 17.3 million barrels per day. Motor gasoline, distillate and fuel oil sales increased by 4.4 percent, 9.4 percent and 12.1 percent respectively. Profit margins widened slightly as government regulations allowed quicker recouping of some costs than in the previous year.

3. Gross revenues for 1976 rose by 17.2 percent from 1975 for the reasons stated in 2.

4. Capital and exploration expenditures increased 7.1 percent to $28.8 billion, more than the $28.6 billion cash flow from profits plus depreciation. Cash dividend payments increased by 11.4 percent to provide support for outside financing. The dividend payout rate of 38.3 percent of profits was less than the 41 percent 1975 payout rate and considerably lower than the approximate 50 percent payout rate average which prevailed before the embargo.

To finance the cash flow shortfall, long term debt for the 44 company group was expended 10.9 percent by outside borrowing, thereby increasing the debt to total capital ratio to 26.4 percent, a historical high. The degree to which such large outside borrowing can continue to be obtained without lowered credit ratings, (resulting in higher interest charges on debt and probable increased expense in raising additional equity capital) is uncertain.

5. Return on average common equity was 14.3 percent in 1976, les than the 15.0 percent return earned by an approximate 2,000 group of non-petroleum manufacturing companies.

Group comparisons—1975 versus 1974:

1. A 43 oil company group reported an aggregate 25.4 percent decline in net income from 1974 to 1975.

2. Decreased aggregate earnings resulted from lower world petroleum demand due to warmer-than-normal winter, a worldwide recession, disappearing inventory profits and higher taxes.

3. A 4-percent increase in gross revenue was insufficient to offset virtual loss of the depletion allowance and other provisions of the Tax Reduction Act of 1975.

4. Direct comparisons with 1974 profits are hampered by:

a. A change in accounting rules which modified the method of translating foreign earnings into dollars and rules covering insurance and contingency reserves in foreign operations.

b. Some companies opted to restate downwards certain past year profits in accordance with an accounting rule change regarding tax deferrals necessitated by decrease in percentage depletion.

5. Capital and exploration expenditures increased 4.6 percent despite decreased earnings to $26.9 billion versus $11.6 billion in earnings and $22.8 billion cash flow in 1975.

Group comparisons—1974 versus 1973:

1. A 43 company group reported an aggregate 35.0-percent net income increase compared with 1973 results.

2. Reported earnings were higher due in large part to nonrecurring inventory profits caused by substantial increases in crude oil prices, following a trend that began in 1973. These inventory profits were offset to a degree by some companies switching to "last in, first out" (LIFO) inventory accounting. These nonrecurring inventory claims also declined sharply during the fourth quarter of 1974. Petrochemical profits were sharply up from previously depressed levels.

3. Gross revenues increased 69 percent and taxes showed an appreciable jump.

4. Capital and exploratory expenses increased 57.7 percent compared to the 35.0-percent earnings increased. Actual aggregate capital expenditures amounted to $25.7 billion versus $15.9 billion net income and $28.9 billion cash flow.

Group comparisons—1973 versus 1972:

1. In 1973 a 43 company group reported a 73.2-percent net income increase over 1972.

2. U.S. earnings increased about 20 percent, slightly more than the percentage increase in domestic revenues. Major factors contributing to the increase included:

a. Increased volumes of oil production and product sales;

b. Higher prices;

c. Fuller utilization of plant capacity;

d. Improving tanker and chemical profits; and

e. Increased foreign income due to the U.S. dollar devaluation and some inventory profits.

3. The strong 1973 profit showing compares with the 1968–72 period when group earnings showed little increase despite heavy capital investment programs.

4. Gross revenues increased 25.5 percent.

5. Capital and exploration expenses increased 14.0 percent to $16.3 billion compared to $11.8 billion net income and $22.3 billion in cash flow.

Group comparisons—1972 versus 1971:

1. A 41 company group reported decreased aggregate 1972 earnings of 5.4 percent compared with 1971. However, results were mixed; 27 of the companies showed increases in 1972 net income, while a combined decline of three international companies resulted in the profit decline for the group as a whole.

2. Higher taxes and operating costs and early year weak product markets caused the earnings weakness.

3. Gross revenues increased 9.3 percent.

4. Capital and exploratory expenses increased 1.2 percent to $14.3 billion compared to aggregate net income of $6.8 billion and cash flow of $15.9 billion.

Group comparisons—1971 versus 1970:

1. A 39 company group reported an aggregate 1971 net income increase of 5.1 percent over 1970. Twenty-five organizations reported profit increases while 14 showed declining earnings.

2. The overall earnings improvement was due to international operations. U.S. earnings were depressed by several factors, including depressed gasoline and chemical prices. U.S. demand increased 2.7 percent, compared to a 6.4 percent foreign demand increase. U.S. crude production decreased 1.1 percent.

3. Gross revenues increased by 12.7 percent.

4. The 39 company group increased capital and exploratory expenses by 6.6 percent to $14.1 billion, compared to $7.2 billion net income and total cash flow of $15.1 billion.

Group comparisons—1970 versus 1969:

1. A 37 oil company group reported a 0.3-percent increase 1970 net income compared to the previous year. Eighteen of the companies reported higher 1970 net income while 19 reported declining earnings.

2. Fourth quarter earnings improvement prevented an aggregate net income decrease as some prices improved. Starting in November the domestic industry began to benefit from a 25 cents per barrel crude price increase and a 7 cents per gallon gasoline price increase.

3. Gross revenues increased 9.0 percent.

4. Capital and exploratory expenses increased by 3 percent over 1969 to $13.3 billion, compared to $6.8 billion net income and cash flow of $14.2 billion.

Group comparisons—1969 versus 1968:

1. A 36 oil company group reported a 1.2-percent gain in 1969 net income compared to 1968 results. Twenty-two firms reported earnings increases; 14 reported declines.

2. The earnings growth was retarded by increased costs of materials, labor and debt service, plus higher dry hole costs. These increased costs were not recovered in the marketplace where selling prices were generally weak.

3. Aggregate gross revenues increased by 8.3 percent as U.S. product demand increased by 5.5 percent, while total free world demand increased 8.2 percent over 1968.

4. Aggregate capital and exploratory expenditures for the year were $12.87 billion, an increase of 3.8 percent. Aggregate group net income was $6.8 billion, while cash flow amounted to $12.6 billion.

Group comparisons—1968 versus 1967:

1. A 37 oil company group reported an aggregate net income increase of 9.4 percent compared with 1967.

2. The 10.5 percent earnings increase resulted mostly from a 9.3 percent gain in aggregate free world demand. U.S. demand increased 6.3 percent.

3. Aggregate gross revenues increased 9.6 percent, slightly more than the 9.3 percent increase in free world demand.

4. Capital and exploratory expenditures increased 14.3 percent over 1967 to $12.4 billion compared to $6.8 billion net income and $11.9 billion cash flow.

The annual key financial data for 25 major oil companies included in Table 2 are provided primarily as an easily accessible data source to answer many of the commonly asked questions regarding major oil company financial results. It may also be utilized to compare individual oil company results with the industry composite results shown in Table 1.

CONCLUSIONS

While the purpose of this paper is not to present definite conclusions, the data suggest:

Return on oil company stockholder equity is not excessive compared to other manufacturing industries, with the exception of 1974, which was an abnormal year.

Oil companies have consistently been making capital expenditures in excess of available internally generated fund (consisting mainly of profits and depreciation/depletion).

Profits have increased sharply since 1973 but are not excessive in relation to capital expenditures.

Outside borrowing and long term debt ratios are increasing and may be approaching the limit beyond which credit ratings are impaired and more expensive financing results.

Returns to stockholders (dividends) have increased only modestly compared to capital expenditures; dividend payments as a percent of earnings have been declining since 1973. The exception to this trend is 1975, a year of declining profits.

(No copy of table No. 2 is available.)

TABLE 1.—SELECTED AGGREGATE FINANCIAL DATA FOR APPROXIMATELY 40 LARGEST PETROLEUM COMPANIES

	1976	1975	1974	1973	1972	1971	1970	1969	1968	1967
(1) Net income (billions of dollars)	13.80	11.56	15.94	11.80	6.81	7.20	6.85	6.83	6.75	6.17
(2) Percent change	19.4	−25.4	35.0	73.2	−5.4	5.1	0.3	1.2	9.4	
(3) Depreciation-depletion (billions of dollars)	14.82	11.26	13.00	10.54	9.11	7.95	7.38	5.74	5.16	4.85
(4) Percent change	31.6	13.4	23.3	15.7	14.6	9.8	28.6	11.2	6.4	
(5) Cash flow (billions of dollars (3+1)	28.62	22.82	28.94	22.34	15.92	15.15	14.23	12.57	11.91	11.02
(6) Percent change	25.4	−21.1	29.5	40.3	5.1	6.5	13.2	5.5	8.1	
(7) Capital and exploratory expenditures (billions of dollars)	28.83	26.93	25.75	16.33	14.32	14.15	13.27	12.87	12.40	10.85
(8) Percent change	7.1	4.6	57.7	14.0	1.2	6.6	3.0	3.8	14.3	
(9) Dividends paid (billions of dollars)	5.28	4.74	4.48	4.00	3.78	3.79	3.75	3.65	3.33	3.06
(10) Percent change	11.4	5.8	12.0	5.8	−0.3	1.1	2.7	9.6	8.8	
(11) Dividend payout ratio (percent)	38.3	41.0	28.1	33.9	55.5	53.3	55.2	53.1	48.8	49.5
(12) Excess of expenditures over cash income (7+9−5) (billions of dollars)	5.49	8.85	1.29	−2.01	2.18	2.79	2.79	3.95	3.82	2.89
(13) Long-term debt (billions of dollars)	36.37	28.89	25.04	22.48	21.78	20.78	18.52	16.35	14.6	11.5
(14) Percent change	25.9	15.4	11.4	3.2	4.8	12.2	14.0	11.3	27.0	
(15) Long-term debt ratio	26.4	23.8	22.2	22.0	23.3	23.0	21.9	20.6	19.9	17.2
(16) Percent change	10.9	7.2	.9	−5.6	1.3	5.0	6.3	3.5	15.7	
(17) Return on total average capital (percent)	10.7	10.0	14.8	12.0	7.4	8.2	8.3	9.0	9.7	9.6
(18) Return on average common equity (percent)	14.3	13.1	19.0	15.6	9.7	10.8	10.7	11.4	12.0	11.6
(19) Return on equity (manufacturing group ex petroleum) (percent)	15.0	12.2	13.9	14.7	12.5	10.7	9.8	12.6	13.4	12.6
(20) Ratio oil return/manufacturing group return (percent) (16/19)	95.3	107.4	136.7	106.1	77.6	100.9	109.2	90.5	90.0	92.1

Note: The ratios represent approximate rather than actual year-to-year comparisons because of changes in the make-up of the group due to mergers and other corporate changes. The year-to-year distortions in the comparisons are considered minor.

Source: Pforzheimer and FEA (PIR).

Mr. TOWER. Mr. President, this is what the FEA report that has been suppressed concludes. This is in the language of the FEA report prepared by this administration, but which they will not release because they had some preconceived notions and this report does not support them.

This is the administration's own report, prepared last June, suppressed until now, and it is going in the RECORD at this point.

Here is what it concludes, it says:

While the purpose of this paper is not to present definite conclusions, the data suggest:

Return on oil company stockholder equity is not excessive compared to other manufacturing industries, with the exception of 1974, which was an abnormal year.

Oil companies have consistently been asking capital expenditures in excess of available internally generated funds (consisting mainly of profits and depreciation/depletion).

Profits have increased sharply since 1973 but are not excessive in relation to capital expenditures.

Outside borrowing and long term debt ratios are increasing and may be approaching the limit beyond which credit ratings are impaired and more expensive financing results.

Returns to stockholders (dividends) have increased only modestly compared to capital expenditures; dividend payments as a percent of earnings have been declining since 1973. The exception to this trend is 1975, a year of declining profits.

Mr. President, there is one particularly ominous suggestion in this report. It says:

Based on these data, it appears that a choice may have to be made between allowing higher profits or probably seeing lower capital expenditures for privately financed energy development efforts. The alternative will be increased Federal participation in energy development by subsidy or direct operational participation.

Mr. President, this report, suppressed by FEA, was prepared by their direction. They will not even acknowledge its existence, much less pass out copies of it. But here it is.

The FEA–ERD, Office of Oil and Gas, a Summary of Aggregate Financial Data and Key Composite Annual Comparisons of 40 Major Oil Companies.

Either profits have to go higher, says this report, or they will have to go in with a Federal subsidy or Federal operation to get an adequate amount of capital investment in the energy industry in this country.

The suppression of this report leads me to believe that perhaps there are those in this administration who would like to see the energy industry in this country nationalized.

Perhaps our debate should focus on the desirability of the nationalization of oil and gas in this country.

The debt ratios are too high right now. Informed comments from the investment community have indicated a belief that debt ratios of about 30 percent have become dangerously close to the maximum attainable without impairment of credit standings. Many smaller companies already exceed their maximum safe ratio.

Mr. President, the administration's own report, prepared under its direction, says that the administration position is wrong.

I think the question is, why was this report suppressed, and I call on the President, consistent with his idea of having an open administration, to order FEA to release this report to the public, which I now have placed in the RECORD.

This report lets a very ugly cat out of the bag, indeed, Mr. President.

I still suspect that what we are hearing is an effort to so restrict and proscribe the production of energy by the private sector in this country that somebody will come to the conclusion that nationalization is the only solution.

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

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, the Senator from South Dakota still has 4 minutes of time that was yielded to him earlier which, when used, will make a total of 15.

I am ready to yield him an additional 8 minutes from my side, if the minority will yield him 7 minutes from their side, which will make a total of 30 minutes which the opponents were promised.

Mr. PEARSON. I think we have only 7 minutes left, if I am correct. I do not know of anyone who wants any time on my side.

Mr. ROBERT C. BYRD. I yield to him at this point.

The PRESIDING OFFICER. The Senator from Kansas has 13½ minutes under his control.

Mr. ROBERT C. BYRD. I will yield 8 minutes to him and the minority 7 minutes, and that will assure him he has had his full time.

Mr. PEARSON. Yes.

Mr. ABOUREZK. If we have 8 more minutes, does that mean we have a full 30?

Mr. ROBERT C. BYRD. My 8, and 7, the Senator has had 15, 4 of which still remain.

Mr. ABOUREZK. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. ABOUREZK. I yield myself 4 minutes.

Mr. President, I want to repeat something I said earlier in this particular hour's debate. I want to advise the Members of the Senate, and particularly the distinguished majority leader, that there are some 200 or 300 perfecting amendments to various portions of the bill that we are considering, and there are substitutes.

If cloture is invoked, each and every one of those amendments, which we think will perfect the bill, will be voted on. We will have up and down votes on each and every one of those, plus others. Perhaps votes as people try to get too stringent on procedure. I am sure we would have to vote on that, as well.

I see no reason for the Senate to be put through this, because it is going to mean long hours, early morning and late at night. I see no reason why, when the President has threatened a veto, when the Speaker of the House and the House itself, have said consistently that no deregulation bill is going to get through the House——

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ABOUREZK. I yield.

Mr. ROBERT C. BYRD. In my judgment, the Senate will exercise its own independent will, entirely aside from what comments may be made from the outside.

Mr. ABOUREZK. Getting back to what I was saying, it is entirely futile—it is a futile gesture—to try to continue with any kind of deregulation measure when we know that it is not going to get anywhere, in the first place, and when we know that it is going to be weeks before we get to a vote on any deregulation measure, if we do get to a vote.

I think it is going to be a lot easier for the Members of the Senate if we do not vote cloture than if we do vote cloture; because I think we can come to some kind of reasonable resolution of deregulation amendments, preferably by tabling or recommitting them, so that we can get on with passing on the Carter bill or the Jackson substitute or whatever—something that is reasonable and not something that is unreasonable, such as deregulation.

I reserve the remainder of my time.

Mr. BELLMON. Mr. Prcsident, will the Senator yield me 3 minutes?

Mr. PEARSON. I yield.

Mr. BELLMON. Mr. President, apparently there is a great deal of concern and interest here today in the statement which is attributed to President Carter, in which he is supposed to have said that he would veto a bill that deregulates natural gas.

I have before me a letter written to Gov. David Boren, of Oklahoma, dated October 19, 1976, about 2 weeks before the election, which I should like to read for the enlightenment particularly of my friend from South Dakota and others who may wonder where the President stands.

The letter reads:

The formulation of a workable national energy policy implemented by a responsive, understandable governmental structure will be of highest priority in a Carter administration. If we are to reach our goals of full employment and a healthy, growing economy, we must reduce our dangerous dependence on foreign oil and we must develop our own domestic energy supplies. These resources must be produced and used in an environmentally acceptable manner at a cost that the consumer can afford to pay.

A sound energy policy must aggressively promote conservation of our scarce oil and gas resources. This is the only way in which we can hope to make ends meet in our energy budget. But, coupled with energy conservation—

I particularly emphasize the next phrase.

our policy must encourage additional production of our domestic reserves.

Eight years of Republican administration have failed to produce an energy policy. Demand for new energy supplies has increased by over 4% per year since 1969—even though demand was reduced considerably during the recession triggered by the Arab oil embargo. At the same time, domestic production and resources have decreased substantially, and dependence on foreign supplies has increased from 35% prior to the embargo to over 40% today.

To increase our domestic production, I have proposed three important steps.

First, I will work with the Congress, as the Ford administration has been unable to do, to deregulate new natural gas.

So here is Jimmy Carter, candidate, saying that he wants to deregulate new natural gas, and now we have him saying that he may veto a bill.

I submit that the President is at least confused and uncertain on this issue and that his statements should not come into consideration as the Senate decides on this matter; because if he has changed his mind once, I submit that he might change it again.

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

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

OCTOBER 19, 1976.

GOV. DAVID BOREN,
State Capital Building,
Oklahoma City, Okla.

DEAR GOVERNOR BOREN: The formulation of a workable national energy policy implemented by a responsive, understandable governmental structure will be of highest priority in a Carter administration. If we are to reach our goals of full employment and a healthy, growing economy, we must reduce our dangerous dependence on foreign oil and we must develop our own domestic energy supplies. These resources must be produced and used in an environmentally acceptable manner at a cost that the consumer can afford to pay.

A sound energy policy must aggressively promote conservation of our scarce oil and gas resources. This is the only way in which we can hope to make ends meet in our energy budget. But, coupled with energy conservation, our policy must encourage additional production of our domestic reserves.

Eight years of Republican administration have failed to produce an energy policy. Demand for new energy supplies has increased by over 4% per year since 1969—even though demand was reduced considerably during the recession triggered by the Arab oil embargo. At the same time, domestic production and resources have decreased substantially, and dependence on foreign supplies has increased from 35% prior to the embargo to over 40% today.

To increase our domestic production, I have proposed three important steps.

First, I will work with the Congress, as the Ford administration has been unable to do, to deregulate new natural gas. The decontrol of producers prices for new natural gas would provide an incentive for new exploration and would help our nation's oil and gas operators attract needed capital. Deregulation of new gas would encourage sales in the interstate market and help lessen the prospect of shortages in the nonproducing states which rely on interstate supplies. While encouraging new production, this proposal will protect the consumer against sudden, sharp increases in the average price of natural gas.

Second, I believe we should act to encourage enhanced recovery from wells already in production. As you well know, an average of 60% of our oil remains in the ground after standard recovery methods have been exhausted. It is estimated that up to 60 billion barrels of crude could be added to our supply if enhanced recovery techniques are used. Since the environmental costs have already been largely paid on these resources, both consumers and producers alike benefit from development of this resource.

Third, I favor a substantial shift from the use of oil and gas—our highest quality energy sources—to coal, which we have in abundance. We must immediately begin a program to encourage conversion from the use of petroleum and natural gas to coal in those applications for which coal is an acceptable substitute. Our present demand for coal is limited by two important factors. First, we have geared our technological growth to oil and gas for well over 100 years. Second, we have failed to establish a stable regulatory climate in which coal producers are sure of the rules of the game before they make investments in expanded production or new mines. Switching to the use of coal will require strong presidential leadership and proper federal incentives to encourage the conversion process. A Carter Administration will provide this leadership.

I hope that these policy recommendations will help to put my views on the supply aspects of the energy problem into focus. Without a strong commitment to increasing our domestic production, while maintaining basic environmental principles, we cannot hope to reverse the unhealthy trends which the lack of leadership of the current administration has produced.

Sincerely,

JIMMY CARTER.

Mr. ABOUREZK. Mr. President, will the Senator yield to me briefly?

Mr. BELLMON. On the Senator's time.

Mr. ABOUREZK. If the Senator from Oklahoma is giving me a choice as to which statement to accept, I will take the one the President made Saturday.

Mr. BELLMON. I am not giving the Senator a choice. I am simply suggesting that the President is confused on the issue. He said one thing last October and something different now.

I suggest that the Senate should make its decision on what we know is best for the country, and let the President make his decision when the bill gets to his desk.

Mr. ABOUREZK. Mr. President, I yield 5 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in a very few moments, we will be voting on cloture, in spite of the fact that the issue that is before the Senate is one on which the proponents are prepared to vote, and to vote now.

I cannot recall a time during my service in the Senate, almost 15 years, when we have been asked to vote on a cloture motion which would cut off debate for those who want to perfect the measure before the Senate, at a time when the supporters of that measure are prepared to go to an up-and-down vote. That is where we are at the present time.

Beyond this, Mr. President, I believe that during these past few days we have had a very good and enlightened debate on a number of the important issues which are raised in the proposed legislation. I think the most important is the relationship of price to supply, because that is at the heart of the whole issue we are considering on the floor of the Senate.

We have to recognize that if we go to cloture, the opportunity to work out any particular adjustment on the basis of information and the debate we have heard over the past few days is virtually eliminated. It seems to me to be unwise from that point of view.

The President has made his statement; the Speaker has made his statement. The Senate has indicated, by previous votes, that it is virtually evenly divided on this issue. It seems to me to

be unwise for the Senate to put itself into a straitjacket at this particular time, on this issue, when the interests are so divergent, and to preclude the opportunity for any kind of reasonable adjustment on the issue before us.

Third, Mr. President, it seems to me that, in the final moments, we are hearing about the regulation of an industry and what a disservice it is going to be in terms of the new capital formation, new exploration, in future years, if we are not going to deregulate that industry. Many of these arguments were explored during the time that Congress put a limitation and a cap on the processing of old oil. We heard many of the same voices that speak today say that if we put a limitation on old oil and we put a limitation on new oil, this is virtually going to end the opportunity for the oil industry to survive in this country.

Nonetheless, we did put on such a limitation, and we have seen the increase in the profits of oil companies, some $2.6 billion in the past years—billions of dollars that have come out of the pocketbooks of the consumers of this Nation.

It is quite clear that with the type of deregulation program that is suggested in the Bentsen-Pearson proposal, it is going to mean tens and tens of billions of dollars out of the pocketbooks of the consumers of this country and into the bank accounts of these major companies—with all the implications of equity and fairness, let alone the welfare of millions of Americans who are dependent upon heating their homes with natural gas. I think this is an enormous disservice to those people.

Mr. President, I think that the broad economic implications of the proposal we are considering today—in terms of our national well-being and national economy—are proved. The studies which have been done by the Joint Economic Committee clearly underline that fact.

We have seen, during recent periods of time, that the significant increase in the cost of petroleum products has virtually extended us into the longest periodic economic stagnation that we have seen since the earliest days of this country, including the depressing days of the early part of the thirties.

We still have not recovered. I daresay that the proposal we are facing here today on the Pearson-Bentsen proposal I believe would have a similar adverse impact and effect on an already faltering economy. It may very well be just that additional push that will put us right back into the kind of severe unemployment, galloping inflation, and the kind of stagflation which we have seen in recent times.

For all of these reasons, Mr. President, it seems to me to be unwise for the Senate to move ahead to a period of cloture which will effectively cut off the opportunities for the serious kind of discussions we have seen over the period of these past few days.

For these reasons, Mr. President, and the reasons we outlined in previous debate and discussion, I am very hopeful that this particular measure will fail.

I reserve the remainder of my time.

Mr. ABOUREZK. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. No—let us wait and see if someone wishes to speak.

Mr. President, just permit me to say that I want Mr. ABOUREZK to be protected in his utilization of the 30 minutes which have been allotted.

As I understand, this would leave me about 7 minutes?

The PRESIDING OFFICER. The Senator from West Virginia has 7½ minutes. The Senator from South Dakota has 10 minutes remaining.

Mr. ROBERT C. BYRD. How much would remain on the other side?

The PRESIDING OFFICER. One and a half minutes to the Senator from Wyoming.

Mr. ROBERT C. BYRD. I would hope the Senator from South Dakota would be able to utilize some of his time now because a quorum call would eat into my remaining 7 minutes which I would like to reserve.

Mr. HANSEN. May I ask the distinguished majority leader, Mr. President, if it is not true that our side yielded time to the Senator from South Dakota as well——

Mr. ROBERT C. BYRD. Both sides did. So if the Senator could use some of his time——

Mr. ABOUREZK. Mr. President, I will ask for a quorum—how about if we divide the time equally?

Mr. ROBERT C. BYRD. The problem is it eats into my own 7 minutes, which is all the time I have left.

Mr. ABOUREZK. Mr. President, can we divide the remaining time between us and call a quorum based on that?

Mr. ROBERT C. BYRD. Yes.

Mr. ABOUREZK. Mr. President, I ask unanimous consent that of the time remaining the Senator from West Virginia have half and I have half, and that a quorum call be called with time equally charged.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. The time will be so divided.

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum on those conditions.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Four minutes.

Mr. ROBERT C. BYRD. Mr. President, the Senate is about to vote on whether debate should be brought to a close on the Pearson-Bentsen substitute to S. 2104 the Natural Gas Policy Act.

I shall take only a few minutes of the Senate's time to explain why I feel cloture should be invoked on this measure, and to urge all of my colleagues as strongly as I possibly can—Mr. President, may we have order?

The PRESIDING OFFICER. May we have order in the Senate, please? Those who are talking will please retire to the cloakroom. May we have those talking please be quiet or retire to the cloakroom?

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I shall take only a few minutes of the Senate's time to explain why I feel that cloture should be invoked on this measure and to urge my colleagues, as strongly as I possibly can, to support this effort to allow the Senate to come to a final determination on this very crucial matter.

First, may I say that I am proud of the dispatch with which the Senate has considered the administration's energy proposals. The President's energy message was delivered to the Senate on April 20. Senators will recall that because of the Senate's own reorganization involving among other things the Senate's committee structure, we were off to a very large start in consideration of our legislative agenda. In spite of that, and in spite of the extremely heavy flow of nonenergy legislation and energy-related legislation that was submitted by the new administration, the Senate and its Energy Committee worked diligently for long hours to put together the pieces of the energy package.

Because of that diligence on the part of the members and because of the dedication and unusual degree of cooperation on behalf of all Senators, both on the Majority and Minority side, we have made rapid progress toward the priority goal we set for ourselves early in this session, namely, to deliver to the American people a comprehensive energy program formulated by the new administration and designed to meet the Nation's energy needs in the years directly ahead.

We have already passed three major portions of the six-part energy program. We completed action on the Emergency Educational Assistance Act, S. 701, on July 20. We concluded our consideration of the Natural Gas and Petroleum Conservation and Coal Utilization Policy Act, H.R. 5146, on September 8. Shortly thereafter, on September 13, we sent to the House of Representatives the National Energy Conservation Policy Act. We are now about to take a vote which will hopefully enable us to conclude our deliberation ultimately on natural gas policy. When that is done, we can turn immediately to the consideration of the final measure from the Committee on Energy, the utility rate reform bill, and dispose of it in a reasonable time.

When we finally conclude our action on the utility rate reform bill, the Senate should be ready to turn to consideration of the heart of the administration's energy recommendations, the energy tax provisions to be reported by the Finance Committee of the Senate.

In the meantime we have other legis-

lation which is considered to be very important, and the Senate will have to work its will thereon.

Mr. President, I turn now to our present situation. We have just concluded on last Saturday evening, 1 full week—a long 6-day week—of deliberation and debate on the natural gas bill. We have had full and I think adequate debate on the many aspects of the measure. I believe the deliberations of last week have been good for the Senate, good for the administration, good for the affected industries, good for the consuming public, and have been essential to the legislative process. These deliberations are, as a matter of fact, the very sine qua non of the process, and I believe the Senate is performing at its very best as the unique legislative entity it is, when it performs as it has in the past few days. Last Saturday's session provided, in my view, some of the best debate we have heard on the very difficult and extremely complex questions we are addressing in this bill and, Mr. President, may I again say that I am proud of the membership and of the performance of the Senate in this instance.

As I have stated, we are past the halfway mark with respect to the consideration of the energy bills. But we have now come to a very crucial point in our deliberations. The alternative courses on natural gas policy have been thoroughly aired.

The PRESIDING OFFICER. The Senator's 4 minutes have expired.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield to me 2 minutes?

Mr. ABOUREZK. I yield 2 minutes to the majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from South Dakota for his courtesy.

The time has come for the Senate to halt its deliberations and decide. Deciding, as well as deliberating, is our duty. There is a point beyond which deliberation is fruitless. The alternatives are before the Senate. They have been thoughtfully presented, defended, and attacked. Compromise positions remain as alternatives but the time has been reached when further unlimited debate must be stopped and the focus of the Senate centered on choosing among the various alternatives. The invocation of cloture today is necessary to force that decision, and decide we must. This is not legislation that can wait for another time. It is crucial legislation. We face critical choices within this bill as we will in the energy tax bill which still remains to be considered by the Senate. But the time to begin to make these critical decisions is here and now. I urge each of my colleagues—whatever their substantive views may be concerning this bill—to vote to invoke cloture, to make the hard decisions, and to turn to the other pressing issues before the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. ABOUREZK. Mr. President, do I have 3 minutes remaining?

The PRESIDING OFFICER. The Senator has 2½ minutes remaining.

Mr. ABOUREZK. Mr. President, in attempting to obtain cloture, as Senator KENNEDY said, what the leadership is doing is trying to shut off what even the leadership admitted was constructive debate, for example, on last Saturday. Now there is no way that there is going to be some sort of an ideal compromise unless we are allowed to debate these things openly and freely. Cloture shuts off that open and free debate because each of us then after cloture has only an hour's time, except that I promise that there will be many efforts made to amend and to perfect the legislation that is before us if cloture is invoked. If that is what the Senate wants to go through, that is up to the Senate.

I submit, Mr. President, that there is one of the greatest economic issues of this century at stake today. It goes well beyond the $160 billion that this particular bill will cost in direct gas prices alone to consumers, to industry, and to those people who buy from industry. The inflationary impact of this will be staggering; the devastation to low-income people will be staggering. But there is one other factor that has not been debated very much during this discussion on the deregulation proposal.

And that is, if deregulation is allowed to take effect, it will give those oil companies and those energy conglomerates who want to go into synthetic gas production the pricing structure necessary to do that, and that is exactly and precisely what they are after. They are trying to get the price of gas up high enough not only to make an exorbitant profit directly out of the gas pricing structure but they want to go into the synthetic production of natural gas out of the other fossil fuel resources we have in this country. When they get to that then they are going to come to Congress and they are going to say let us take the Rockefeller proposal under which the Government will give $100 billion, which is the proposal, in loans and grants to the already overflowing coffers of the oil companies in order to "research and produce synthetic gas resources."

CLOTURE MOTION

The PRESIDING OFFICER. The time for debate under the unanimous-consent agreement having expired, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the Bentsen-Pearson substitute, No. 862, to S. 2104, to establish a comprehensive natural gas policy.

Robert C. Byrd, Henry M. Jackson, Daniel P. Moynihan, Warren G. Magnuson, Patrick J. Leahy, Wendell H. Ford, Alan Cranston, Claiborne Pell, Abraham Ribicoff, Charles McC. Mathias.

Howard H. Baker, Jr., John Tower, Richard S. Schweiker, Paul Laxalt, S. I. Hayakawa, Daniel K. Inouye, Ted Stevens, Henry Bellmon, Harrison A. Williams, Dennis DeConcini.

CALL OF THE ROLL

The PRESIDING OFFICER. Pursuant to rule XXII, the Chair now directs the clerk to call the roll to ascertain the presence of a quorum.

The second assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 29 Leg.]

Abourezk	Garn	Morgan
Allen	Glenn	Moynihan
Anderson	Goldwater	Muskie
Baker	Gravel	Nelson
Bartlett	Griffin	Nunn
Bayh	Hansen	Packwood
Bellmon	Hart	Pearson
Bentsen	Haskell	Pell
Biden	Hatch	Proxmire
Brooke	Hatfield	Randolph
Bumpers	Hayakawa	Ribicoff
Burdick	Heinz	Riegle
Byrd, Harry F., Jr.	Hollings	Roth
	Huddleston	Sarbanes
Byrd, Robert C.	Inouye	Sasser
Cannon	Jackson	Schmitt
Case	Javits	Schweiker
Chafee	Johnston	Scott
Chiles	Kennedy	Sparkman
Church	Laxalt	Stennis
Clark	Leahy	Stevens
Cranston	Long	Stevenson
Culver	Lugar	Stone
Curtis	Magnuson	Talmadge
Danforth	Mathias	Thurmond
DeConcini	Matsunaga	Tower
Dole	McClellan	Wallop
Domenici	McClure	Weicker
Durkin	McGovern	Williams
Eagleton	McIntyre	Young
Eastland	Melcher	Zorinsky
Ford	Metzenbaum	

The PRESIDING OFFICER. A quorum is present.

VOTE

The PRESIDING OFFICER. The Senate will be in order, please.

The question is, Is it the sense of the Senate that debate on the Pearson-Bentsen substitute, amendment No. 862 to S. 2104, to establish a comprehensive natural gas policy, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON of California. I announce that the Senator from Minnesota (Mr. HUMPHREY), the Senator from Montana (Mr. METCALF), and the Senator from Maine (Mr. HATHAWAY), are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The yeas and nays resulted—yeas 77, nays 17, as follows:

[Rollcall Vote No. 408 Leg.]

YEAS—77

Baker	Case	Eagleton
Bartlett	Chafee	Eastland
Bellmon	Chiles	Ford
Bentsen	Church	Garn
Biden	Clark	Glenn
Brooke	Cranston	Goldwater
Bumpers	Curtis	Gravel
Burdick	Danforth	Griffin
Byrd, Harry F., Jr.	DeConcini	Hansen
	Dole	Haskell
Byrd, Robert C.	Domenici	Hatch

Hatfield	McClure	Schmitt
Hayakawa	McIntyre	Schweiker
Heinz	Melcher	Scott
Huddleston	Moynihan	Sparkman
Inouye	Muskie	Stennis
Jackson	Nelson	Stevens
Javits	Nunn	Stevenson
Johnston	Packwood	Stone
Laxalt	Pearson	Talmadge
Leahy	Pell	Tower
Long	Proxmire	Wallop
Lugar	Randolph	Weicker
Magnuson	Ribicoff	Williams
Mathias	Roth	Young
Matsunaga	Sasser	Zorinsky

NAYS—17

Abourezk	Durkin	Metzenbaum
Allen	Hart	Morgan
Anderson	Hollings	Riegle
Bayh	Kennedy	Sarbanes
Cannon	McClellan	Thurmond
Culver	McGovern	

NOT VOTING—6

Hathaway	Humphrey	Percy
Helms	Metcalf	Stafford

The PRESIDING OFFICER (Mr. SARBANES). On this vote, the yeas are 77, the nays are 17. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to. Each Senator is now limited to 1 hour for debate purposes.

COMPREHENSIVE NATURAL GAS POLICY

Several Senators addressed the chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. ROBERT C. BYRD. Mr. President, the Senate has indicated very clearly that it wants to bring to a close the unlimited debate and reach a conclusion on the matter before it.

The Chair has already stated that each Senator is allotted 1 hour. That 1 hour is not transferable, except by unanimous consent.

I am informed that there are more than 500 amendments at the desk. These amendments may be called up as long as they are germane and are properly drawn and as long as no other points of order can be made against them.

Points of order under cloture are not debatable. Appeals are not debatable.

Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. Will Members please take their seats?

Mr. ROBERT C. BYRD. As Senators are very well aware, in back of this bill, once a conclusion has been reached thereon, there is the next and last energy bill out of the Energy Committee—one which has to do with utility rate reform.

Then there is also the final energy bill, which is the energy tax measure, coming out of Senator LONG's Committee on Finance. There are other measures which will have to be disposed of before the Senate adjourns for the year.

I hope that Senators understand that we are in a very difficult situation, that it will take a considerable amount of time—in my judgment, at this point, at least—to finish the work on this bill.

There will be many, many rollcall votes, if I understand the situation, as I believe I do, after having discussed it with Senators on both sides of the question.

So I urge Senators to cancel all appointments and engagements, if it is possible for them to do so, beginning with today—whether those engagements and appointments are in the city or outside the city.

What I am saying is that there will have to be late sessions, there will have to be early sessions, and it may get to the point where we will just have one rollcall vote after another, one rollcall vote after another; and this also means that if the Senate has not completed action on this bill by Saturday, a Saturday session will be absolutely necessary. Even if the Senate completes this business before Saturday, it may be that, because of the press of other business, it still would be necessary to have a Saturday session.

So I say again there will be rollcall votes daily, very early and until late, very late. I do not know how late tonight as a starter, but I hope Senators will understand that if they leave the city or leave the Senate, they will be leaving with the understanding that they may miss a great number of rollcall votes.

If we do not complete the bill on Saturday, we will be continuing on Monday. But after a little while, the votes are going to come more often. I think there is a good possibility that there could be at least half as many rollcall votes on this bill as we have had in this entire session. That is easily possible.

Having said that, I think I have stressed the importance of our being here at all times. We can shorten the time for action on this bill, lengthy though it may be, if Senators will stay on the floor as much as they possibly can, so that when there are quorum calls, they will be completed as soon as possible and not be strung out.

Mr. BAKER. Mr. President——

Mr. ABOUREZK. Mr. President——

The PRESIDING OFFICER. The minority leader is recognized.

Mr. BAKER. Mr. President, I rise simply to ask the Chair to state the pending business.

The PRESIDING OFFICER. The pending question is the amendment of the Senator from Kentucky (Mr. FORD) amendment No. 881, to the bill itself.

Mr. BAKER. I thank the Chair.

UP AMENDMENT NO. 853

Mr. ABOUREZK. Mr. President, I call up an unprinted amendment, lettered A, and I demand a division of the amendment.

The PRESIDING OFFICER. If the Senator will defer the request for a division, the clerk will report the amendment.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. ABOUREZK) proposes an unprinted amendment numbered 853 to amendment numbered 881 by Mr. FORD.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator request a division?

Mr. ABOUREZK. I request a division, and I ask that the amendment be read.

Mr. LONG. I object.

The PRESIDING OFFICER. The Senator from South Dakota has offered the amendment, and he has both the right to have the amendment read and to ask for a division of the amendment.

The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. FORD. Mr. President, a parliamentary inquiry.

Mr. ABOUREZK. Mr. President——

Mr. FORD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Chair informs the Senator that unanimous consent is required to interrupt the reading of the amendment.

Mr. FORD. I ask unanimous consent that the reading of the amendment be interrupted, for the purpose of a parliamentary inquiry.

Mr. ABOUREZK. I object.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue to read the amendment.

Mr. FORD. A point of information——

The legislative clerk resumed the reading of the amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue with the reading of the amendment.

The legislative clerk resumed and concluded the reading of the amendment.

The amendment is as follows:

In lieu of the language proposed to be inserted by the Senator from Kentucky, insert the following:

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FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that—

(1) during the early history of this Nation's petroleum industry, natural gas was a byproduct of the production of crude oil, was not readily marketable, and was often treated as waste and flared;

(2) during the last 40 years the natural gas market has changed dramatically as a national distribution system has been built

to deliver natural gas to commercial and industrial consumers throughout the Nation;

(3) the Congress enacted the Natural Gas Act in 1938 to protect consumers and to provide a regulatory structure through which interstate pipelines and natural gas producers could be assured an opportunity to earn a fair rate of return;

(4) in 1954, the Supreme Court held that the Natural Gas Act applied to the wellhead sale of natural gas in interstate commerce thereby subjecting producers selling natural gas in interstate commerce, but not those selling natural gas in intrastate commerce, to a regulatory standard based upon a determination of historic production costs;

(5) the gap between the price of natural gas and the price of crude oil, on a Btu basis, has widened since 1973 with the continuation of cost-based regulation for natural gas and with a fourfold increase in world oil prices;

(6) estimates of the proven reserves of natural gas have declined while demand for this premium and relatively inexpensive fuel has increased;

(7) while proven reserves have declined and demand has risen, increasing proportions of new supplies of natural gas have moved to the unregulated intrastate market, resulting in both critical and growing shortages of natural gas in the interstate market; and

(8) a new system of natural gas pricing is needed to eliminate the distortions created by the existence of two separate markets for natural gas, to reflect the costs and risks associated with finding new supplies of natural gas, and to reflect the economic cost of reliance upon alternative fuels in the absence of new supplies of natural gas.

(b) The purposes of this Act are—

(1) to bring the natural gas market into better balance by reducing the demand for natural gas and increasing the supply through the establishment of a uniform and incentive-based pricing system for new natural gas;

(2) to provide both fair and equitable revenues to producers and to protect consumers:

(3) to deal with short-term shortages of natural gas through extension of the allocation provisions of the Emergency Natural Gas Act of 1977; and

(4) to provide for the conservation of natural gas by pricing natural gas to low priority users at a level that will provide incentives for conservation and conversion to other, more plentiful, fuels.

DEFINITIONS

SEC. 3. As used in this Act:

(a) The term "Btu" means British thermal unit.

(b) The term "Commission" means the Federal Power Commission.

(c) The term "completion location" means the subsurface location from which natural gas is or has been produced from a reservoir.

(d) The term "current Btu related price" means the most recently published Btu related price calculated pursuant to section 4.

(e) The term "existing contract" means any contract for the sale of natural gas entered into on or before April 20, 1977.

(f) The term "horizontal distance" means the shortest distance, measured horizontally and without regard to topography, between—

(1) the surface location of the old well, and

(2) (A) the surface location of the new well, or

(B) a point directly above the completion location of the new well at the same elevation as the surface location of the old well.

(g) The term "inflation adjustment" means the amount that results from dividing—

(1) the first revision of the implicit price deflator, for the calendar quarter which immediately precedes such calendar quarter, seasonally adjusted, for the gross national product as computed and published by the Department of Commerce; by

(2) the implicit price deflator, for the first calendar quarter of 1977, seasonally adjusted, for the gross national product as computed and published by the Department of Commerce.

(h) The term "Mcf" means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds (avoirdupois) per square inch and at a temperature of 60° Fahrenheit.

(i) The term "natural gas" has the same meaning as it has under section 2(5) of the Natural Gas Act.

(j) The term "new contract" means any contract entered into after April 20, 1977, for the sale of natural gas that was not previously subject to an existing contract.

(k) The term "new lease" means a lease, entered into on or after April 20, 1977, of submerged acreage—

(1) which was not leased before April 20, 1977; or

(2) which was leased before such date, under a lease which terminated or was abandoned before such date, and was not in effect on such date.

(l) The term "new natural gas" means natural gas—

(1) which is produced from a new lease on the Outer Continental Shelf; or

(2) which is produced (other than from a new lease on the Outer Continental Shelf)—

(A) from a new well—

(i) which is 2.5 statute miles or more (horizontal distance) from any old well, and

(ii) the completion location of which is in a newly discovered reservoir; or

(B) from a new well the completion location of which—

(i) is 1,000 or more feet deeper than the deepest completion location of any old well which is within 2.5 statute miles (horizontal distance) of such new well, and

(ii) is in a newly discovered reservoir.

(m) The term "new well" means a well the surface drilling of which was begun after April 20, 1977.

(n) The term "newly discovered reservoir" means any reservoir which was first penetrated by a well the surface drilling of which commenced after April 20, 1977.

(o) The term "old natural gas" means natural gas other than new natural gas.

(p) The term "old well" means any well other than a new well.

(q) The term "Outer Continental Shelf" has the same meaning as such term has in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(r) The term "person" includes the United States and any State, and any political subdivision, agency, or instrumentality of either.

(s) The term "reservoir" means a porous and permeable underground formation containing a natural accumulation of producible crude oil, natural gas, or both, confined by impermeable rock or water barriers and characterized by a single natural pressure system.

(t) The term "rollover contract" means any contract, entered into after April 20, 1977, for the sale of natural gas that was previously subject to an existing contract which expired at the end of a fixed term specified by such existing contract.

(u) The term "United States" includes the Outer Continental Shelf.

CALCULATION OF THE CURRENT BTU RELATED PRICE

SEC. 4. Within 30 days after the date of the enactment of this Act, and on a monthly basis thereafter, the Commission shall calculate and publish in the Federal Register the current Btu related price. Such Btu related price shall be computed by dividing—

(1) the average per barrel domestic refiner cost of acquiring crude oil during the preceding 3 calendar months (exclusive of entitlement obligation or amounts attributable to the tax, if any, imposed by section 4996 of the Internal Revenue Code of 1954) produced in the United States, other than crude oil transported through the trans-Alaska pipeline (within the meaning of section 8(g)(2)(A) of the Emergency Petroleum Allocation Act of 1973, as amended), by

(2) a Btu conversion factor of 5.8 million Btu's per barrel.

SALES OF NEW NATURAL GAS

SEC. 5. Except as provided in sections 10 and 14, the maximum lawful price for any first sale of new natural gas produced in the United States and delivered during any calendar month which begins on or after the date of the enactment of this Act shall be the current Btu related price at the time of such deliveries.

SALES OF OLD NATURAL GAS UNDER EXISTING CONTRACTS

SEC. 6. Except as provided in sections 10 and 14, the maximum lawful price for any first sale of old natural gas produced in the United States and sold under an existing contract shall be the product of multiplying—

(a) the inflation adjustment, by

(b)(1) the lesser of the just and reasonable price established by the Commission and applicable to sales of natural gas under such contract on April 20, 1977 (without regard to the outcome of any appeal of such price determination pending on April 20, 1977), if applicable; or

(2) the greater of—

(A) $0.18 per million Btu's, or

(B) the price applicable on April 20, 1977 under such existing contract.

SALES OF OLD NATURAL GAS FROM NEW WELLS UNDER NEW CONTRACTS

SEC. 7. Except as provided in sections 10 and 14, the maximum lawful price for any first sale of old natural gas produced from a new well in the United States and sold under a new contract shall be $1.45 per million Btu's multiplied by the inflation adjustment.

SALES OF OLD NATURAL GAS UNDER ROLLOVER CONTRACTS

SEC. 8. (a) Except as provided in sections 10 and 14, and subject to the limitations of subsection (b), the Commission shall, by rule, prescribe the maximum lawful price for any first sale of old natural gas produced in the United States and sold under a rollover contract.

(b)(1) In the case of any first sale of old natural gas to which the provisions of this section apply, if such old natural gas was committed or dedicated to interstate commerce on April 20, 1977, the maximum lawful price prescribed by the Commission under this section may exceed the maximum lawful prices permitted under the previous existing contracts solely to the extent that such prices are necessary to permit the recovery of increased costs in order to maintain production of such natural gas, but in no event may any such price exceed $1.45 per million Btu's multiplied by the inflation adjustment.

(2) In the case of any first sale of old natural gas to which the provisions of this section apply, if such old natural gas was not committed or dedicated to interstate commerce on April 20, 1977, the maximum lawful price prescribed by the Commission under this section may exceed the maximum lawful prices permitted under previous existing contracts solely to the extent that such prices are necessary to permit the recovery of increased costs in order to maintain production of such natural gas, but in no event may any such price exceed—

(A) The product of multiplying the inflation adjustment by $1.45 per million Btu's, if the contract price applicable on April 20, 1977, was less than or equal to $1.45 per million Btu's; or

(B) The current Btu related price, if the contract price applicable on April 20, 1977, was greater than $1.45 per million Btu's.

(c) For purposes of this section, the term "committed or dedicated to interstate commerce" shall not be construed as applicable to any old natural gas which was sold under a limited term certificate of 5 years or less, a temporary emergency contract pursuant to section 7(c) of the Natural Gas Act, or a contract authorized by section 6 of the Emergency Natural Gas Act of 1977.

EFFECTIVE DATES OF RULES WITH RESPECT TO MAXIMUM LAWFUL PRICES

SEC. 9. The Commission shall promulgate and make effective rules required to be prescribed under section 8 within 60 days after the date of the enactment of this Act. Such rules shall apply to deliveries of natural gas with respect to the first sale of which section 8 applies and which occur on or after such date of enactment.

SPECIAL PRICING PROVISIONS

SEC. 10. (a) The Commission may, by rule, prescribe a maximum lawful special price, applicable to the first sale of high cost natural gas produced in the United States or synthetic natural gas manufactured in the United States. Such special price may exceed the applicable maximum lawful price established by section 5, 6, or 7, or prescribed under section 8, to the extent that such special price is necessary to provide reasonable incentives for the production of high cost natural gas or the manufacture of synthetic gas.

(b) For purposes of this section, the term "high cost natural gas" means natural gas produced—

(1) from submerged acreage located beneath more than 500 feet of water;

(2) from a completion location more than 15,000 feet (true vertical depth) below the surface location of the well;

(3) from geopressurized brine; or

(4) under such other conditions as present extraordinary risks or costs.

(c) In the case of a first sale of natural gas with respect to which the seller bears all or part of the cost of gathering, processing, liquefaction, or transportation of such natural gas, the Commission may, by rule, provide for an adjustment to the maximum lawful price established by section 5, 6, 7, or prescribed under section 8 or subsection (a) of this section to reflect such cost borne by such seller.

INCREMENTAL PRICING OF NATURAL GAS

SEC. 11. (a) (1) Not later than 90 days after the date of the enactment of this Act, the Commission shall, by rule, provide that, to the maximum extent practicable, the amount by which the average cost of natural gas delivered to any pipeline company after the date of enactment exceeds the product of the average cost of natural gas delivered to such company during the 12-calendar-month period ending immediately before the date of the enactment of this Act, multiplied by the inflation adjustment, shall be initially allocated to the rates and charges of such pipeline company applicable to sales of natural gas to—

(A) low priority users served by such pipeline company, and

(B) local distribution companies for resale to low priority users served by such local distribution company,

until the rates or charges applicable to such low priority users, served by such pipeline company or such local distribution company, equal to the reasonable cost of substitute fuels (as determined by the Commission) to such low priority users.

(2) Not later than 90 days after the date of the enactment of this Act, the Commission shall, by rule provide that, to the maximum extent practicable, the dollar amounts allocated to any local distribution company pursuant to subparagraph (B) of paragraph (1) shall be allocated by such local distribution company to the rates and charges of such company applicable to sales of natural gas to low priority users.

(3) The rule required to be prescribed under paragraph (1) shall, to the maximum extent practicable, provide that after the rates and charges of a pipeline company applicable to sales of natural gas to—

(A) low priority users served by such pipeline, and

(B) local distribution companies for resale to low priority users served by such local distribution company, equal the reasonable cost of substitute fuels (as determined by the Commission), to low priority users, served by such pipeline company and such local distribution companies, further increases in the average cost of natural gas delivered to such pipeline company shall be allocated to the rates and charges of such pipeline company applicable to sales of natural gas to all customers of such pipeline company.

(b) For purposes of this section:

(1) The term "low priority user" means any user other than a high priority user.

(2) The term "high priority user" means any person who—

(A) uses natural gas in a residence, or

(B) uses natural gas in a commercial establishment in amounts of less than 50 Mcf on a peak day.

(3) The term "pipeline company" means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

(4) The term "local distribution company" means any persons engaged in the business of transportation and local distribution of natural gas and the sale of natural gas for ultimate consumption.

ADMINISTRATIVE PROCEDURE, ENFORCEMENT, AND JUDICIAL REVIEW

SEC. 12. (a) (1) Subject to paragraphs (2), (3), and (4) of this subsection, the provisions of subchapter II of chapter 5 of title 5, United States Code, shall apply to any rule or order having the applicability and effect of a rule as defined in section 551(4) of title 5, United States Code, issued under this Act.

(2) Notice of any proposed rule or order described in paragraph (1) which is substantive and of general applicability shall be given by publication of such proposed rule or order in the Federal Register. In each case, a minimum of 30 days following the date of such publication and prior to effective date of the rule shall be provided for opportunity to comment; except that the 30-day period for opportunity to comment prior to the effective date of the rule may be reduced to no less than 10 days if the Commission finds that strict compliance would seriously impair the operation of the program to which such rule or order relates and such findings are set out in such rule or order.

(3) In addition to the requirements of paragraph (2) and to the maximum extent practicable, an opportunity for oral presentation of data, views, and arguments shall be afforded prior to the effective date of such rule or order. In all cases such opportunity shall be afforded no later than 45 days, and no later than 10 days (in the case of a waiver of the entire comment period under paragraph (2)), after the date of publication in the Federal Register pursuant to paragraph (2). A transcript shall be made of any oral presentation.

(4) Any officer or agency authorized to issue rules, regulations, or orders described in pargaraph (1) shall provide for the making of such adjustments, consistent with the other purposes of this Act as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens. The rules shall establish procedures which are available to any person for the purposes of seeking an interpretation, modification, or rescission of, or an exception to or exemption from, such rules, regulations, and orders. If such person is aggrieved or adversely affected by the denial of a request for such action under the preceding sentence, he may request a review of such denial by the officer or agency and may obtain judicial review in accordance with subsection (b) or other applicable law when such denial becomes final. The officer or agency shall, by rule, establish appropriate procedures, including provision for a hearing where deemed advisable, for considering such requests for action under this paragraph.

(b) Any person aggrieved by any rule prescribed, or order issued, by the Commission under this Act may obtain judicial review of such rule or order in the United States Court of Appeals for the District of Columbia Circuit pusuant to the provisions of chapter 7 of title 5, United States Code.

(c) (1) It shall be unlawful for any person—

(A) to violate any provision of this Act; or

(B) to violate any rule prescribed, or any order issued, under this Act.

(2) (A) Whoever violates any provision of this Act or any provision of any rule prescribed, or order issued, under this Act shall be subject to a civil penalty, which may be assessed by the Commission—

(i) with respect to any activity relating to the production, gathering, sale, transportation, or distribution of natural gas, of not more than $20,000 for each violation; and

(ii) with respect to any activity not referred to in clause (i) of this subparagraph, of not more than $2,500 for each violation.

(B) Whoever willfully violates any provision of this Act or any provision of any rule prescribed, or order issued, under this Act, shall be imprisoned not more than one year for each violation, or—

(i) with respect to any activity relating to the production, gathering, sale, transportation, or distribution of natural gas, shall be fined not more than $40,000 for each violation;

(ii) with respect to any activity not referred to in clause (i) of this subparagraph, shall be fined not more than $10,000 for each violation;

or both such imprisonment and fine.

(3) For purposes of this subsection each day of violation shall be treated as a separate offense.

(4) Any individual director, officer, or agent of a corporation who knowingly and willfully authorizes, orders, or performs any of the acts of practices constituting in whole or in part a violation of any provision of this Act or any provision of any rule prescribed, or order issued, under this Act shall be subject to penalties under this subsection without regard to any penalties to which that corporation may be subject under paragraph (2), except that no such individual director, officer, or agent shall be subject to imprisonment under paragraph (2) unless he also has knowledge, or reasonably should have knowledge, of notice of noncompliance received by the corporation from the Commission.

(d) (1) In order to obtain information to carry out its authority under this Act and to enforce compliance with the requirements of this Act, the Commission may—

(A) sign and issue subpenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(B) require any person, by general or special order, to submit answers in writing to interrogatories (including requests for reports or for other information) and such answers shall be made within such reason-

able period, and under oath or otherwise, as the Commission may determine; and

(C) secure, upon request, any information from any Federal department or executive agency.

(2) The Commission may not exercise authority under subparagraph (C) with respect to information, in the possession of a Federal agency, the disclosure of which to answer Federal agency is expressly prohibited by law.

(e) In the case of any refusal to obey a subpena, or to obey an order of the Commission issued under subsection (d), the appropriate United States district court may, upon petition of the Commission, issue an order requiring compliance with such subpena or order of the Commission. Any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(f)(1) The Commission shall have power to issue procedural rules in enforcing compliance with the provisions of this Act and rules prescribed and orders issued under this Act.

(2) The Commission shall have power to further define terms used in this Act consistent with the definitions set forth in, and the purposes of, this Act.

(3) The Commission shall have power to prescribe rules, applicable to any first sale to which the provisions of section 5, 7, 8, or 10 apply, relating to contract terms other than price, including contract duration, conditions of termination, and delivery obligations.

(g)(1) Except as provided in paragraph (2), the Commission may, by rule, prescribe a maximum lawful price applicable to any sale of natural gas other than sales to which the provisions of sections 5, 6, 7, 8, and 10 apply if it determines such maximum lawful price is necessary to prevent circumvention of any provision of such sections.

(2) Paragraph (1) shall not apply to any sale for resale of natural gas if such sale is subject to the provisions of the Natural Gas Act.

UNENFORCEABLE CONTRACT PROVISIONS

SEC. 13. (a) The price of any natural gas determined under this Act shall not be taken into account for purposes of any contractual provision which determines, terminates, or permits renegotiation of, the price of any natural gas on the basis fo sales of other natural gas.

(b) Any contractual provision—

(1) prohibiting the sale or commingling of natural gas subject to such contract with natural gas subject to the provisions of the Natural Gas Act, or

(2) terminating, or granting any party the option to terminate, any obligation under any such contract as a result of such sale or commingling,

is hereby declared against public policy and unenforceable with respect to the first sale of any natural gas to which the provisions of section 5, 7, 8, or 10 apply.

RELATIONSHIP TO THE EMERGENCY NATURAL GAS ACT OF 1977

SEC. 14. Nothing in section 5, 6, 7, 8, or 10 shall apply to any price for the sale of natural gas which is allowed under section 4 of the Emergency Natural Gas Act of 1977.

JURISDICTION OF THE COMMISSION UNDER THE NATURAL GAS ACT

SEC. 15. (a)(1) Section 1 of the Natural Gas Act (15 U.S.C. 717(b)) is amended to read as follows:

"(b)(1) Except as provided in paragraph (2), the provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use and to natural-gas companies engaged in such transportation or sale.

"(2) The provisions of this Act shall not apply—

"(A) to any other transportation or sale of natural gas;

"(B) to the local distribution of natural gas;

"(C) to the facilities used for such distribution;

"(D) to the production or gathering of natural gas;

"(E) to any first sale of natural gas to which the provisions of section 5, 7, 8, or 10 of the Natural Gas Policy Act apply; or

"(F) to any person to the extent to which such person makes a first sale of natural gas to which the provisions of section 5, 7, 8, or 10 of the Natural Gas Policy Act apply.".

(2) Section 2 of the Natural Gas Act (15 U.S.C. 717(a)) is amended by striking out subsection (6) and inserting in lieu thereof the following:

"(6) 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale, but does not include any person to the extent that such person makes a first sale of natural gas to which the provisions of section 5, 7, 8, or 10 of the Natural Gas Policy Act apply.".

(b) Section 1(b) of the Natural Gas Act, as amended by subsection (a), is further amended by adding at the end thereof the following new paragraph:

"(3)(A) Except as provided in subparagraph (B), the provisions of this Act shall apply to—

"(i) any facility owned or operated, in whole or in part, by a natural-gas company or an affiliate thereof for the manufacture of pipeline-quality gas for the purposes of transportation in interstate commerce or sale in interstate commerce for resale for ultimate public consumption,

"(ii) the transportation in interstate commerce or sale in interstate commerce for resale for ultimate public consumption of pipeline quality gas, and

"(iii) any natural-gas company, companies or their affiliates engaged in such manufacture, transportation, or sale.

"(B) The provisions of this Act shall not apply to the mining, production, transportation, sale, delivery, or any other activity related to the furnishing of hydrocarbon-containing material (other than natural gas) to a natural-gas company or its affiliate for the manufacture of such pipeline-quality gas.

"(C)(i) If, before the date of the enactment of this paragraph, any natural-gas company or its affiliate was engaged in the manufacture of pipeline-quality gas from hydrocarbon-containing material, the Commission shall issue a certificate for such manufacture of such pipeline-quality gas without requiring further proof that the public convenience and necessity will be served by such manufacture, and without further proceedings pursuant to this Act or any other provision of law.

"(ii) If, before the date of enactment of this paragraph, a certificate of public convenience and necessity has been issued by the Commission authorizing the transportation in interstate commerce of pipeline-quality gas manufactured from hydrocarbon-containing material or the sale in interstate commerce for resale for ultimate consumption of such pipeline-quality gas, the Commission shall issue a certificate for such transportation or sale for resale without requiring further proof that the public convenience and necessity will be served by such transportation or sale for resale and without further proceedings pursuant to this Act or any other provision of law.

"(iii) Application for such a certificate shall be made to the Commission by such natural-gas company or its affiliate within 90 days after such date of enactment. Pending the determination of any such application, the continuance of such manufacture, transportation, or sale for resale, shall be lawful.

"(D) For purposes of this subsection, the term 'pipeline-quality gas' shall mean a mixture of hydrocarbons in a gaseous state (i) the principal ingredient of which is methane and (ii) that is interchangeable and compatible with natural gas as determined, by rule, by the Commission.".

CONFORMING AMENDMENTS TO THE NATURAL GAS ACT

SEC. 16. (a) Section 4(a) of the Natural Gas Act (15 U.S.C. 717c(a)) is amended by adding at the end thereof the following new sentence: "For purposes of this section, any price for any first sale of natural gas, to which the provisions of the Natural Gas Policy Act apply, shall be deemed just and reasonable if such price does not exceed the maximum lawful price established in, or prescribed under, such provisions.".

(b) Section 5(a) of the Natural Gas Act (15 U.S.C. 717d(a)) is amended by adding at the end thereof the following new sentence: "For purposes of this section, any price for any first sale of natural gas, to which the provisions of the Natural Gas Policy Act apply, shall be deemed just and reasonable if such price does not exceed the maximum lawful price established in, or prescribed under, such provisions.".

(c) Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)) is amended by adding at the end of the first paragraph thereof the following new sentence: "The Commission may not deny a certificate of public convenience and necessity under this section solely on the basis of the price for any first sale of natural gas, to which the provisions of the Natural Gas Policy Act apply, if such price does not exceed the maximum lawful price established in, or prescribed under, such provisions.".

EXTENSION OF THE EMERGENCY NATURAL GAS ACT OF 1977

SEC. 17. The Emergency Natural Gas Act of 1977 is amended—

(1) in section 2, by striking out paragraphs (2), (3), and (4) and inserting in lieu thereof the following:

"(2) The term 'pipeline' means any person engaged in the transportation of natural gas.";

(2) in section 2, by redesignating paragraphs (5), (6), and (7) thereof as (3), (4), and (5), respectively;

(3) in section 4(a)(1), by striking out subparagraphs (A) and (B) and inserting in lieu thereof the following:

"(A) any pipeline to make emergency deliveries of, or to transport, natural gas to any other pipeline or to any local distribution company for purposes of meeting such requirements; or";

(4) in section 4(a)(1), by redesignating subparagraph (C) thereof as subparagraph (B);

(5) in section 4(a)(1), by striking out "April 30, 1977" and inserting in lieu thereof "April 30, 1979";

(6) in section 4(a)(2), by striking out "interstate" wherever it appears;

(7) in section 4(a)(3), by striking out "interstate";

(8) in section 4(d), by striking out "interstate pipeline, intrastate";

(9) in section 4(f)(2)(A), by striking out "by August 1, 1977, to the maximum extent practicable" and inserting in lieu thereof "as expeditiously as practicable,";

(10) in section 7, by striking out "interstate" wherever it appears;

(11) in section 9(c), by striking out "August 1, 1977" and inserting in lieu thereof "April 30, 1979"; and

(12) in section 12(b), after "October 1, 1977,", by inserting "October 1, 1978, and June 1, 1979.".

Mr. ROBERT C. BYRD. Mr. President, with the understanding of Mr. FORD, I move that the amendment by Mr. FORD be laid on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. DECONCINI). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum. There is not a quorum present.

The PRESIDING OFFICER. No response to the rollcall on the vote having been heard, the clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

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

Mr. ABOUREZK. Objection.

The PRESIDING OFFICER. Objection is heard.

The call of the roll was resumed and concluded, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 30 Leg.]

Abourezk	Bumpers	Hathaway
Baker	Cannon	Muskie
Bentsen	DeConcini	

The PRESIDING OFFICER. A quorum is not present.

Mr. ABOUREZK. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. ABOUREZK. On a Sergeant at Arms vote, you do not have to have 11.

The PRESIDING OFFICER. There is not a sufficient second.

Mr. METZENBAUM. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. METZENBAUM. How many Senators do we need for a sufficient second?

The PRESIDING OFFICER. There needs to be one-fifth of those Senators responding to order the yeas and nays.

The clerk will continue to call the names of the absentees.

Mr. ABOUREZK. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Business is not in order during the absence of a quorum.

Mr. METZENBAUM. A parliamentary inquiry.

The PRESIDING OFFICER. That is not in order either.

Mr. ABOUREZK. Mr. President, I move to adjourn. There is obviously not a quorum here.

I move that the Senate adjourn.

Mr. DURKIN. Mr. President, that would be out of order while a quorum call is in progress.

The PRESIDING OFFICER. The question is on agreeing to the motion to adjourn.

Mr. PEARSON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to adjourn. The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 0, nays 93, as follows:

[Rollcall Vote No. 409 Leg.]

YEAS—0

NAYS—93

Abourezk	Garn	Morgan
Allen	Glenn	Moynihan
Anderson	Goldwater	Muskie
Baker	Gravel	Nelson
Bartlett	Griffin	Nunn
Bayh	Hansen	Packwood
Bellmon	Hart	Pearson
Bentsen	Haskell	Pell
Biden	Hatch	Proxmire
Brooke	Hatfield	Randolph
Bumpers	Hathaway	Ribicoff
Burdick	Hayakawa	Riegle
Byrd, Harry F., Jr.	Heinz	Roth
	Hollings	Sarbanes
Byrd, Robert C.	Huddleston	Sasser
Cannon	Inouye	Schmitt
Case	Jackson	Schweiker
Chafee	Javits	Scott
Chiles	Johnston	Sparkman
Church	Kennedy	Stevens
Clark	Laxalt	Stevenson
Cranston	Leahy	Stone
Culver	Long	Talmadge
Curtis	Lugar	Thurmond
Danforth	Magnuson	Tower
DeConcini	Mathias	Wallop
Dole	Matsunaga	Weicker
Domenici	McClure	Williams
Durkin	McGovern	Young
Eagleton	McIntyre	Zorinsky
Eastland	Melcher	
Ford	Metzenbaum	

NOT VOTING—7

Helms	Metcalf	Stennis
Humphrey	Percy	
McClellan	Stafford	

So the motion to adjourn was rejected.

The PRESIDING OFFICER (Mr. ZORINSKY). A quorum is present.

Mr. ROBERT C. BYRD. Vote!

The PRESIDING OFFICER. The question is on agreeing to the motion to table. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 92, nays 1, as follows:

[Rollcall Vote No. 410 Leg.]

YEAS—92

Abourezk	Ford	Morgan
Allen	Garn	Moynihan
Anderson	Glenn	Muskie
Baker	Goldwater	Nelson
Bartlett	Gravel	Nunn
Bayh	Griffin	Packwood
Bellmon	Hansen	Pearson
Bentsen	Hart	Pell
Biden	Haskell	Proxmire
Brooke	Hatch	Randolph
Bumpers	Hatfield	Ribicoff
Burdick	Hathaway	Riegle
Byrd, Harry F., Jr.	Hayakawa	Roth
	Heinz	Sarbanes
Byrd, Robert C.	Inouye	Sasser
Cannon	Jackson	Schmitt
Case	Javits	Schweiker
Chafee	Johnston	Scott
Chiles	Kennedy	Sparkman
Church	Laxalt	Stennis
Clark	Leahy	Stevens
Cranston	Long	Stevenson
Culver	Lugar	Stone
Curtis	Magnuson	Talmadge
Danforth	Mathias	Thurmond
DeConcini	Matsunaga	Tower
Dole	McClure	Wallop
Domenici	McGovern	Weicker
Durkin	McIntyre	Williams
Eagleton	Melcher	Young
Eastland	Metzenbaum	Zorinsky

NAYS—1

Hollings

NOT VOTING—7

Helms	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

The motion to lay Mr. FORD's amendment (No. 881) on the table was agreed to.

Mr. HART and Mr. ABOUREZK addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. The Senate now being under cloture, does the cloture time limitation apply only to amendments to the pending amendment or to amendments to the bill itself as well?

The PRESIDING OFFICER. It applies to amendments to the bill itself and to the first two substitute amendments. The third one by Mr. KENNEDY would not be amendable.

Mr. HART. I thank the Chair.

Mr. ABOUREZK. Mr. President, I move to reconsider the vote by which the motion to lay on the table the amendment of the Senator from Kentucky was agreed to.

I ask for the yeas and nays.

Mr. ROBERT C. BYRD. I move to lay that motion on the table and I ask for the yeas and nays on the motion to lay on the table the motion to reconsider the vote by which the motion to lay on the

table the amendment of the Senator from Kentucky was agreed to.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the motion to lay on the table the amendment of the Senator from Kentucky was agreed to.

On this motion the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ANDERSON assumed the chair.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 92, nays 1, as follows:

[Rollcall Vote No. 411 Leg.]

YEAS—92

Abourezk	Ford	Morgan
Allen	Garn	Moynihan
Anderson	Glenn	Muskie
Baker	Goldwater	Nelson
Bartlett	Gravel	Nunn
Bayh	Griffin	Packwood
Bellmon	Hansen	Pearson
Bentsen	Hart	Pell
Biden	Haskell	Proxmire
Brooke	Hatch	Randolph
Bumpers	Hatfield	Ribicoff
Burdick	Hathaway	Riegle
Byrd, Harry F., Jr.	Hayakawa	Roth
	Heinz	Sarbanes
Byrd, Robert C.	Inouye	Sasser
Cannon	Jackson	Schmitt
Case	Javits	Schweiker
Chafee	Johnston	Scott
Chiles	Kennedy	Sparkman
Church	Laxalt	Stennis
Clark	Leahy	Stevens
Cranston	Long	Stevenson
Culver	Lugar	Stone
Curtis	Magnuson	Talmadge
Danforth	Mathias	Thurmond
DeConcini	Matsunaga	Tower
Dole	McClure	Wallop
Domenici	McGovern	Weicker
Durkin	McIntyre	Williams
Eagleton	Melcher	Young
Eastland	Metzenbaum	Zorinsky

NAYS—1

Hollings

NOT VOTING—7

Helms	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

So the motion to lay on the table was agreed to.

AMENDMENT NO. 1037 (FORMERLY UP AMENDMENT NO. 849)

The PRESIDING OFFICER. The question now occurs on agreeing to the amendment of the Senator from Texas, as amended, to the substitute 862. The yeas and nays have been ordered. The clerk will call the roll.

Mr. ABOUREZK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. The Chair said that the question occurs on the amendment by the Senator from Texas. Which amendment is that? He has several amendments pending.

The PRESIDING OFFICER. It is the Bentsen amendment, as amended by the Senator from Arizona's amendment No. 1037, to the amendment No. 862. The yeas and nays have been ordered.

The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Montana (Mr. METCALF), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 90, nays 3, as follows:

[Rollcall Vote No. 412 Leg.]

YEAS—90

Abourezk	Glenn	Moynihan
Allen	Goldwater	Muskie
Anderson	Gravel	Nelson
Baker	Griffin	Nunn
Bayh	Hansen	Packwood
Bellmon	Hart	Pearson
Bentsen	Haskell	Pell
Biden	Hatch	Proxmire
Brooke	Hatfield	Randolph
Bumpers	Hathaway	Ribicoff
Burdick	Hayakawa	Riegle
Byrd, Harry F., Jr.	Heinz	Roth
	Hollings	Sarbanes
Byrd, Robert C.	Inouye	Sasser
Cannon	Jackson	Schmitt
Case	Javits	Schweiker
Chafee	Johnston	Scott
Church	Kennedy	Sparkman
Clark	Laxalt	Stennis
Cranston	Leahy	Stevens
Culver	Long	Stevenson
Curtis	Lugar	Stone
Danforth	Magnuson	Talmadge
DeConcini	Mathias	Thurmond
Dole	Matsunaga	Wallop
Domenici	McClure	Weicker
Durkin	McGovern	Williams
Eagleton	McIntyre	Young
Eastland	Melcher	Zorinsky
Ford	Metzenbaum	
Garn	Morgan	

NAYS—3

Bartlett	Chiles	Tower

NOT VOTING—7

Helms	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

So Mr. BENTSEN's amendment (No. 1037) was agreed to.

AMENDMENT NO. 1023

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee (Mr. BAKER).

Mr. BAKER. Mr. President, what is the pending business?

The PRESIDING OFFICER. Amendment No. 1022, offered by the Senator from Massachusetts (Mr. KENNEDY).

Mr. BAKER. I move to table amendment No. 1022, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, a parliamentary inquiry. No one has answered the rollcall.

Mr. METZENBAUM. Mr. President, a parliamentary inquiry. We cannot hear in the rear of the Chamber.

The PRESIDING OFFICER. The Senator from Tennessee (Mr. BAKER).

Mr. BAKER. I asked the Chair to state the pending amendment before the Senate, and I understood the Chair to say "1022." Is it 1022 or 1023?

The PRESIDING OFFICER. It is 1023.

Mr. BAKER. My motion to table was against the pending amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Is it clear that we are voting on amendment 1023?

Mr. ROBERT C. BYRD. Which is the Kennedy substitute to the Jackson substitute to the Pearson-Bentsen substitute. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. ABOUREZK. Mr. President, a point of order.

The PRESIDING OFFICER. A point of order is not in order.

Mr. ABOUREZK. The rollcall started, and debate is not in order. I make a point of order against it.

The PRESIDING OFFICER. Debate is not in order.

The call of the roll was concluded.

Mr. STENNIS (when his name was called). Mr. President, as I understand the situation, this is a matter that comes within the purview of the agreement I had with the Senator from Minnesota (Mr. HUMPHREY) regarding the Bentsen-Pearson amendment. If the Senator from Minnesota (Mr. HUMPHREY) were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF), are necessarily absent.

I further announce that, if present and voting, the Senator from Kentucky (Mr. HUDDLESTON), would vote "nay."

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS), and the Senator from Illinois (Mr. PERCY), are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD), is absent on official business.

The result was announced—yeas 53, nays 39, as follows:

[Rollcall Vote No. 413 Leg.]

YEAS—53

Abourezk	Ford	Metzenbaum
Allen	Garn	Nunn
Baker	Goldwater	Packwood
Bartlett	Gravel	Pearson
Bellmon	Griffin	Randolph
Bentsen	Hansen	Roth
Burdick	Hart	Schmitt
Byrd, Harry F., Jr.	Hatch	Schweiker
	Hatfield	Scott
Cannon	Hayakawa	Sparkman
Chafee	Heinz	Stevens
Chiles	Johnston	Stone
Curtis	Laxalt	Thurmond
Danforth	Long	Tower
DeConcini	Lugar	Wallop
Dole	Mathias	Weicker
Domenici	McClure	Young
Eastland	Melcher	Zorinsky

NAYS—39

Anderson	Glenn	Morgan
Bayh	Haskell	Moynihan
Biden	Hathaway	Muskie
Brooke	Hollings	Nelson
Bumpers	Inouye	Pell
Byrd, Robert C.	Jackson	Proxmire
Case	Javits	Ribicoff
Church	Kennedy	Riegle
Clark	Leahy	Sarbanes
Cranston	Magnuson	Sasser
Culver	Matsunaga	Stevenson
Durkin	McGovern	Talmadge
Eagleton	McIntyre	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stennis, for.

NOT VOTING—7

Helms	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

So the motion to table amendment No. 1023 was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. STONE. I move to lay that motion on the table.

Mr. ABOUREZK. I ask for the yeas and nays.

Mr. STONE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which the motion to lay on the table the amendment of the Senator from Massachusetts was agreed to.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. STENNIS (when his name was called). Mr. President, on this vote I have a pair with the distinguished Senator from Minnesota (Mr. HUMPHREY). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 56, nays 36, as follows:

[Rollcall Vote No. 414 Leg.]

YEAS—56

Abourezk	Ford	Morgan
Allen	Garn	Moynihan
Baker	Glenn	Nunn
Bartlett	Goldwater	Packwood
Bellmon	Gravel	Pearson
Bentsen	Griffin	Randolph
Burdick	Hansen	Roth
Byrd, Harry F., Jr.	Hart	Schmitt
	Hatch	Schweiker
Byrd, Robert C.	Hatfield	Scott
Cannon	Hayakawa	Sparkman
Chafee	Heinz	Stevens
Chiles	Johnston	Stone
Curtis	Laxalt	Thurmond
Danforth	Long	Tower
DeConcini	Lugar	Wallop
Dole	Mathias	Weicker
Domenici	McClure	Young
Eastland	Melcher	Zorinsky

NAYS—36

Anderson	Haskell	Metzenbaum
Bayh	Hathaway	Muskie
Biden	Hollings	Nelson
Brooke	Inouye	Pell
Bumpers	Jackson	Proxmire
Case	Javits	Ribicoff
Church	Kennedy	Riegle
Clark	Leahy	Sarbanes
Cranston	Magnuson	Sasser
Culver	Matsunaga	Stevenson
Durkin	McGovern	Talmadge
Eagleton	McIntyre	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stennis, against

NOT VOTING—7

Helms	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

So the motion to lay on the table the motion to reconsider the vote by which the motion to table Mr. KENNEDY'S amendment (No. 1023) was agreed to.

AMENDMENT NO. 918

Mr. METZENBAUM. Mr. President, I call up my amendment No. 918.

The PRESIDING OFFICER. The amendment will be stated.

Mr. ROBERT C. BYRD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Is this amendment divisible?

The PRESIDING OFFICER. The amendment has not been stated. It is divisible.

Mr. ROBERT C. BYRD. A further parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Is this an amendment to the bill?

The PRESIDING OFFICER. It is an amendment to the bill.

Mr. ROBERT C. BYRD. Mr. President, if it is an amendment to the bill, in my judgment it is futile for the Senate to proceed to consider it. I do not know anything about the amendment except that it is to the bill and it is divisible.

The cloture motion goes to the Pearson-Bentsen substitute. The amendments below that, or above it, whichever way one wants to describe it, are included in the cloture motion. The last thing the Senate votes on will be the Pearson-Bentsen substitute.

If that is voted up, the ball game is over. No further amendments to the bill are in order.

I thought I should make that statement so that if Senators feel that they want to take the time to consider amendments to the bill, that is up to the Senate, but inasmuch as the Pearson-Bentsen substitute is going to be voted on finally, as amended if amended, then, in reality, I think Senators will want to think twice as to whether or not they want to take the time of the Senate to consider amendments that go to the bill, No. 1.

In the second place, if the Senate wants to consider this amendment, I would ask whether or not the Senator who is offering it would be willing to vote on the amendment without its being divided.

Mr. METZENBAUM. The answer is "No."

Mr. ROBERT C. BYRD. In other words, the Senator would want it divided?

Mr. METZENBAUM. That is correct.

Mr. ROBERT C. BYRD. All right. A parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROBERT C. BYRD. Into how many parts is the amendment divisible?

The PRESIDING OFFICER. The amendment is divisible into three parts.

Mr. ROBERT C. BYRD. Three parts. Mr. President, I personally do not want to deprive the author of any amendment of a vote on his amendment. I am very willing to enter into a unanimous-consent agreement at any time, personally, to vote on the amendment up or down or to table it, but without dividing it, without voting on the divisions.

What I am saying is that instead of having three votes we could have one vote, and I would be very happy to have one vote on the Senator's amendment.

As I say, I do not want to deprive him of a vote on his amendment. But if he is going to insist on its being divided, then I should think that if any Senator wishes to table that amendment, that motion to table had better be made before it is presented to the Senate; in other words, before the clerk states it.

Mr. METZENBAUM. Mr. President——

Mr. ROBERT C. BYRD. And I still have the floor.

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). The normal procedure would be that the amendment would first be reported, and then no one would have the floor except under recognition by the Chair.

Mr. ROBERT C. BYRD. That is right; but I am trying to explore what the situation is. Once that amendment is reported, unless a Senator moves to table it immediately, the Senator can ask for its division. Once the Senator asks for its division, the motion to table that amendment is out.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. METZENBAUM. Mr. President, I am certain the Senator from West Vir-

ginia would not want to deprive the Senator from Ohio of my rights under the rules of the Senate. The amendment as offered really has three separate parts to it: One part has to do with data, one part has to do with plowback, and one part is the effectuating part of the amendment.

I believe I have a right, under the rules, to divide the amendment. Therefore, I would like to have the amendment read at the desk.

Mr. ROBERT C. BYRD. I still have the floor at the moment.

I certainly do not want to deprive the Senator of his right to have his amendment voted on.

However, I wish to apprise the Senate of two things: First, that the amendment is an amendment to the bill; and, second, that the author of the amendment intends to ask that it be divided.

If any Senator wishes to move to table, the Senator has that right, once the clerk states it.

But that motion to table has to be made before the request for the division is made, or else there will be several votes instead of one vote.

I am going to yield the floor shortly, but I just wanted the Senate to know what is about to happen.

Mr. HART. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The clerk will state the amendment.

Mr. HART. A parliamentary inquiry Mr. President.

The PRESIDING OFFICER. First the clerk will state the amendment. Then I shall recognize the distinguished Senator from Colorado.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an amendment:

On page 8, line 19, after "delivery)." add: *Provided*, That—

"(a) The natural gas producer reports for the past five years on an annual basis the following information:

"(1) exploration, development, and production expenditures;

"(2) new reserve additions from extension, revisions, and new well discoveries, including any negative revisions;

"(3) the cost of producing gas and the net income (or loss) including the rate of return earned on gas operations (or loss); and

"(4) interstate and intrastate sales and revenues of natural gas.

"(b) Any producer receiving this price increases exploration and development expenditures outlays by 50 per centum of the revenue increase resulting from the price increase above the highest level of exploration and development expenditures in the past five years.

"(c) For any producer not complying with the provisions of this section, the maximum lawful price for any first sale of new natural gas produced in the United States and delivered during any calendar month which begins on or after the date of the enactment of this Act shall be $1.45 plus the inflation adjustment.".

Mr. HANSEN, Mr. METZENBAUM, and Mr. ABOUREZK addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized for a parliamentary inquiry.

Mr. HART. Mr. President, in response to a question of the Senator from Colorado earlier, the Chair ruled, I believe, that the cloture motion applies not only to all amendments to the bill but to the bill itself. I believe the Senator from West Virginia has just stated in his parliamentary inquiry that the bill itself is not covered by the cloture motion. Which is correct?

The PRESIDING OFFICER. The Senator from West Virginia is correct. The bill is not covered by the cloture vote.

Mr. ABOUREZK, Mr. METZENBAUM, and Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Chair has been asked to respond to a parliamentary inquiry. The Chair previously stated that the Pearson-Bentsen substitute, on which cloture was invoked, and all amendments thereto or the bill, are subject to cloture, but not the bill itself.

Mr. ABOUREZK, Mr. METZENBAUM, and Mr. BUMPERS addressed the Chair.

Mr. BUMPERS. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Arkansas is recognized for a parliamentary inquiry.

Mr. BUMPERS. Mr. President, this amendment by the Senator from Ohio, whether it is divisible or not, if it is adopted to the original bill, and Pearson-Bentsen is subsequently tabled or voted down, then the original bill, with the amendments that had been adopted to that bill, will be the pending business. Is that correct?

The PRESIDING OFFICER. The question would then be on the bill as amended, if amended.

Mr. ABOUREZK. Mr. President, I demand a division of the amendment.

The PRESIDING OFFICER. The division is demanded. The amendment will be divided.

Mr. ABOUREZK. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second .

The yeas and nays were ordered.

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. LONG. Mr. President, point of order.

The PRESIDING OFFICER. The Senator will state his point of order.

Mr. ABOUREZK. Mr. President, regular order.

Mr. LONG. Mr. President, at this point, I make a point of order that this is a dilatory procedure. There is obviously a quorum present and there was on the last vote.

The PRESIDING OFFICER. The Chair will say that the Senator made the request for the point of order prior to the response for the rollcall. The Senator from Louisiana may state his point of order.

Mr. LONG. The point of order is that a quorum call at this point is dilatory. There is clearly a quorum here and there was at the last vote and no business has been transacted. It is purely dilatory.

Mr. METZENBAUM. The yeas and nays have been ordered.

The PRESIDING OFFICER. Under rule XXII, dilatory motions and amendments are not in order. Since this is a case of first impression, the Chair, under the rule, would submit the question to the Senate for a vote.

Mr. ABOUREZK. I ask for the yeas and nays.

Mr. BARTLETT. A point of order, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. BARTLETT. It is my understanding that it takes one-fifth of those here to properly second the yea and nay request. I did not count 11. I question the number that the Chair counted.

Mr. METZENBAUM. The yeas and nays have been ordered, Mr President.

Mr. ROBERT C. BYRD. Mr. President, what question is the Chair submitting to the Senate?

The PRESIDING OFFICER. May the Chair respond to the Senator from Oklahoma?

The point of order on the question of the yeas and nays comes too late to be considered.

The Chair is submitting to the Senate the question as to whether, at this point, a request for a quorum call is dilatory.

Mr. ABOUREZK. Yeas and nays, Mr. President.

Mr. ROBERT C. BYRD. Mr. President, under the rule, the Chair has the authority to say whether or not quorum calls, under cloture, are dilatory. I ask the Chair to state. That was the point of order that the distinguished Senator from Louisiana made. The Chair has that authority.

The PRESIDING OFFICER. The Chair is aware of that point raised by the Senator from West Virginia, but, since this is a case of first impression, it seemed appropriate to let the Senate make that decision.

Mr. LONG addressed the Chair.

Mr. ABOUREZK. Yeas and nays, Mr. President.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. I would like to speak to my point of order for just one moment, because I do not want this precedent to be misunderstood. I am speaking of a situation where a quorum is obviously present, which there is. At that point, under cloture, it is dilatory, with a quorum obviously present and with a previous rollcall identifying that a quorum is present, for one to suggest the absence of a quorum when a point of order is——

Mr. BUMPERS. Mr. President, is a point of order debatable?

The PRESIDING OFFICER. Under the cloture rule, points of order are not debatable.

Mr. LONG. Mr. President, a parliamentary inquiry.

On a vote to sustain the point of order that this is a dilatory motion, would that be a yea vote or a nay vote?

The PRESIDING OFFICER. The question is, Is the point of order well taken that a quorum call would be dilatory?

Mr. McGOVERN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McGOVERN. Mr President, if you agreed with the substantive position of the Senator from South Dakota but wanted to establish a principle that there is such a thing as dilatory tactics, would you vote "aye"?

The PRESIDING OFFICER. The Senator from South Dakota will have to make that decision for himself.

Mr. ABOUREZK. I ask for the yeas and nays, Mr. President.

Mr. BAKER. Mr. President, point of order.

The PRESIDING OFFICER. The question is, Is the point of order——

Mr. BAKER. Mr. President, I do not want to prolong this. This is not in the nature of a debate. May I inquire as to the point of order?

As I understand it, the Chair ruled that he observes that a quorum is present and that he submits the question to the Senate on whether or not a call for a quorum call under those circumstances is dilatory.

Mr. METZENBAUM. Mr. President, I have not heard the President make that ruling.

The PRESIDING OFFICER. The Chair itself cannot make that observation. It would depend on a quorum call establishing a quorum.

Mr. METZENBAUM. I am sorry, I could not hear the Chair.

The PRESIDING OFFICER. It would require a live quorum call or a rollcall vote to establish the fact that a quorum is present.

Mr. BAKER addressed the Chair.

The PRESIDING OFFICER. The Chair itself could not make that observation.

Mr. BAKER. A further point of order.

This is a terribly important precedent. It is my personal preference at this time that we declare this a dilatory tactic and to support the Chair, or to support this proposition. But to guard against the unfavorable consequences and unfair consequences in the future, I would hope the Chair would observe and state for the RECORD that it is his opinion that a majority of the Senate, or more than 20 Senators were present, or that a quorum is present, because otherwise we would have submitted to the Senate the question of whether or not a quorum is present.

Mr. LONG. Mr. President, a point of order.

Mr. BAKER. I would call on the Chair to state whether or not in his opinion there is a quorum present.

The PRESIDING OFFICER. The Chair reiterates that it will submit this question to the Senate for its consideration.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. It is a question for the yeas and nays.

Mr. LONG. Point or order, Mr. President.

In view of the fact that we are going to have a rollcall vote, the rollcall will establish whether there are 51 Senators here.

Mr. CHILES. If the Senator will yield, why are we going to have a rollcall here? There has not been a sufficient second to have a rollcall vote?

The PRESIDING OFFICER. Is there a sufficient second?

Is there a sufficient second?

There is not a sufficient second.

SEVERAL SENATORS. Vote! Vote!

Several Senators addressed the Chair.

The PRESIDING OFFICER. The question is, is the point of order well taken? (Putting the question.)

So the point of order was sustained.

Mr. ABOUREZK. Mr. President, I have been seeking recognition——

The PRESIDING OFFICER. A point of order——

Mr. ABOUREZK (continuing). Before the vote was announced.

I seek recognition, Mr. President.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABOUREZK. Am I recognized, Mr. President?

The PRESIDING OFFICER. Yes.

Mr. ABOUREZK. Mr. President, since there are not enough Senators to second a rollcall vote, it would seem to me there is not a quorum present and I suggest the absence of a quorum at this time.

Mr. LONG. That is dilatory.

Mr. ABOUREZK. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senate just made that decision and the Chair rules, as a result of the Senate vote, that the suggestion of the absence of a quorum is a dilatory tactic at this point.

The question is on agreeing to division 1 of the amendment offered by the Senator from Ohio.

Mr. METZENBAUM. The yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. METZENBAUM. They have been ordered, have they not, Mr. President?

The PRESIDING OFFICER. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 40, nays 53, as follows:

[Rollcall Vote No. 415 Leg.]

YEAS—40

Anderson	Haskell	Moynihan
Bayh	Hathaway	Muskie
Biden	Hollings	Nelson
Brooke	Inouye	Pell
Bumpers	Jackson	Proxmire
Burdick	Javits	Ribicoff
Case	Kennedy	Riegle
Church	Leahy	Sarbanes
Clark	Magnuson	Sasser
Cranston	Mathias	Stevenson
Culver	McGovern	Williams
DeConcini	McIntyre	Zorinsky
Durkin	Melcher	
Hart	Metzenbaum	

NAYS—53

Abourezk	Ford	Nunn
Allen	Garn	Packwood
Baker	Glenn	Pearson
Bartlett	Goldwater	Randolph
Bellmon	Gravel	Roth
Bentsen	Griffin	Schmitt
Byrd, Harry F., Jr.	Hansen	Schweiker
Byrd, Robert C.	Hatch	Scott
Cannon	Hatfield	Sparkman
Chafee	Hayakawa	Stennis
Chiles	Heinz	Stevens
Curtis	Johnston	Stone
Danforth	Laxalt	Talmadge
Dole	Long	Thurmond
Domenici	Lugar	Tower
Eagleton	Matsunaga	Wallop
Eastland	McClure	Weicker
	Morgan	Young

NOT VOTING—7

Helms	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

So division 1 of Mr. METZENBAUM'S amendment was rejected.

Mr. ABOUREZK. Mr. President, I move to reconsider the vote by which division 1 was rejected.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which division 1 was rejected.

Mr. ABOUREZK. I move to lay that motion on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

The question is on agreeing to the motion to lay on the table the motion to reconsider.

QUORUM CALL

Mr. ABOUREZK. Mr. President, I suggest the absence of a quorum.

Mr. LONG. Point of order, Mr. President. The suggestion is dilatory.

The PRESIDING OFFICER. The Chair would say he does not regard this as a dilatory tactic. The Senator asked for the yeas and nays, and they were not forthcoming. The Chair would state that the Chair feels the Senator has a right to proceed to get a quorum to seek the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all remaining rollcall votes today be 10-minute rollcalls.

Mr. ABOUREZK. Objection.

Mr. METZENBAUM. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. LONG. A point of order, Mr. President. I was going to make a point of order and I would have appealed the ruling of the Chair. I have counted the attendance and I have my doubts that there are 50 Senators.

Mr. BAYH. Mr. President, the yeas and nays are requested one more time.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second. The Clerk will call the roll.

Mr. BARTLETT. Point of order, Mr. President, let us have a vote. A vote is called for, Mr. President.

The assistant legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 31 Leg.]

Abourezk	Chiles	McClure
Anderson	DeConcini	
Bartlett	Durkin	
Byrd, Harry F., Jr.	Ford	
	Hayakawa	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of the absentees.

Mr. ABOUREZK. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Dakota.

The motion was agreed to.

The PRESIDING OFFICER. The Sergeant at Arms will execute the order of the Senate.

Pending the execution of the order, the following Senators entered the Chamber and answered to their names:

Allen	Griffin	Nunn
Baker	Hansen	Packwood
Bartlett	Hart	Pearson
Bayh	Haskell	Pell
Bellmon	Hatch	Proxmire
Bentsen	Hatfield	Randolph
Biden	Hathaway	Ribicoff
Brooke	Heinz	Riegle
Bumpers	Hollings	Roth
Burdick	Inouye	Sarbanes
Byrd, Robert C.	Jackson	Sasser
Cannon	Javits	Schmitt
Case	Johnston	Schweiker
Chafee	Kennedy	Sparkman
Church	Laxalt	Stennis
Clark	Leahy	Stevens
Cranston	Long	Stevenson
Culver	Lugar	Stone
Curtis	Magnuson	Talmadge
Danforth	Mathias	Thurmond
Dole	Matsunaga	Tower
Domenici	McGovern	Wallop
Eagleton	McIntyre	Weicker
Eastland	Metzenbaum	Williams
Garn	Morgan	Young
Glenn	Moynihan	Zorinsky
Goldwater	Muskie	
Gravel	Nelson	

The PRESIDING OFFICER. A quorum is present.

The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which division 1 of the amendment of the Senator from Ohio (Mr. METZENBAUM) was rejected.

Mr. ABOUREZK. Mr. President, have the yeas and nays been ordered on that?

The PRESIDING OFFICER. No; they have not been.

Mr. ABOUREZK. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second .

Mr. ABOUREZK and Mr. METZENBAUM addressed the Chair.

Mr. ABOUREZK. Mr. President, there is not a quorum present.

Mr. WALLOP. Mr. President, a point of order.

The PRESIDING OFFICER. The Chair has announced that there is a quorum present.

Mr. ABOUREZK. I do not see one here on the floor.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. ABOUREZK. Mr. President, there is not a quorum present. That is why there was not a sufficient second.

Mr. HANSEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HANSEN. I conclude from the statement just made by the Senator from South Dakota that despite the personal preference of Members to agree to a record vote or to withhold their request for a record vote seems to establish the presence or the absence of a quorum. I would think that that does not necessarily follow.

I submit, and my question is, cannot a quorum be present and yet Senators still fail to demand the yeas and nays as was just indicated?

The PRESIDING OFFICER. That is very possible.

Mr. HANSEN. I thank the Presiding Officer.

Mr. ABOUREZK. Mr. President, will the Chair look around and tell me if there are 51 Members present?

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider the vote by which division 1 of the amendment of the Senator from Ohio was rejected.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. GOLDWATER), the Senator from North Carolina (Mr. HELMS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 59, nays 33, as follows:

[Rollcall Vote No. 416 Leg.]

YEAS—59

Allen	Ford	Morgan
Baker	Garn	Nunn
Bartlett	Glenn	Packwood
Bellmon	Gravel	Pearson
Bentsen	Griffin	Pell
Biden	Hansen	Randolph
Byrd, Harry F., Jr.	Hart	Roth
	Hatch	Schmitt
Byrd, Robert C.	Hatfield	Schweiker
Cannon	Hayakawa	Scott
Chafee	Heinz	Sparkman
Chiles	Inouye	Stennis
Church	Johnston	Stevens
Curtis	Laxalt	Stone
Danforth	Leahy	Talmadge
Dole	Long	Thurmond
Domenici	Lugar	Tower
Durkin	Matsunaga	Wallop
Eagleton	McClure	Weicker
Eastland	Melcher	Young

NAYS—33

Abourezk	Haskell	Moynihan
Anderson	Hathaway	Muskie
Bayh	Hollings	Nelson
Brooke	Jackson	Proxmire
Bumpers	Javits	Ribicoff
Burdick	Kennedy	Riegle
Case	Magnuson	Sarbanes
Clark	Mathias	Sasser
Cranston	McGovern	Stevenson
Culver	McIntyre	Williams
DeConcini	Metzenbaum	Zorinsky

NOT VOTING—8

Goldwater	Humphrey	Percy
Helms	McClellan	Stafford
Huddleston	Metcalf	

So the motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER (Mr. BAYH). The Senator from West Virginia.

Mr. ROBERT C. BYRD. I would like to ask a question of the distinguished Senator from Ohio as to whether or not he will be willing to agree to a unanimous-consent request that the Senate vote en bloc on the remaining two divisions of his amendment.

Mr. METZENBAUM. I shall be very happy to accommodate the Senator, on the assumption that the yeas and nays will be asked for and we shall have a rollcall vote.

Mr. ROBERT C. BYRD. I ask unanimous consent, Mr. President, that the remaining two divisions be voted on en bloc.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. METZENBAUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to divisions 2 and 3. The yeas and nays have been requested.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that Mr. Tom Connaughton and Mr. Mack, aides to Senator BAYH, be accorded the privilege of the floor while this matter is being debated.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all rollcall votes for the remainder of today be limited to 10 minutes.

Mr. ABOUREZK. Objection.

Mr. ROBERT C. BYRD. I ask unanimous consent that the pending rollcall vote be limited to 10 minutes,

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

Mr. PELL. Mr. President, I ask just to clarify it in my own mind, what is the objective, what is the reason for objecting? Is that an improper question? Is the intent to avoid having passage of this legislation in any way whatsoever? If that is the objective, OK. But why object to a 10-minute rollcall?

Mr. ABOUREZK. I say to my colleague from Rhode Island that it is the right of the Senate to have a 15-minute rollcall. We do not want anybody to miss a rollcall by calling for a 10-minute rollcall. I think that, in order to protect our colleagues who are not nearby, we ought to maintain the 15-minute rollcalls.

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. STEVENS. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 27, nays 66, as follows:

[Rollcall Vote No. 417 Leg.]

YEAS—27

Anderson	Hathaway	Pell
Bayh	Hollings	Proxmire
Bumpers	Jackson	Ribicoff
Case	Kennedy	Riegle
Clark	Leahy	Sarbanes
Cranston	Magnuson	Williams
Culver	McGovern	Zorinsky
DeConcini	McIntyre	
Durkin	Muskie	
Haskell	Nelson	

NAYS—66

Abourezk	Garn	Moynihan
Allen	Glenn	Nunn
Baker	Goldwater	Packwood
Bartlett	Gravel	Pearson
Bellmon	Griffin	Randolph
Bentsen	Hansen	Roth
Biden	Hart	Sasser
Brooke	Hatch	Schmitt
Burdick	Hatfield	Schweiker
Byrd, Harry F., Jr.	Hayakawa	Scott
	Heinz	Sparkman
Byrd, Robert C.	Inouye	Stennis
Cannon	Javits	Stevens
Chafee	Johnston	Stevenson
Chiles	Laxalt	Stone
Church	Long	Talmadge
Curtis	Lugar	Thurmond
Danforth	Mathias	Tower
Dole	Matsunaga	Wallop
Domenici	McClure	Weicker
Eagleton	Melcher	Young
Eastland	Metzenbaum	
Ford	Morgan	

NOT VOTING—7

Helms	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

So the remaining divisions of Mr. METZENBAUM's amendment were rejected.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which parts 2 and 3 of the amendment were rejected.

Mr. ABOUREZK. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The question is on agreeing to the motion to reconsider. The yeas and nays have been requested. Is there a sufficient second? There is not a sufficient second.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

Mr. BARTLETT. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator will state it.

Mr. BARTLETT. My point is that this is a dilatory tactic.

Mr. METZENBAUM. Mr. President, there is not a sufficient second available.

The PRESIDING OFFICER. The Senate has established the present precedent no further back than about 2 hours or an hour ago, that when the yeas and nays were requested, then there are not sufficient Senators to grant that request, that the Senator is certainly within his rights and the rules of the Senate to request a quorum so that he can get the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. BARTLETT. A point of order.

Mr. METZENBAUM. I yield——

Mr. ROBERT C. BYRD. Mr. President, I wonder if the Senator from Ohio——

The PRESIDING OFFICER. The Senator from Ohio has the floor and yielded to the Senator from West Virginia.

Mr. METZENBAUM. Without losing my right to the floor.

Mr. ROBERT C. BYRD. In view of the fact that the first part of the Senator's amendment was rejected, and obviously the first part having been rejected the second and third parts are really without legs to stand on, and they both having now been rejected, would the Senator allow us to vote on a motion to reconsider by voice vote?

Mr. METZENBAUM. I would prefer to have a rollcall vote, although I would like to accommodate my friend from West Virginia. In this instance, I would like to have a rollcall vote and I think that it is not inappropriate for me to ask that at this time.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield further?

Mr. METZENBAUM. I yield to the Senator from West Virginia without losing my right to the floor.

Mr. ROBERT C. BYRD. I like the very warm and gracious smile the Senator is wearing.

Would he not admit that the first section having been voted down, and now that the second and third sections have been voted down, and the motion to table the motion to reconsider the vote by which the first section was voted down having been carried, this is really a dilatory action? Would the Senator continue to look at me and continue to smile?

[Laughter.]

Mr. METZENBAUM. I just want to ask on whose time this is.

Mr. ROBERT C. BYRD. It is on the Senator's time.

The PRESIDING OFFICER. The Senator speaking is the one for whom the clock is ticking.

[Laughter.]

Mr. METZENBAUM. Does that mean the Senator from West Virginia?

The PRESIDING OFFICER. The Senator from Ohio is now speaking.

Mr. ROBERT C. BYRD. The Senator yielded.

Mr. METZENBAUM. But when the Senator from West Virginia is speaking, is it on his time?

The PRESIDING OFFICER. If the Senator from Ohio is kind-hearted enough to yield to a brother Senator, the clock is ticking for him.

Mr. METZENBAUM. That being the case, I can no longer yield, and I give the floor to the Senator from West Virginia, and then I can keep my smile.

Mr. ROBERT C. BYRD. Mr. President, it is a dilatory motion, I say with the greatest of respect. I am not going to make any point of it. Is the motion to reconsider or the motion to table before the Senate?

The PRESIDING OFFICER. The yeas and nays were requested on the motion to reconsider. There was not a sufficient second.

Mr. ROBERT C. BYRD. Mr. President, in order to bring this to a close, I move to table the motion to reconsider, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BARTLETT. Mr. President, a point of order. This goes back to the point of order I made before.

Mr. ABOUREZK. Regular order.

Mr. BARTLETT. This is a point of order. I understand that the Chair grants the right to a Senator to establish a quorum or to establish a quorum for his request for the yeas and nays. I do not question that. But I question that it is dilatory to grant it, and it was not answered in that way.

The PRESIDING OFFICER. The Senator will state his point of order and not debate.

Mr. BARTLETT. My point of order is that the rules do not require, if dilatory tactics are taking place, that in this case the rollcall be granted. It can be requested. He has the right to request the yeas and nays, but it does not have to be granted if the tactics are dilatory.

The PRESIDING OFFICER. The Chair suggests to the Senator from Oklahoma that the yeas and the nays have been requested and already granted, so it seems to the Chair that the point of order of the Senator from Oklahoma is a little late.

Mr. BARTLETT. I had the floor. I was trying to retain the floor, to follow up on the point of order, and I want a point of order on this question. I think it is very unfair to count me out because I am not recognized.

The PRESIDING OFFICER. The Chair recognized the Senator from Oklahoma on the point of order and then recognized the Senator from Ohio, who yielded to the Senator from West Virginia.

Mr. BARTLETT. With due respect to the Chair, he did not answer my point of order, and I am asking it again.

The PRESIDING OFFICER. The Chair, with all respect, tells the Senator from Oklahoma that his point of order is not apropos to the situation which presently confronts the Senate, where there has been a sufficient second to the tabling motion of the Senator from West Virginia.

The question is on agreeing to the motion to table. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), and the Senator from Montana (Mr. METCALF) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from North Carolina (Mr. HELMS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

The result was announced—yeas 70, nays 22, as follows:

[Rollcall Vote No. 418 Leg.]

YEAS—70

Allen	Ford	Moynihan
Baker	Garn	Muskie
Bartlett	Glenn	Nunn
Bellmon	Goldwater	Packwood
Bentsen	Gravel	Pearson
Biden	Hansen	Pell
Brooke	Hart	Randolph
Burdick	Hatch	Roth
Byrd, Harry F., Jr.	Hatfield	Sasser
	Hayakawa	Schmitt
Byrd, Robert C.	Heinz	Schweiker
Cannon	Inouye	Scott
Chafee	Jackson	Sparkman
Chiles	Javits	Stennis
Church	Johnston	Stevens
Cranston	Laxalt	Stevenson
Curtis	Leahy	Stone
Danforth	Long	Talmadge
DeConcini	Lugar	Thurmond
Dole	Mathias	Tower
Domenici	Matsunaga	Wallop
Durkin	McClure	Weicker
Eagleton	Melcher	Young
Eastland	Morgan	

NAYS—22

Abourezk	Hathaway	Proxmire
Anderson	Hollings	Ribicoff
Bayh	Kennedy	Riegle
Bumpers	Magnuson	Sarbanes
Case	McGovern	Williams
Clark	McIntyre	Zorinsky
Culver	Metzenbaum	
Haskell	Nelson	

NOT VOTING—8

Griffin	Humphrey	Percy
Helms	McClellan	Stafford
Huddleston	Metcalf	

So the motion to lay on the table the motion to reconsider was agreed to.

UP AMENDMENT NO. 854

Mr. KENNEDY. Mr. President, I call up my amendment at the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes unprinted amendment No. 854 to amendment No. 862.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Beginning on page 9, strike lines 19 through 24, and strike all of pages 10 through 12, and on page 13, strike lines 1 through 5, and insert the following:

SEC. 24. (a) Notwithstanding any other provision of law, all rates and charges made, demanded, or received by any natural-gas company for, or in connection with, the purchase or sale of natural gas sold or delivered from offshore Federal lands shall be subject to the regulation of the Commission and shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Each such rate of charge made, demanded, or received by any natural-gas company, for or in connection with, the purchase or sale of natural gas sold or delivered from offshore Federal land, found by the Commission to be just and reasonable shall be deemed, for purposes of this Act, to be a national ceiling for rates or charges.

Mr. RIEGLE. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. KENNEDY. I yield.

Mr. RIEGLE. Mr. President, I ask unanimous consent that two members of my staff, Bill Humphreys and Susan Poor be accorded the privilege of the floor during consideration of this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. I thank the Senator.

Mr. KENNEDY. Mr. President, this is a very simple straightforward, and important amendment. What it basically does is it excludes the Outer Continental Shelf lands from the Pearson-Bentsen amendment.

We recognized during the debate on Pearson-Bentsen some 2 years ago that there should be a different consideration than would be given to the gas product on the Outer Continental Shelf from that that would be on the land in the United States. It is recognized in the price mechanism.

Just very briefly, Mr. President, unquestionably there is a large supply of natural gas on the Outer Continental Shelf which I think is generally recognized by the gas companies and by most oil and gas people.

Second, to lift that gas off the Continental Shelf because of the facility of moving pipelines offshore, it is done a good deal more cheaply than it would be if it is brought onstream on land where you have to acquire rights of way and build pipelines.

Third, and I think most importantly, is that the gas which is in the Outer Continental Shelf basically belongs to the American people and it is of common value to all Americans, and no provision of the Pearson-Bentsen amendment should permit that the profiteering from that particular resource be attributed to the gas companies.

So, Mr. President, I hope that the Senate will accept this amendment which would exclude the Outer Continental Shelf gas from the Pearson-Bentsen amendment and would continue the price mechanism which is the boilerplate price mechanism, what is just and what is reasonable, and that we would maintain the cost controls on that particular gas.

That is basically the description of the amendment.

I reserve the remainder of my time.

I am glad to get into a greater explanation of it. Otherwise, I wish to have a rollcall vote on that particular amendment.

So if either Mr. PEARSON or Mr. BENTSEN want to debate this amendment, I am glad to debate it for a short time. Otherwise, I wish to have a rollcall vote on that, Mr. President.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. McCLURE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection?

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the call of the roll.

The second assistant legislative clerk resumed the call of the roll.

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

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue.

The rollcall was resumed and concluded.

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of absent Senators.

The call of the roll was resumed.

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

Mr. ABOUREZK. Objection.

The PRESIDING OFFICER (Mr. ZORINSKY). The request is not in order, the lack of a quorum having already been announced. The clerk will continue.

The call of the roll was resumed and concluded, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 32 Leg.]

Abourezk	Garn	Moynihan
Allen	Glenn	Muskie
Anderson	Goldwater	Nelson
Baker	Gravel	Nunn
Bartlett	Hansen	Packwood
Bayh	Hart	Pearson
Bellmon	Haskell	Pell
Bentsen	Hatch	Proxmire
Biden	Hatfield	Randolph
Brooke	Hathaway	Ribicoff
Bumpers	Hayakawa	Riegle
Burdick	Heinz	Roth
Byrd, Harry F., Jr.	Helms	Sarbanes
	Hollings	Sasser
Byrd, Robert C.	Inouye	Schmitt
Cannon	Jackson	Schweiker
Case	Javits	Scott
Chafee	Johnston	Sparkman
Chiles	Kennedy	Stennis
Church	Laxalt	Stevens
Clark	Leahy	Stevenson
Cranston	Long	Stone
Culver	Lugar	Talmadge
Curtis	Magnuson	Thurmond
Danforth	Mathias	Tower
DeConcini	Matsunaga	Wallop
Dole	McClure	Weicker
Domenici	McGovern	Williams
Durkin	McIntyre	Young
Eagleton	Melcher	Zorinsky
Eastland	Metzenbaum	
Ford	Morgan	

The PRESIDING OFFICER. A quorum is present.

Mr. McCLURE. Mr. President, I move that the amendment be laid on the table.

Mr. ABOUREZK. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to

lay on the table the amendment of the Senator from Massachusetts (Mr. KENNEDY). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Montana (Mr. METCALF), and the Senator from Arkansas (Mr. MCCLELLAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Michigan (Mr. GRIFFIN) and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 50, nays 43, as follows:

[Rollcall Vote No. 419 Leg.]

YEAS—50

Abourezk	Glenn	Packwood
Allen	Goldwater	Pearson
Baker	Gravel	Randolph
Bartlett	Hansen	Roth
Bellmon	Haskell	Schmitt
Bentsen	Hatch	Schweiker
Byrd, Harry F., Jr.	Hatfield	Scott
	Hayakawa	Stennis
Chafee	Heinz	Stevens
Chiles	Helms	Stone
Curtis	Johnston	Talmadge
Danforth	Laxalt	Thurmond
Dole	Long	Tower
Domenici	Lugar	Wallop
Eastland	Mathias	Weicker
Ford	McClure	Young
Garn	Nunn	Zorinsky

NAYS—43

Anderson	Eagleton	Morgan
Bayh	Hart	Moynihan
Biden	Hathaway	Muskie
Brooke	Hollings	Nelson
Bumpers	Inouye	Pell
Burdick	Jackson	Proxmire
Byrd, Robert C.	Javits	Ribicoff
Cannon	Kennedy	Riegle
Case	Leahy	Sarbanes
Church	Magnuson	Sasser
Clark	Matsunaga	Sparkman
Cranston	McGovern	Stevenson
Culver	McIntyre	Williams
DeConcini	Melcher	
Durkin	Metzenbaum	

NOT VOTING—7

Griffin	McClellan	Stafford
Huddleston	Metcalf	
Humphrey	Percy	

So the motion to lay on the table Mr. KENNEDY's unprinted amendment No. 854 was agreed to.

Mr. ABOUREZK addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABOUREZK. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Several Senators addressed the Chair.

Mr. MCCLURE. I move to lay that motion on the table.

Mr. BUMPERS. Mr. President, I sought recognition first.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. I thank the Chair.

Mr. President, I will only take 3 or 4 minutes of my 1 hour to point out something to the Members of this body present here.

When the momentum gets going on a bill such as this and there is a certain mind set, the votes have a tendency to solidify on one side or the other with no real debate. Everybody is most anxious not to use up any portion of his 1 hour, because he wants this to go as long as possible.

But I simply want to point out that the amendment which we have just voted to table by a vote of 49 to 44 would only require three changed votes to reconsider. I personally think it is worthwhile, and I am willing to use up some of my time to tell the Senate why.

This is a very simple amendment. It simply excludes offshore gas from deregulation.

The first thing that somebody might say who takes issue with this is, offshore drilling costs a lot more money than onshore drilling, so why should it not be deregulated?

But what we are talking about here is production from the public domain.

This is not to say that the price of offshore gas might not bring more money than deregulated gas onshore. The case could be made before the new Federal regulatory energy commission and, if justified, the price could bring whatever the statistics indicated, based on the cost of drilling, the cost of capital investment, and so on.

So I simply want to say that I hope we will vote and have an honest-to-God vote to reconsider this, and that the Senators, some of them, will reconsider the way they just voted, because it is much too serious to allow an amendment of this magnitude to go down in that rote fashion that all the rest are going through, because we are dealing with public property now. We are not dealing with landowners who lease their land to some driller who, in turn, is going to sell it to an interstate pipeline, or whatever he wants to do with it.

We are talking about gas that actually belongs to the people of the United States next winter, or whenever, and they are entitled to know that their interest is not being jeopardized by a routine, formalized vote in the U.S. Senate.

So, Mr. President, the motion to reconsider is a very serious one. I seriously hope the Senate will, indeed, reconsider the vote.

Mr. ABOUREZK. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. MCCLURE addressed the Chair.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

Mr. MCCLURE. Mr. President, I move to lay on the table the motion to reconsider.

Mr. ABOUREZK. I ask for the yeas and nays.

Mr. METZENBAUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the motion to reconsider. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 47, nays 44, as follows:

[Rollcall Vote No. 420 Leg.]

YEAS—47

Allen	Glenn	Morgan
Baker	Goldwater	Nunn
Bartlett	Gravel	Packwood
Bellmon	Hansen	Pearson
Bentsen	Haskell	Randolph
Byrd, Harry F., Jr.	Hatch	Roth
	Hatfield	Schmitt
Chafee	Hayakawa	Schweiker
Chiles	Heinz	Scott
Curtis	Helms	Stevens
Danforth	Johnston	Stone
Dole	Laxalt	Thurmond
Domenici	Long	Tower
Eastland	Lugar	Wallop
Ford	Mathias	Weicker
Garn	McClure	Young

NAYS—44

Abourezk	Durkin	Moynihan
Anderson	Eagleton	Muskie
Bayh	Hart	Nelson
Biden	Hathaway	Pell
Brooke	Hollings	Proxmire
Bumpers	Inouye	Ribicoff
Burdick	Jackson	Riegle
Byrd, Robert C.	Kennedy	Sarbanes
Cannon	Leahy	Sasser
Case	Magnuson	Sparkman
Church	Matsunaga	Stevenson
Clark	McGovern	Talmadge
Cranston	McIntyre	Williams
Culver	Melcher	Zorinsky
DeConcini	Metzenbaum	

NOT VOTING—9

Griffin	Javits	Percy
Huddleston	McClellan	Stafford
Humphrey	Metcalf	Stennis

So the motion to table the motion to reconsider was agreed to.

AMENDMENT NO. 997

Mr. KENNEDY. Mr. President, I have at the desk——

Mr. ROBERT C. BYRD. Mr. President, may we have order so the Senator from Massachusetts may be heard?

The PRESIDING OFFICER. Senators will please clear the well. Senators will please cease their conversation and take their seats.

The Senator from Massachusetts.

Mr. KENNEDY. I call up my amendment 997 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes amendment No. 997.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On the first page, between lines 2 and 3, insert the following:

"TITLE I—NATURAL GAS".

At the end of the bill, add the following new title:

"TITLE II—THE OIL AND GAS COMPETITION

"SEC. 201. This title may be cited as the 'Oil and Gas Competition Act'.

"FINDINGS AND PURPOSE

"SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

"(1) this Nation is committed to a private enterprise system and a free market economy, in the belief that competition spurs innovation, promotes productivity, prevents undue concentration of economic, social, and political power, and helps preserve a domestic society;

"(2) vigorous and effective enforcement of the antitrust laws and reduction of monopoly and oligopoly power in the economy can contribute significantly to reducing prices, unemployment, and inflation;

"(3) existing antitrust laws have been inadequate to maintain and restore effective competition in the oil and gas industry; and

"(4) the extraordinary dimensions of the remedy required by this Act necessitate expenditure judicial supervision of the divestitures and attendant actions required by this Act.

"(b) PURPOSE.—It is the purpose of the Congress in this Act to facilitate the creation and maintenance of competition in the petroleum industry, and to require the most expeditious and equitable separation and divestment of assets and interests of vertically integrated major petroleum companies.

"DEFINITIONS

"SEC. 203. As used in this title—

"(a) 'person' means an individual person or a corporation, partnership, joint stock company, trust, trustee in bankruptcy, receiver in reorganization, association, or any organized group whether or not incorporated, and whether or not domiciled or incorporated within the United States. It does not include any authority of the United States or of the several States;

"(b) 'control' means a direct or indirect legal or beneficial interest in or legal power or influence over another person, directly or indirectly, arising through direct, indirect, or interlocking ownership of capital stock, interlocking directorates of officers, or contractual relations which substantially impair the independent business behavior of another person;

"(c) 'affiliate' means a person controlled by, controlling, or under or subject to common control with respect to any other person;

"(d) 'asset' means any property (tangible or intangible, real, personal, or mixed) and includes stock in any corporation;

"(e) 'commerce' means commerce among the several States, with the Indian tribes, or with foreign nations; or commerce in any State which affects commerce among or between a State and a foreign nation;

"(f) 'energy resource' means crude oil, natural gas liquids, and condensate;

"(g) 'redefine' means to change by any operation the physical or chemical characteristics of petroleum or petroleum products in order to create a derivative product for resale, exclusive of the operations of passing petroleum through a separator to remove gas, placing petroleum in settling tanks to remove basic sediment and water, dehydrating petroleum and generally cleaning and purifying petroleum;

"(h) 'refined product' means any product, whether liquid or gas, which is produced by a refinery asset;

"(i) 'marketing asset' means any asset used in the sale and distribution of gasoline or fuel oil, including diesel and distillate, to ultimate consumers at a retail motor fuel outlet, other than the initial sale with transfer of ownership to customers at the refinery;

"(j) 'production asset' means—

"(A) natural deposits of crude oil, or condensate and natural gas liquids;

"(B) any asset used primarily in the exploration for, development of, or production of an energy resource including, but not limited to, an interest in real property, whether or not such real property is developed or undeveloped; and

"(C) geological and geophysical information;

"(k) 'refinery asset' means any asset used in the refining of an energy resource;

"(l) 'transportation asset' means any asset used in the transportation within the United States by pipeline or gathering line of crude oil or refined product;

"(m) 'major producer' means any person which, during the calendar year 1974 or in any subsequent calendar year, alone or with affiliates, produced within the United States either a total of thirty-six million five hundred thousand barrels of crude oil, condensate and natural gas liquids, or whose interest in crude oil, condensate and natural gas liquid production totaled thirty-six million five hundred thousand barrels;

"(n) 'Outer Continental Shelf' means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (67 Stat. 29) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

"(o) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands, and the Outer Continental Shelf;

"(p) 'Commission' means the Federal Trade Commission; and

"(q) 'prohibited asset' means any marketing asset, refining asset, or transportation asset, the retention of which is prohibited by section 204 of this Act.

"UNLAWFUL RETENTION

"SEC. 204. Notwithstanding any other provision of law, five years after the date of enactment of this Act, it shall be unlawful for any major producer to own, or control, any interest in any refinery asset, transportation asset, or marketing asset.

"SEC. 205. In order to facilitate the purposes of this title, the Commission is authorized to exempt any corporation formed or reorganized as a result of compliance with this section from the prohibitions contained in section 8 of the Act of October 5, 1914 (38 Stat. 732; 15 U.S.C. 19) for a period not to exceed one year.

"PROHIBITION ON SOLICITATION

"SEC. 206. It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a corporation subject to the requirements of section 204 or a subsidiary corporation thereof in contravention of such rules.

"REPORTS

"SEC. 207. Not later than thirty days after the date of enactment of this Act, each person subject to the requirements of section 204 shall file with the Commission a report listing its interests in its prohibited assets. The Commission may order such persons to file additional reports and may order any other person to file reports as it deems necessary to carry out the purposes of this Act. Not later than five days after any order of the Commission issued as provided in this section has been served, persons upon whom such an order has been served may bring an action for judicial review of such order in the court referred to in section 8(c) of this Act in accordance with the provisions of chapter 7 of title 5, United States Code. Such court shall take final action with respect to such order not later than ten days after such action is brought.

"ENFORCEMENT

"SEC. 208. (a)(1) The Commission, in accordance with such rules, regulations, or orders, as it deems appropriate to carry out the purposes of this Act, shall require each person subject to section 204 to submit to the Commission, not later than six months after the date of enactment of this Act, a plan for the divestment of its prohibited assets.

"(2) Such plan shall—

"(A) be developed in consultation with the officers and employees of the Commission and the Securities and Exchange Commission pursuant to guidelines which the Commission shall issue after consultation with the Securities and Exchange Commission;

"(B) be fair and equitable to all persons affected by such plan; and

"(C) provide for the substantial accomplishment of the required divestiture not later than three years after the date of enactment of this Act.

"(3) After each such plan is submitted to the Commission, the Commission shall provide the major petroleum producer submitting such plan the opportunity for a hearing on the record in accordance with the provisions of chapter 5 of title 5, United States Code, to resolve disputes of law and fact among all persons affected by such plan, the Commission, and the Securities and Exchange Commission. Prior to any such hearing, the Commission shall give notice of such hearing to all persons affected by such plan.

"(b)(1) In the administration of the provisions of this section, the Commission shall have primary oversight jurisdiction and responsibility for the preparation and final approval of the required divestiture plans.

"(2) The Securities and Exchange Commission and the Attorney General of the United States shall—

"(A) advise and file comments with the Commission as to the conformity of each such plan with general standards of fairness and equity with respect to the interests of the holders of debt and equity interests in corporations affected by the provisions of section 5; and

"(B) have the right to participate, including by intervention, in any proceeding with respect to any such plan.

"(c)(1) Not later than six months after the submission of any plan as provided in subsection (a), the Commission shall issue a final order with respect to such plan.

"(2) Not later than thirty days after such order is issued, such order may be appealed to a court of three judges of the United States District Court for the District of Columbia who shall be designated by the chief judge of the United States Court of Appeals for the District of Columbia. The filing of an appeal under this section shall automatically stay all related proceedings in State courts or Federal courts and such proceedings shall

be transferred to such court of three judges. The hearing of such appeal shall be given precedence and held at the earliest practicable date.

"(3) Such court of three judges shall have the power to modify the plan which is the subject of such final order.

"(4) The provisions of section 2284 of title 28, United States Code, shall not apply to such court of three judges.

"(5) The judicial panel on multidistrict litigation established by section 1407 of title 28, United States Code, shall not exercise any power or perform any functions with respect to such court of three judges or any matter before such court.

"(d) The Commission may institute suits or actions (1) only in the court referred to in subsection (c), and (2) for such relief as is appropriate to assure compliance by any person with this Act, including, but not limited to, orders of divestiture, declaratory judgments, mandatory or prohibitive injunctive relief, interim equitable relief, the appointment of temporary or permanent receivers or trustees, civil penalties, and punitive damages for willful failure to comply with lawful orders of the court.

"(e) In carrying out the provisions of this Act, the Commission shall have all powers, including the power to enforce, conferred upon the Securities and Exchange Commission by any other provision of law, and the Securities and Exchange Commission shall have all powers, including the power to enforce, conferred upon the Commission by any other provision of law.

"SANCTIONS

"SEC. 209. (a) Any person, or any officer, director, or partner thereof, who violates any provision of this Act shall be subject to a civil penalty of not more than $100,000, in the case of an individual, or not more than $1,000,000, in the case of a corporation. Such penalties shall accrue to the United States and may be recovered in a civil action brought by the Commission. Failure to obey any order of the court of three judges referred to in section 8 shall be punishable by such court as a contempt of court.

"(b) Any person, or any officer, director or partner thereof, who violates a lawful order of the Commission issued pursuant to this Act shall be subject to a civil penalty for each violation of not more than $100,000 which shall accrue to the United States and may be recovered in a civil action brought by the Commission. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey an order of the Commission, each day that such failure or neglect continues shall be deemed a separate offense.".

Mr. KENNEDY. Mr. President, I will not delay the Senate very long. This is a vertical divestiture amendment. It seems to me it is absolutely relevant to this particular bill.

What we are talking about in terms of the Pearson-Bentsen amendment is the question of what the effect of price will be on the increase in supply. We want to insure that the price will reflect free market forces.

Since we are moving towards such an extraordinary conclusion involving deregulation, it seems only appropriate that we consider other steps to increase competition in the oil and gas industry. This amendment addresses that issue in a very detailed way that is modeled on the proposal that was reported from the Committee on the Judiciary last year after very extensive hearings and very long periods of markup before that committee.

Mr. President, the Committee on the Judiciary reviewed the history of the various joint ventures within the oil and gas industry, the various exchange agreements that exist within the industry, the farmout provisions, the interrelationship between pipelines and those interrelated aspects of the industry involving production and refining and marketing. The committee also did a very extensive review of concentration in the industry, focusing as well on the international activities of the oil and gas industry.

So this kind of amendment has had very extensive hearings. It will, I believe, be extremely important as part of the Pearson-Bentsen amendment because it will insure, in the words of the proponents of that amendment, sufficiency of supply at competitive prices. That can only be achieved with my amendment.

It seems to me it is entirely relevant and germane to this proposal, and I would hope the Senate is prepared to accept this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. TOWER. Mr. President, I raise the point that the amendment of the Senator from Massachusetts is not germane and, therefore, is not in order and, therefore, a point of order should lie against the amendment of the Senator from Massachusetts, and I ask the Chair to rule.

The PRESIDING OFFICER. Once cloture is invoked amendments must be germane under the rule. There is nothing in the nature of the amendment in the nature of a substitute that this is introduced to or the original bill dealing with divestiture.

Mr. KENNEDY. I will withdraw that amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

UP AMENDMENT NO. 855

Mr. KENNEDY. I call up my second amendment.

The PRESIDING OFFICER. The clerk will report the next amendment.

The second assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) proposes unprinted amendment No. 855:

Insert at the appropriate place a new section to read as follows:

SEC. . The Commission shall promulgate such rules and regulations as it finds appropriate to prohibit the ownership or control of natural deposits of coal or uranium by natural gas companies which produced during the calendar year 1976, or in any subsequent year within the United States one hundred billion cubic feet of natural gas, or whose interest in natural gas production during calendar year 1976, or in any subsequent calendar year, within the United States totaled one hundred billion cubic feet. In no case shall the rules or regulations permit the retention of the prohibited assets for more than five years from the date of enactment of this Act.

Mr. KENNEDY addressed the Chair.

Mr. SCOTT. Mr. President, point of order.

Mr. ABOUREZK. Regular order.

Mr. SCOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. SCOTT. Mr. President, if there is more than one subject matter in this amendment, is the amendment in order based upon that point?

The PRESIDING OFFICER. Is the Senator's point of order that this amendment offers new subject matter?

Mr. SCOTT. It addresses itself to more than one subject matter. As I understand, once cloture is invoked an amendment should only have one item.

The PRESIDING OFFICER. No, this inserts a new section. So the Senator would be wrong on his assumption.

Mr. SCOTT. I appreciate the Chair's response.

Mr. KENNEDY. Mr. President, this basically is targeted at the same objective as the previous amendment, but it adds powers to the commission which is dealt with in the Pearson-Bentsen amendment. In the Pearson-Bentsen amendment the energy regulatory commission is contemplated as having powers: Hearings, rulemaking, and setting the price for old gas. This adds to the commission's power one more function, relating to the control of various levels of activities by major oil and gas companies.

So, this will be good news to the Members of the Senate who wanted to vote on the divestiture amendment earlier, because now they will have that opportunity to do so.

Mr. President, I am prepared to have a vote on my amendment at this time.

Mr. TOWER. Mr. President, I raise the point of order that the amendment is not germane and, therefore, a point of order should lie against it, and I ask the Chair to rule.

The PRESIDING OFFICER. This amendment is not as clear as the previous amendment, but the Chair feels that it does deal with divestiture and therefore will sustain a point of order.

Mr. TOWER. I thank the Chair.

Mr. KENNEDY. Mr. President, because I do believe that it is related on the question of competitive aspects which are fundamental to this legislation in terms of the supply and price; therefore, I appeal the ruling of the Chair and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Shall the decision of the Chair stand as the judgment of the Senate?

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the

Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 60, nays 31, as follows:

[Rollcall Vote No. 421 Leg.]

YEAS—60

Abourezk	Glenn	Pearson
Allen	Goldwater	Pell
Baker	Gravel	Randolph
Bartlett	Hansen	Roth
Bellmon	Hatch	Schmitt
Bentsen	Hatfield	Schweiker
Burdick	Hayakawa	Scott
Byrd, Harry F., Jr.	Heinz	Sparkman
	Helms	Stevens
Byrd, Robert C.	Inouye	Stevenson
Cannon	Johnston	Stone
Chafee	Laxalt	Talmadge
Chiles	Long	Thurmond
Curtis	Lugar	Tower
Danforth	Matsunaga	Wallop
DeConcini	McClure	Weicker
Dole	Melcher	Williams
Domenici	Morgan	Young
Eastland	Moynihan	Zorinsky
Ford	Nunn	
Garn	Packwood	

NAYS—31

Anderson	Eagleton	McIntyre
Bayh	Hart	Metzenbaum
Biden	Haskell	Muskie
Brooke	Hathaway	Nelson
Bumpers	Hollings	Proxmire
Case	Jackson	Ribicoff
Church	Kennedy	Riegle
Clark	Leahy	Sarbanes
Cranston	Magnuson	Sasser
Culver	Mathias	
Durkin	McGovern	

NOT VOTING—9

Griffin	Javits	Percy
Huddleston	McClellan	Stafford
Humphrey	Metcalf	Stennis

So the ruling of the Chair was sustained as the judgment of the Senate.

Mr. ABOUREZK. Mr. President, I move to reconsider the vote by which the ruling of the Chair was sustained.

Mr. ROBERT C. BYRD. Mr. President, I hope the Senator will not press that request. The vote is very one-sided, 60 to 31. Obviously the Senate is not going to vote now to reconsider that vote. The Chair has been sustained. I hope the Senator will not press for a rollcall vote on that.

Mr. ABOUREZK. Mr. President, I ask for the yeas and nays on the motion.

Mr. ROBERT C. BYRD. Mr. President, I make the point of order that the motion is dilatory, and I ask the Chair to so rule.

The PRESIDING OFFICER. The Chair rules that the motion is dilatory. The bill is open to further amendment.

Mr. ABOUREZK. I appeal from the ruling of the Chair, and I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, I make the point of order that the appeal is dilatory. It comes right on the heels of a motion that has been ruled dilatory by the Chair.

The PRESIDING OFFICER. The Chair rules that the appeal is dilatory. The bill is open to further amendment.

The point of order is well taken. The bill is open for amendment.

The Senator from Colorado is recognized.

AMENDMENT NO. 991

Mr. HASKELL. Mr. President, I call up amendment No. 991 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Colorado (Mr. HASKELL) proposes amendment No. 991.

Mr. HASKELL. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, strike line 24.

On page 5, strike all through line 7.

On page 6, strike all after line 13.

On page 7, strike line 1.

On page 6, after line 13, insert the following: "lease) from a newly discovered reservoir."

On page 7, after line 16 insert the following:

"(s) The term 'qualified geologist' means a person who meets requirements of technical competence and expertise to be specified by rule of the Commission.".

On page 21, after line 14 insert the following:

"(3) The Commission shall determine if gas produced from a new well qualifies as new natural gas under section 3(1)(2). In order to qualify as new natural gas the Commission shall have received the findings and certification of a qualified geologist and shall have determined based on accurate geological information that such gas was produced from a newly discovered reservoir. The Commission shall prescribe such rules as necessary governing the information and findings which will be required to make such a determination. The Commission shall have 90 days from the receipt of such findings and certification to review and render its decision.".

Mr. STONE. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HASKELL. I yield.

Mr. STONE. Mr. President, I ask unanimous consent that Paul Laudicina of Senator BIDEN's staff may have the privilege of the floor during consideration of this measure.

Mr. GLENN. Mr. President, I ask unanimous consent that Len Bickwit of my staff have the privilege of the floor during consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HASKELL. Mr. President, this amendment is quite simple. It changes the definition of new gas. The amendment in the administration's bill and, as I understand it, the amendment in the substitute bill defines new gas by a certain number of miles from the existing well and a certain number of feet below the existing producing horizon. All my amendment does is basically eliminate this metes and bounds description and say that new gas is that gas determined to be new by geological opinion. Obviously, the Secretary would first rule and then the decision of the Secretary could be appealed and must be decided within 90 days by the regulatory agency set up.

I grant that the metes and bounds description is easier of administration. It is certainly bureaucratically easier. However, I suggest, Mr. President, to the Senate that my amendment is more realistic. New gas, in fact, is a geological determination, not a determination of a strict number of miles or number of feet. Therefore, Mr. President, based upon the realism of the situation, I hope that the Senate can adopt my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. ABOUREZK. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), the Senator from North Carolina (Mr. MORGAN), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), the Senator from Illinois (Mr. PERCY), and the Senator from Virginia (Mr. SCOTT) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 72, nays 16, as follows:

[Rollcall Vote No. 422 Leg.]

YEAS—72

Allen	Garn	Moynihan
Baker	Glenn	Muskie
Bartlett	Goldwater	Nelson
Bayh	Gravel	Nunn
Bellmon	Hansen	Packwood
Bentsen	Hart	Pearson
Bumpers	Haskell	Pell
Burdick	Hatch	Randolph
Byrd, Harry F., Jr.	Hatfield	Ribicoff
	Hathaway	Roth
Byrd, Robert C.	Hayakawa	Sarbanes
Cannon	Heinz	Schmitt
Chafee	Helms	Schweiker
Church	Hollings	Stevens
Clark	Inouye	Stone
Cranston	Johnston	Talmadge
Culver	Kennedy	Thurmond
Curtis	Laxalt	Tower
Danforth	Leahy	Wallop
Dole	Lugar	Weicker
Domenici	Magnuson	Williams
Durkin	Matsunaga	Young
Eagleton	McClure	Zorinsky
Eastland	McIntyre	
Ford	Melcher	

NAYS—16

Abourezk	DeConcini	Riegle
Anderson	Jackson	Sasser
Biden	Mathias	Sparkman
Brooke	McGovern	Stevenson
Case	Metzenbaum	
Chiles	Proxmire	

NOT VOTING—12

Griffin	Long	Percy
Huddleston	McClellan	Scott
Humphrey	Metcalf	Stafford
Javits	Morgan	Stennis

So Mr. HASKELL's amendment was agreed to.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The bill is open to further amendment.

The Senator from Ohio.

AMENDMENT NO. 955

Mr. METZENBAUM. Mr. President, I call up amendment No. 955.

The PRESIDING OFFICER. The amendment will be stated.

Mr. GLENN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HASKELL. I move to lay that motion on the table.

Mr. ABOUREZK. Mr. President, I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, that vote was so lopsided that there is no need to reconsider the vote.

Mr. ABOUREZK. I ask for the yeas and nays.

Mr. METZENBAUM. Mr. President, I have the floor, and I have an amendment pending at the desk, and I do not believe any other motion is in order.

The PRESIDING OFFICER. The Senator is correct. The motion to reconsider is not in order.

The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an amendment numbered 955:

On page 10, line 10, insert after "gas" the following: "associated with incurred cost and a fair rate of return not to exceed eighteen percent on equity".

Mr. METZENBAUM. Mr. President, this is a very simple amendment. It provides that if you want to give a fair return on the equity of the investment, this provides for an 18 percent return. It should be a noncontroversial amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. ROBERT C. BYRD. Mr. President, if this is a noncontroversial amendment, why do we not vote by voice?

Mr. METZENBAUM. Only if I had some assurance from the other side that it was indeed noncontroversial.

Mr. ABOUREZK. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. ROBERT C. BYRD. Mr. President, let us not have the yeas and nays. Let us have a voice vote.

Mr. ABOUREZK. Mr. President, can we get the yeas and nays or not?

Mr. ROBERT C. BYRD. Mr. President, may I explain to my dear friend from South Dakota? Let us try a voice vote. If it carries, he does not need the yeas and nays.

Mr. DURKIN. Mr. President, let us try a motion to table.

The PRESIDING OFFICER. The Senator makes a motion to table.

Mr. ABOUREZK. I ask for the yeas and nays on that.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I realize that a quorum call is underway. I ask unanimous consent, with the understanding that the yeas and nays will be given, that the order for the quorum call be rescinded.

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued to call the roll.

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

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "nay."

Mr. STEVENS. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), the Senator from Illinois (Mr. PERCY), and the Senator from Virginia (Mr. SCOTT) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 61, nays 28, as follows:

[Rollcall Vote No. 423 Leg.]

YEAS—61

Allen	Eastland	McClure
Baker	Ford	Melcher
Bartlett	Garn	Morgan
Bellmon	Glenn	Moynihan
Bentsen	Goldwater	Nunn
Bumpers	Gravel	Packwood
Burdick	Hansen	Pearson
Byrd, Harry F., Jr.	Hart	Pell
Byrd, Robert C.	Haskell	Randolph
Cannon	Hatch	Roth
Chafee	Hayakawa	Sasser
Chiles	Heinz	Schmitt
Curtis	Helms	Schweiker
Danforth	Johnston	Sparkman
DeConcini	Laxalt	Stevens
Dole	Leahy	Stevenson
Domenici	Lugar	Stone
Eagleton	Magnuson	Talmadge
Tower	Matsunaga	Thurmond
Wallop	Weicker	
	Young	Zorinsky

NAYS—28

Abourezk	Durkin	Metzenbaum
Anderson	Hatfield	Muskie
Bayh	Hathaway	Nelson
Biden	Hollings	Proxmire
Brooke	Inouye	Ribicoff
Case	Jackson	Riegle
Church	Kennedy	Sarbanes
Clark	Mathias	Williams
Cranston	McGovern	
Culver	McIntyre	

NOT VOTING—11

Griffin	Long	Scott
Huddleston	McClellan	Stafford
Humphrey	Metcalf	Stennis
Javits	Percy	

So Mr. DURKIN's motion to lay on the table Mr. METZENBAUM's amendment was agreed to.

Mr. HANSEN. Mr. President, I move to reconsider the vote by which the motion to lay on the table the amendment of the Senator from Ohio was agreed to.

Mr. DURKIN. I move to lay that motion on the table.

Mr. ABOUREZK. I ask for the yeas and nays.

Mr. DURKIN. Mr. President, that motion is dilatory.

Mr. ABOUREZK. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. The point of order is well taken.

Mr. ABOUREZK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. I did not make the motion. All I ask for is the yeas and nays on a motion by the Senator from Wyoming. If the Chair wishes to rule him dilatory that is fine. But asking for the yeas and nays was not dilatory.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. ABOUREZK. I suggest the absence of a quorum.

Mr. DURKIN. Mr. President, I move that that is dilatory.

Mr. ABOUREZK addressed the Chair.

The PRESIDING OFFICER. That point of order is well taken.

Mr. ABOUREZK. I suggest the absence of a quorum. There is obviously not a quorum present in the Chamber.

The PRESIDING OFFICER. The point of order is well taken.

Mr. DURKIN. No business has been transacted, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Hampshire.

The motion was agreed to.

Mr. ABOUREZK addressed the Chair.

The PRESIDING OFFICER. The bill is open to further amendment.

The Senator from South Dakota.

AMENDMENT NO. 868

Mr. ABOUREZK. Mr. President, I call up amendment No. 868.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. ABOUREZK) proposes amendment No. 868.

Mr. DURKIN. Mr. President, that action is dilatory and that is the amendment of Senator JACKSON that has been tabled.

Mr. ABOUREZK. Regular order, Mr. President. The amendment has not been reported yet.

Mr. DURKIN. Point of order, Mr. President.

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. DURKIN. Point of order, Mr. President. That amendment has been tabled.

Mr. ABOUREZK. Regular order, Mr. President. The amendment has not yet been reported.

The PRESIDING OFFICER. The amendment has been tabled, and in addition, the amendment seeks to be a substitute for the bill at a time when there is a substitute for the bill pending, and therefore is not in order.

Mr. ABOUREZK. Mr. President, a parliamentary inquiry.

Mr. DURKIN addressed the Chair.

The PRESIDING OFFICER. The Senator will state it.

Mr. ABOUREZK. This amendment to the bill S. 2104 has not been tabled. It has been tabled as an amendment, and it was in a different form. It has not yet been called up in the original bill.

I ask for the regular order.

Mr. DURKIN. Point of order, Mr. President.

Mr. ABOUREZK. The amendment has not been reported, Mr. President, and I am entitled to have it reported.

Mr. DURKIN. Point of order, Mr. President.

The PRESIDING OFFICER. The amendment has been tabled by the Senate and was not in order.

Mr. ABOUREZK. Mr. President, I appeal the ruling of the Chair and ask for the yeas and nays.

Mr. DURKIN. Point of order, Mr. President.

Mr. ABOUREZK. I ask for the yeas and nays, Mr. President.

Mr. DURKIN. I move that the action of the Senator from South Dakota is dilatory on its face.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. ABOUREZK. I suggest the absence of a quorum, Mr. President.

Mr. ROBERT C. BYRD. Mr. President, I just walked in the door. What does he want?

Mr. DURKIN. The Senator is just in time.

Mr. ABOUREZK. I am trying to get the yeas and nays.

Mr. ROBERT C. BYRD. On what?

Mr. ABOUREZK. On appealing the ruling of the Chair. The Chair ruled that the amendment had been tabled.

Mr. ROBERT C. BYRD. What was the vote?

Mr. ABOUREZK. I suggest the absence of a quorum, Mr. President.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I just walked in. What is the question before the Senate.

The PRESIDING OFFICER. Whether an amendment has been read and tabled. Whether it is in order to be called up again and offered again.

Mr. ROBERT C. BYRD. The amendment was called up and was tabled. The question is whether or not it can be called up again?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. How did the Chair rule?

The PRESIDING OFFICER. That it was not in order.

Mr. ROBERT C. BYRD. The Chair is right. [Laughter.]

Mr. President, I would hope that the Senator would not appeal the ruling of the Chair.

Mr. ABOUREZK. Mr. President, if I could use the Senator's time, I do not want to use my time in this debate, but I have asked for a ruling.

The PRESIDING OFFICER. It would take unanimous consent.

Mr. DURKIN. I object.

The PRESIDING OFFICER. Objection is heard.

The question is on the appeal.

Mr. ROBERT C. BYRD. Let us give him the yeas and nays so we will not have a quorum on appealing the ruling of the Chair.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. What is the question that is going to be put?

The PRESIDING OFFICER. Shall the decision of the Chair stand as the judgment of the Senate.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. STEVENS. I announce that the Senator from Michigan (Mr. GRIFFIN), the Senator from New York (Mr. JAVITS), the Senator from Illinois (Mr. PERCY), and the Senator from Virginia (Mr. SCOTT) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 86, nays 3, as follows:

[Rollcall Vote No. 424 Leg.]

YEAS—86

Allen	Byrd,	Curtis
Anderson	Harry F., Jr.	Danforth
Baker	Byrd, Robert C.	DeConcini
Bartlett	Cannon	Dole
Bayh	Case	Domenici
Bellmon	Chafee	Durkin
Bentsen	Chiles	Eagleton
Biden	Church	Eastland
Brooke	Clark	Ford
Bumpers	Cranston	Garn
Burdick	Culver	Glenn
Goldwater	Lugar	Ribicoff
Gravel	Magnuson	Roth
Hansen	Mathias	Sarbanes
Hart	Matsunaga	Sasser
Haskell	McClure	Schmitt
Hatch	McGovern	Schweiker
Hatfield	McIntyre	Sparkman
Hathaway	Melcher	Stevens
Hayakawa	Morgan	Stevenson
Heinz	Moynihan	Stone
Helms	Muskie	Talmadge
Hollings	Nelson	Thurmond
Inouye	Nunn	Tower
Jackson	Packwood	Wallop
Johnston	Pearson	Weicker
Kennedy	Pell	Williams
Laxalt	Proxmire	Young
Leahy	Randolph	Zorinsky

NAYS—3

Abourezk	Metzenbaum	Riegle

NOT VOTING—11

Griffin	Long	Scott
Huddleston	McClellan	Stafford
Humphrey	Metcalf	Stennis
Javits	Percy	

So the ruling of the Chair was sustained as the judgment of the Senate.

AMENDMENT NO. 953

Mr. ABOUREZK. Mr. President, I call up amendment No. 953 and ask that it be considered.

The PRESIDING OFFICER. The amendment will be stated.

Mr. ROBERT C. BYRD. Mr. President, I make a parliamentary inquiry. Is this amendment divisible?

The PRESIDING OFFICER. The amendment will be stated first.

Mr. ROBERT C. BYRD. Why can I not have my question answered first?

The PRESIDING OFFICER. When a Senator offers an amendment, it should be stated first.

Mr. ROBERT C. BYRD. Does the Chair mean I cannot ask if it is divisible if it is not reported?

Mr. ABOUREZK. I ask for regular order, Mr. President.

The PRESIDING OFFICER. It is clearly divisible. It hits the bill in more than one place.

Mr. ROBERT C. BYRD. I thank the Chair doubly.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from South Dakota (Mr. ABOUREZK) for Mr. METZENBAUM proposes an amendment:

On page 7, strike out all in lines 7 through 18 and redesignate the clauses in section 3 accordingly.

On page 8, beginning with line 7, strike out all through line 11 and insert in lieu thereof:

"COST BASED NATIONAL CEILING PRICES

"SEC. 4. (a) Not later than the first day of the sixth full calendar month following the effective date of this Act the Commission shall establish a maximum ceiling price which shall be applicable to new natural gas produced in the United States and delivered on or after such date. Such price shall be promulgated in proceedings made on the record after opportunity for hearing in accordance with sections 553, 556, and 557 of title 5 of the United States Code, and may be adjusted thereafter in accordance with this section as the Commisison determines necessary.

"(b) In establishing such national ceiling price, the Commission shall—

"(1) provide for the recovery of all costs on the basis of costs during the immediately

preceding period of not less than five calendar years;

"(2) provide for the recovery only of the actual amounts of tax under the Internal Revenue Code of 1954 paid or incurred by the producer;

"(3) provide for a reasonable rate of return (not to exceed 18 per centum of equity employed in the discovery, development, and production (at the wellhead) of natural gas);

"(4) if appropriate, take into account productivity determined on the basis of the average of annual average additions to reserves of natural gas during the immediately preceding twelve calendar years (excluding negative revisions of reserves not associated with such years); and

"(5) associate the reserve additions for any year with the drilling costs of the preceding year.

"(c) The Commission shall prescribe procedures for expediting determinations under this section.

"(d) Any price for the sale of natural gas shall not be considered as exceeding the ceiling price established under this section if such price is necessary to obtain an average rate of return of 18 per centum on equity employed in the discovery, development, and production (at the wellhead) of natural gas. The preceding sentence shall only apply if—

"(1) an appropriate petition for its application has been filed which contains such information as the Commission determines appropriate, and

"(2) within ninety days after such filing, the Commission has not determined that, from the information submitted in, or in connection with, such petition that such price is not necessary for the seller to obtain such rate of return.

"(e)(1) The Commission may establish a higher ceiling price in excess of the ceiling price established under this section in the case of a sale of high-cost natural gas if the Commission finds that such higher ceiling is necessary to provide reasonable incentives for the production of high-cost natural gas as defined in section 10.".

Redesignate the following sections of the bill accordingly.

On page 22, line 19, strike out "5", and insert in lieu thereof "4".

Mr. DURKIN and Mr. ABOUREZK addressed the Chair.

Mr. DURKIN. Point of order.

Mr. ABOUREZK. I demand the division of the amendment.

The PRESIDING OFFICER. The Senator from New Hampshire has been recognized.

Mr. DURKIN. I make a point of order that the amendment is not in order, inasmuch as it touches the bill in more than one place.

Mr. ABOUREZK. I demand a division.

The PRESIDING OFFICER. The Senator is correct. The point of order is well taken.

Mr. METZENBAUM. I appeal the decision of the Chair.

Mr. ROBERT C. BYRD. Mr. President, the point of order is well taken and it is well substantiated by numerous precedents. I therefore make a point of order that the appeal from the ruling of the Chair is dilatory.

Mr. ABOUREZK. Regular order. It is not debatable. Mr. President.

The PRESIDING OFFICER. In this context, the point of order is well substantiated.

Mr. METZENBAUM. What was the ruling?

Mr. DURKIN. My point of order was well taken.

The PRESIDING OFFICER. The Chair feels that the Senate has a right to speak to the question itself. Therefore, the Chair rules that the appeal is not dilatory.

Mr. METZENBAUM. Is not what?

The PRESIDING OFFICER. Not dilatory.

Mr. ABOUREZK. I ask for the yeas and nays.

The PRESIDING OFFICER. The last precedent being in 1972.

Mr. ABOUREZK. I ask for the yeas and nays, Mr. President.

Mr. ROBERT C. BYRD. The last precedent was in 1972?

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

QUORUM CALL

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

Mr. ABOUREZK. I object.

The PRESIDING OFFICER. The Chair hears the objection.

The second assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 33 Leg.]

Abourezk	Danforth	Melcher
Baker	Dole	Metzenbaum
Bartlett	Domenici	Muskie
Byrd, Harry F., Jr.	Durkin	Nunn
	Hansen	Ribicoff
Byrd, Robert C.	Hatch	Schmitt
Chafee	Hatfield	Stone
Chiles	Lugar	Zorinsky
Clark	Magnuson	
Curtis	McClure	

The PRESIDING OFFICER. A quorum is not present. The clerk will call the names of absent Senators .

The second assistant legislative clerk resumed the call of the roll.

Bayh	Haskell	Packwood
Biden	Hathaway	Pearson
Brooke	Heinz	Pell
Bumpers	Hollings	Proxmire
Case	Inouye	Roth
Church	Jackson	Sarbanes
Culver	Johnston	Schweiker
Eagleton	Laxalt	Stevens
Glenn	Mathias	Thurmond
Goldwater	McGovern	Wallop
Gravel	McIntyre	Weicker
Hart	Morgan	Young

The PRESIDING OFFICER. A quorum is present.

Mr. ABOUREZK. I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President——

Mr. METZENBAUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ROBERT C. BYRD. Mr. President, if Senators will turn to page 76, I will read from the book of precedents as follows:

An amendment consisting of two provisions amending a bill at different points is in fact two amendments and cannot be offered together if the question is raised, except by unanimous consent.

The Senator from New Hampshire made the point of order that the amendment was not in order, based on this precedent in the RECORD. The footnotes indicate that that precedent has been sustained at least twice and as recently as April 1972. The book was printed in 1974, and I know for a fact that there have been at least two or three situations in which that precedent has been sustained since the book was published. There is no precedent to the contrary.

In view of that history of several sustained precedents, I think that the appeal of the ruling of the Chair in a cloture situation, such as we are in now, is clearly dilatory, and I make the point of order that the appeal is dilatory.

The PRESIDING OFFICER. Having had more time to think it over, and in light of the total consistency of the more recent precedents, the last two in 1975, the Chair is now inclined to rule the motion dilatory.

ROUTINE MORNING BUSINESS

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

APPROVAL OF BILL

A message from the President of the United States announced that on September 24, 1977, he approved and signed the enrolled bill (S. 1752) to extend certain programs under the Elementary and Secondary Education Act of 1965 for 1 year, and for other purposes.

NATURAL GAS PIPELINE REPORT—PM–116

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, which was referred to the Committee on Energy and Natural Resources:

To the Congress of the United States:

I herewith transmit the Ninth Annual Report on the administration of the Natural Gas Pipeline Safety Act of 1968. This report has been prepared in accordance with section 14 of the Act and covers the activities for calendar year 1976, prior to the time I became President.

JIMMY CARTER.

THE WHITE HOUSE, *September 26, 1977.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:18 p.m., a message from the House of Representatives delivered by Mr. Berry, one of its clerks, announced that the House has passed the following bill and agreed to the following concurrent resolution in which it requests the concurrence of the Senate:

H.R. 5383. An act to amend the Age Discrimination in Employment Act of 1967 to extend the age group of employees who are protected by the provisions of such act, and for other purposes; and

H. Con. Res. 361. A concurrent resolution authorizing certain corrections to be made in the enrollment of H.R. 6111.

At 3:50 p.m., a message from the House of Representatives delivered by Mr. Berry announced that—

The House has passed without amendment the bill (S. 1322) to revise the basis for estimating the annual Federal payment to the District of Columbia for water and water services and sanitary sewer services furnished to the United States.

The House insists upon its amendment to the bill (S. 1811) to authorize appropriations to the Energy Research and Development Administration in accordance with section 261 of the Atomic Energy Act of 1954, as amended, section 305 of the Energy Reorganization Act of 1974, and section 16 of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended, and for other purposes; requests a conference with the Senate on the disagreeing votes of the two Houses thereon; and that Mr. TEAGUE, Mr. FUQUA, Mr. FLOWERS, Mr. MCCORMACK, Mr. BROWN of California, Mr. THORNTON, Mr. OTTINGER, Mr. HARKIN, Mr. AMBRO, Mrs LLOYD, Mr. WATKINS, Mr. WYDLER, Mr. WINN, Mr. FREY, Mr. GOLDWATER, and Mr. GARY A. MYERS were appointed managers of the conference on the part of the House.

The House has passed the bill (H.R. 3) to strengthen the capability of the Government to detect, prosecute, and punish fraudulent activities under the medicare and medicaid programs, and for other purposes, in which it requests the concurrence of the Senate.

At 5:45 p.m., a message from the House of Representatives delivered by Mr. Hackney, one of its clerks, announced that the House has agreed to, without amendment, the concurrent resolution (S. Con. Res. 25) providing for the acceptance of a statue of the late Senator Ernest Gruening presented by the State of Alaska for the National Statuary Hall collection, and for other purposes.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 126. An act to reduce the hazards of earthquakes, and for other purposes.

S. 602. An act to extend and revise the Library Services and Construction Act, and for other purposes.

S. 1307. An act to deny entitlement to veterans' benefits to certain persons who would otherwise become so entitled solely by virtue of the administrative upgrading under temporarily revised standards of other than honorable discharges from service during the Vietnam era; to require case-by-case review under uniform, historically consistent, generally applicable standards and procedures prior to the award of veterans' benefits to persons administratively discharged under other than honorable conditions from active military, naval, or air service; and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDING OFFICER laid before the Senate the following communications which were referred as indicated:

EC–2059. A letter from the Director of Office of Management and Budget, Executive Office of the President, reporting, pursuant to law, money being appropriated through the apportionment process to the Board for International Broadcasting for the purpose of providing a grant to Radio Free Europe/Radio Liberty, Inc.; to the Committee on Appropriations.

EC–2060. A letter from the Executive Secretary of the Public Service Commission of the District of Columbia transmitting, pursuant to law, the 63d annual report of the Public Service Commission of the District of Columbia for the calendar year 1975 (with an accompanying report); to the Committee on Appropriations.

EC–2061. A letter from the Acting Secretary, Interstate Commerce Commission, reporting, pursuant to law, the Commission's determination to extend the time period for acting upon the appeal pending before the agency in Ex Parte No. 331; to the Committee on Commerce, Science, and Transportation.

EC–2062. A letter from the Secretary of Transportation transmitting, pursuant to law, a report entitled "Applicability of Federal Motor Vehicle Safety Standards and Regulations to Electric and Hybird Vehicles" (with an accompanying report); to the Committee on Commerce, Science, and Transportation.

EC–2063. A letter from the Secretary of the Federal Trade Commission transmitting, pursuant to law, the third report of the FTC concerning the impact on competition and on small business of the development and implementation of voluntary agreements and plans of action to carry out provisions of the international energy program (with an accompanying report); to the Committee on Energy and Natural Resources.

EC–2064. A letter from the Administrator of the Federal Energy Administration transmitting, pursuant to law, a report on sales of refined petroleum products for June, 1977 (with an accompanying report); to the Committee on Energy and Natural Resources.

EC–2065. A letter from the Administrator of the Federal Energy Administration transmitting, pursuant to law, a report on gasoline service station market shares for June, 1977 (with an accompanying report); to the Committee on Energy and Natural Resources.

EC–2066. A letter from the Secretary of Health, Education, and Welfare transmitting a draft of proposed legislation to amend the Social Security Act to expand the availability of emergency assistance under title IV in the case of natural disaster or other occurrence of regional or national significance beyond a State's control (with accompanying papers); to the Committee on Finance.

EC–2067. A letter from the Assistant Administrator for Legislative Affairs for the Agency for International Development, Department of State, transmitting, pursuant to law, notice of an increase in the funding level of the proposed fiscal year 1977 program in Panama (with accompanying papers); to the Committee on Foreign Relations.

EC–2068. A letter from the Administrator of the Agency for International Development, Department of State, transmitting, pursuant to law, an interim report covering the organizational arrangements, responsibilities, and administrative budget costs for a minority business section (with accompanying papers); to the Committee on Foreign Relations.

EC–2069. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United Sates within the past 60 days (with accompanying papers); to the Committee on Foreign Relations.

EC–2070. A letter from the Chairman of the Commission on Federal Paperwork transmitting, pursuant to law, a report with recommendations concerning paperwork burdens imposed upon the education community (with an accompanying report); to the Committee on Governmental Affairs.

EC–2071. A letter from the general counsel of the Commodity Futures Trading Commission transmitting, pursuant to law, a report on the establishment of two new systems of records, in accordance with the Privacy Act (with an accompanying report); to the Committee on Governmental Affairs.

EC–2072. A letter from the Deputy Assistant Secretary of Defense transmitting, pursuant to law, a report on a Navy proposal on a new system of records, in accordance with the Privacy Act (with an accompanying report); to the Committee on Governmental Affairs.

EC–2073. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "U.S. Coal Development—Promises, Uncertainties" (EMD–77–43, September 22, 1977) (with an accompanying report); to the Committee on Governmental Affairs.

EC–2074. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Office of Education's Basic Grant Program Can Be Improved" (HRD–77–91, September 21, 1977) (with an accompanying report); to the Committee on Government Affairs.

EC–2075. A letter from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Operational and Planning Improvements Needed in the Veterans' Administration 'Domiciliary' Program for the Needy and Disabled" (HRD–77–69, September 21, 1977) (with an accompanying report); to the Committee on Governmental Affairs.

EC–2076. A letter from the Secretary of Health, Education, and Welfare transmitting a draft of proposed legislation to make technical and perfecting amendments to the Federal program of insured loans to graduate students in health professions schools (with accompanying papers); to the Committee on Human Resources.

EC–2077. A letter from the Director of the Labor-Management Services Administration transmitting, for the information of the Senate, the "Register of Reporting Labor Organizations 1977" (with an accompanying report); to the Committee on Human Resources.

EC–2078. A letter from the Deputy Director of the Administrative Office of the U.S. Courts transmitting a draft of proposed legislation to amend the Speedy Trial Act of 1974 (with accompanying papers); to the Committee on the Judiciary.

EC–2079. A letter from the Chairman of the Board of Directors of the Future Farmers of America transmitting, pursuant to law, a report of the audit of the accounts of the FFA for the fiscal year ended June 30, 1977 (with an accompanying report); to the Committee on the Judiciary.

EC–2080. A secret communication from the Comptroller General of the United States transmitting, pursuant to law, a report re-

evaluating the U.S. policy toward lethal chemical munitions (PSAD–77–84), September 21, 1977) (with an accompanying report); to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CANNON, from the Committee on Rules and Administration:

Without amendment:

S. 2052. A bill to extend the supervision of the U.S. Capitol Police to certain facilities leased by the Office of Technology Assessment (Rept. No. 95–451).

S. Res. 269. An original resolution authorizing supplemental expenditures by the Committee on Rules and Administration (Rept. No. 95–452).

By Mr. LONG, from the Committee on Finance:

With an amendment:

S. 143. A bill to strengthen the capability of the Government to detect, prosecute, and punish fraudulent activities under the medicare and medicaid programs, and for other purposes (Rept. No. 95–453).

HOUSE BILL REFERRED

The following bill was read twice by title and referred to the Committee on Human Resources:

H.R. 5383. An act to amend the Age Discrimination in Employment Act of 1967 to extend the age group of employees who are protected by the provisions of such act, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. RIEGLE (for himself, Mr. RANDOLPH, Mr. WILLIAMS, and Mr. JAVITS):

S. 2139. A bill to reestablish the Advisory Committee on Sheltered Workshops to the Department of Labor; to the Committee on Human Resources.

By Mr. MELCHER:

S. 2140. A bill for the relief of Loretto B. Fitzgerald; to the Committee on the Judiciary.

By Mr. SCHWEIKER:

S. 2141. A bill to facilitate the naturalization of applicants who are 50 years old and have lived in the United States for 20 years; to the Committee on the Judiciary.

By Mr. PACKWOOD (for himself, Mr. MOYNIHAN, Mr. ALLEN, Mr. ANDERSON, Mr. BENTSEN, Mr. CANNON, Mr. CURTIS, Mr. DANFORTH, Mr. DECONCINI, Mr. DOLE, Mr. DOMENICI, Mr. DURKIN, Mr. GARN, Mr. GOLDWATER, Mr. GRAVEL, Mr. GRIFFIN, Mr. HANSEN, Mr. HATCH, Mr. HATHAWAY, Mr. HAYAKAWA, Mr. HEINZ, Mr. HELMS, Mr. HUMPHREY, Mr. JOHNSTON, Mr. LAXALT, Mr. LEAHY, Mr. LUGAR, Mr. MATHIAS, Mr. MCCLURE, Mr. MELCHER, Mr. NELSON, Mr. PEARSON, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCHMITT, Mr. SCHWEIKER, Mr. SPARKMAN, Mr. STEVENS, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, Mr. YOUNG, and Mr. ZORINSKY):

S. 2142. A bill to amend the Internal Revnue Code of 1954 to permit a taxpayer to claim a credit for amounts paid as tuition to provide education for himself, for his spouse, or for his dependents, and to provide that such credit is refundable; to the Committee on Finance.

By Mr. INOUYE:

S. 2143. A bill for the relief of Mrs. Sun Ok Kim; to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. THURMOND, Mr. PELL, Mr. HATHAWAY, Mr. CLARK, Mr. MAGNUSON, Mr. CULVER, and Mr. METZENBAUM):

S. 2144. A bill to establish a program of drug benefits for the aged; to establish a Drug Benefits Council and other appropriate management controls to provide for the efficient administration of such program; and to require the conducting of certain studies and experiments, to enhance the capability of the Secretary of Health, Education, and Welfare to administer such program, and for other purposes; to the Committee on Human Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. RIEGLE (for himself, Mr. RANDOLPH, Mr. WILLIAMS, and Mr. JAVITS):

S. 2139. A bill to reestablish the Advisory Committee on Sheltered Workshops to the Department of Labor; to the Committee on Human Resources.

Mr. RIEGLE. Mr. President, I rise at this time to introduce, along with Senators RANDOLPH, WILLIAMS, JAVITS, and STAFFORD, a short and simple bill that would restore to the Department of Labor an exceptionally effective advisory committee that has until recently been of great service not only to the Department and the Federal Government, but also to the many handicapped citizens who are contributing to the economic health of the Nation through work in sheltered workshops. This advisory committee, which has done an excellent job of funneling citizen participaton into the Labor Department and also of avoiding unnecessary friction with employers and employees in the private sector, recently fell victim to the initial administration efforts at reorganization.

I am distressed that efforts at restructuring the executive branch—a process that should open Government up to the people, not close it off—has destroyed the Advisory Committee on Sheltered Workshops. I believe the decision to abolish the committee was unwise, and my bill would reverse that decision.

I am particularly proud that Senators RANDOLPH, WILLIAMS, JAVITS, and STAFFORD have joined in introducing this bill. Senator RANDOLPH, chairman of the Subcommittee on the Handicapped, is deservedly known as an outspoken advocate of sheltered workshops and other effective programs designed to enable handicapped individuals to play their full role in American society. Senator JAVITS is also known for his support for sheltered workshops, and as ranking minority member of the Human Resources Committee he has worked with Chairman WILLIAMS to encourage effective programs for handicapped individuals, programs that make every effort to encourage and depend upon participation by members of affected groups.

By Mr. SCHWEIKER:

S. 2141. A bill to facilitate the naturalization of applicants who are 50 years old and have lived in the United States for 20 years; to the Committee on the Judiciary.

Mr. SCHWEIKER. Mr. President, I am pleased to introduce today a bill to make possible U.S. citizenship for applicants who are more than 50 years old and have lived in the United States for at least 20 years, but cannot read and write English—one of the requirements for obtaining naturalization. I have received many letters from constituents regarding the inability of family members to pass the English reading and writing examination which is a prerequisite to becoming a naturalized American citizen. Many former immigrants have simply never had a need in their every-day affairs to read and write in the English language even though they have been in the United States for years, adhering tightly to the work ethic, raising families, and contributing to their communities. Their children have served in the Armed Forces and have been productive citizens.

Because many of these former immigrants are advanced in years or have been away from an academic setting for so long, attending school to learn to read and write English is often highly impractical. As a result, many are frustrated by current law in their long-held ambition to obtain the honor of American citizenship.

We are a nation of immigrants. In communities throughout our Nation, names of Americans sound an echo from every corner of the world. This ethnic diversity has traditionally been a great source of vitality and strength, and represents a key element of our national heritage. I believe this bill is in the spirit of this great tradition. We should welcome into full American citizenship this group of people.

In recent years, U.S. immigration policy seems to have gotten out of kilter. By most reasonable estimates, illegal immigration greatly exceeds legal immigration. Yet President Carter has proposed recently that millions of illegal aliens be granted amnesty and allowed to remain in the United States. In May, I introduced legislation to deal with the problem of illegal aliens by making it unlawful to knowingly employ illegal aliens and imposing stiff fines on employers who choose to violate the law. That bill, S. 1601, and the one I introduce today share the objective of returning to the proposition that our immigration policy should benefit law abiders, not law breakers. Rather than rewarding aliens with special benefits, we should be granting American citizenship to those legal immigrants who have led good lives within the law for many years and have earned the right to become full partners in American society.

For these reasons, I propose that the English reading and writing requirements be waived for applicants who are more than 50 years old and who have resided in the United States at least 20 years.

There is precedent for this measure. When the current provisions of law, including the English reading and writing requirements, were enacted in 1952, an

exemption was established for permanent resident aliens who at that time were more than 50 years old and who had resided in the United States for at least 20 years. This bill simply applies that same standard to all applicants, rather than just those who met the criteria in 1952. Although I am aware of no statistics on the question, my own experience leads me to conclude that the beneficiaries of the 1952 exemption have been competent and knowledgeable participants in public affairs. It is also noteworthy that this bill leaves unaffected all other naturalization requirements, including the requirement that applicants demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States. Moreover, the requirement that all applicants for immigrant visas be literate in their native language remains unchanged.

Mr. President, I hope my colleagues will join in opening the doors of U.S. citizenship to these people who have earned the honor. I ask unanimous consent that this bill be printed in the RECORD at this point.

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

S. 2141

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, the first proviso contained in paragraph (1) of section 312 of the Immigration and Nationality Act (8 U.S.C. 1423) is amended by striking out "or to any person who, on the effective date of this Act, is over fifty years of age and has been living in the United States for periods totaling at least twenty years" and by inserting in lieu thereof the following: "or to any person who, on the date of the filing of his petition for naturalization as provided in section 334 of this Act, is over fifty years of age and has been living in the United States for periods totaling at least twenty years".

By Mr. PACKWOOD (for himself, Mr. MOYNIHAN, Mr. ALLEN, Mr. ANDERSON, Mr. BENTSEN, Mr. CANNON, Mr. CURTIS, Mr. DANFORTH, Mr. DECONCINI, Mr. DOLE, Mr. DOMENICI, Mr. DURKIN, Mr. GARN, Mr. GOLDWATER, Mr. GRAVEL, Mr. GRIFFIN, Mr. HANSEN, Mr. HATCH, Mr. HATHAWAY, Mr. HAYAKAWA, Mr. HEINZ, Mr. HELMS, Mr. HUMPHREY, Mr. JOHNSTON, Mr. LAXALT, Mr. LEAHY, Mr. LUGAR, Mr. MATHIAS, Mr. MCCLURE, Mr. MELCHER, Mr. NELSON, Mr. PEARSON, Mr. RANDOLPH, Mr. RIBICOFF, Mr. SCHMITT, Mr. SCHWEIKER, Mr. SPARKMAN, Mr. STEVENS, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, Mr. YOUNG, and Mr. ZORINSKY):

S. 2142. A bill to amend the Internal Revenue Code of 1954 to permit a taxpayer to claim a credit for amounts paid as tuition to provide education for himself, for his spouse, or for his dependents, and to provide that such credit is refundable; to the Committee on Finance.

READIN' AND 'RITIN' AND REASON

Mr. PACKWOOD. Mr. President, I am introducing today the Packwood-Moynihan Tuition Tax Credit Act of 1977 to provide a tax credit for an individual's tuition expenses or those of a spouse or dependents. The amount is 50 percent of tuition payments up to a total credit of $500 per student. The credit will be subtracted directly from the amount of taxes owed, and it will be refundable if the credit is greater than the tax liability.

To be eligible for the credit, an individual can be a part-time or full-time student at an elementary or secondary school, a vocational school, a college or university. Included are business and trade schools which meet the basic accrediting requirements of the Office of Education.

Forty-two of my colleagues from both sides of the aisle and every section of the country cosponsor this measure. This diversity of support reflects the diversity of educational opportunity this bill will help preserve and promote.

Our educational system is a vast supermarket with a variety of educational programs and possibilities, but if too few people can educate themselves or their children, then the strength of the system itself is in danger. From the elementary level to the university, the excruciating cost squeeze of inflation is preventing too many middle class Americans from supporting our pluralistic approach. Without their support, the danger increases of our moving toward a public education monopoly.

Escalating tuition costs at the college level are hitting middle and lower income students hard. The College Entrance Examination Board reports that between the 1970–71 school year and the 1976–77 year the average tuition and fees at private 4-year institutions rose 54 percent, at public 4-year by 57 percent, at private 2-year by 52 percent, and at public 2-year by 130 percent. The Center for the Study of Higher Education at Penn State found tuition the major factor in enrollment decisions.

These costs impact directly on the lives of millions of Americans—parents who are educating their children, young Americans who are educating themselves, and older Americans who continue their education parttime. The profile of a college student has changed, and many are no longer June high school graduates who go directly to college in the fall. Many students, both young and older, are working and attending college at the same time. Much too little has been done to help these people who are working to educate themselves. They would be given encouragement for their efforts by a tuition tax credit, and many who may be forced to drop out because of these continuing cost increases might be able to continue their education.

We must stop thinking in educational cliches and realize our changing educational needs and traditions. The fluid labor market, different lifestyles, economic pressures, and new types of jobs all influence the educational needs of Americans. Retraining and continuing education have become an economic necessity for many. Other Americans begin or return to college in mid-life to refocus their lives or to prepare for a career. Many of these returning students are women working to reenter the job market, and many of these women are single heads of households supporting children.

College attendance among people 35 and older increased 50 percent between 1973 and 1975. These career adjustments or re-entry efforts directly affect our national employment picture; yet these Americans who are trying to help themselves through education receive limited support.

The higher educational picture is not limited to colleges and universities. Community colleges, vocational, trade, and technical schools, and other training institutions offer educational programs that must be accessible to people. The same problems of tuition increases and reduced income for education affects parents supporting students in these institutions as well as those students educating themselves.

Our multifaceted educational system cannot be sustained without enough educational consumers. This bill assists these consumers to make educational choices based upon individual needs in a most cost-effective approach. The tax credit method encourages individual decisions, and these personal choices are infinitely preferable to national planning. Freedom of choice is an important value to be nourished for many reasons. This very diversity of the system depends upon the availability of choices to all citizens.

The contributions of private educational institutions in America past and present have been well documented. At every educational level, private schools offer an alternative to our public system. No value judgments on either are needed or implied, because the two systems complement each other. Private institutions without the strictures of public governmental pressures sometimes speak to more select needs and interests than public institutions. A smaller constituency affords the opportunity for more specialized interests. By meeting these special needs, private institutions fulfill an important and vital function in the educational process.

In some areas, private schools at the elementary and secondary levels offer substantial financial relief for taxpayers because these schools carry a portion of the educational burden. In Boston, Chicago, Milwaukee, New Orleans, New York, and San Francisco, private schools educate approximately one-fourth of all students. In Cleveland and Philadelphia, that figure climbs to over 30 percent. To carry this share of the educational load of these cities, private schools depend upon these individuals willing to pay both taxes for public schools and tuition for private schools. I believe these individuals need help with this double burden.

Private elementary and secondary schools play a very useful role in educating our children. They offer parents an educational choice about the instruction

of their children. Often these schools give parents a greater voice in the educational process and a higher degree of accountability. Without these schools, America would have an educational monopoly with limited competition and less room for different ideas. The balance of power toward governmental control and away from individual choices would be even more lopsided than now without private institutions.

Enrollment at private elementary and secondary schools has declined substantially since 1966. U.S. Commerce Department statistics indicate that private elementary schools have lost 35 percent of their enrollment in the last 10 years. Private high school enrollment also dropped 13 percent even though total secondary enrollment around the country rose by 18 percent. Although there have been some hopeful signs that this enrollment decline has "bottomed out," it is clear that any further erosion of the private school system would seriously weaken our educational picture.

Private schools primarily educate lower and middle income students; in fact 51 percent of private school students come from families with incomes below $15,000. These middle and lower income Americans need help if private education is going to continue to be accessible to their children.

Whether private elementary and secondary schools or higher education, both public and private, or vocational education, lower- and middle-income Americans need the tax relief of the measure I propose. At the college level, the American Association of State Colleges and Universities estimate lower and middle income student participation in higher education has dropped approximately 20 percent since 1969. That assessment however, defines the upper limit of the middle income group as below $15,000, a very narrow definition. The hope of a college education for their children is a rapidly receding dream for millions of Americans.

Often the middle income students are financially locked out by having too much income to qualify for Federal aid and too little to afford education beyond high school without help. The American Council on Education found that students with adjusted family incomes of less than $7,500 receive about four-fifths of all basic educational opportunity grants, about two-thirds of all college work study awards, about half of the national direct student loans and about one-third of all guaranteed student loans. Obviously, lower income students need this assistance, but we must not overlook the needs of middle income students either. This legislation boosts the opportunities of lower- and middle-income families to finance their educational choices while at the same time reduces administrative costs and, equally important, puts the decisionmaking power in the hands of educational consumers.

The word "credit" in this legislation not only describes the tax procedure, but should also remind us of the credit due those Americans, especially in the middle class, who continue to work to educate themselves despite the pressures of taxes and inflation. Newsweek recently described the plight of what it calls the "middle class poor," those who have watched any income boosts eaten up by inflation and higher taxes. A new home and education lead the list of hopes now priced beyond many middle class taxpayers. The numbers can be tabulated easily. They show the distressing fact that a family of four with a 1970 gross income of $12,000, which now makes $18,000, actually has less disposable income than 7 years ago.

What cannot be figured as precisely, however, are how seriously the erosion of expectations affects the values of those whose hard work and faith keep the country going. Maybe we have talked so long and so often about inflation and its impact on people's lives that we fail to put the numbers with the facts and the names. Higher and higher price tags at colleges and universities are putting many students out of the classroom. Despite changing needs and expectations about a college education, the decision about college should be made on grounds other than it is too expensive.

The very rich, the very poor, and the very brilliant will be the only Americans with realistic prospects of college in a few years if the present situation continues. Those categories are too narrow to support and sustain our system of higher education. The product without the consumer is meaningless in the area of education. This legislation by providing tuition credits for each student in the family will also ease the burden of a family forced to choose which child will receive more education.

Self-help is a concept too often enshrined in our rhetoric, but absent from our legislative philosophy. The Tuition Tax Credit Act encourages self-help, and it will affect the lives of millions of students directly and in a more meaningful way than moneys that are administered and controlled by those unaccountable to all of us.

To put the cost of this proposal in perspective, the $4.7 billion price tag should be compared to an estimated fiscal year 1980 budget of $550 billion. That means this legislation is less than 1 percent of that projection. The tax credit approach also is only 4 percent of what the Nation's taxpayers spend every year for public education at the local, State, and Federal levels. If the 7.7 million students now enrolled in private elementary, secondary schools, or institutions of higher education were enrolled in tax-supported schools, the bill would be an additional $17 billion every year.

One of the most interesting arguments against the tax credit approach for education is that it takes control out of the hands of educational experts. That just may possibly be the best byproduct of tax credits. The educational consumer is also an expert from a more practical standpoint. Parents who want to direct their children's education and students tailoring their educational decisions to their own interests and local job markets are making personal choices on a personal level. I believe they are the people who should be making these decisions, and I believe they should have the opportunity of different options.

This tuition tax credit proposal concerns millions of Americans and their personal choices about education. It will help make colleages and universities more financially feasible for middle- and lower-income students. A college degree whether obtained in mid life or at 21 should be a reachable goal for all Americans willing to work for it. This proposal would help make that degree a reasonable hope.

Retraining or continuing education at any accredited institution will be more accessible to more Americans under this legislation. It specifically includes part-time schooling, because of those who work and study at the same time. Our present tax laws which give tax benefits to companies that provide educational opportunities for employees overlook the initiative and enterprise of individual Americans who seek further education.

Students at vocational schools, community colleges, and in continuing education have become a growing factor in education. As our job market continues to change, educational alternatives to the traditional 4-year college must be nourished. At a time when we need more types of educational experiences, we should be supportive of all aspects of our educational marketplace.

This bill is about preserving the variety of educational choices which individuals should be able to make. The parent who bears the dual burden of taxes and private school tuition, the 18-year-old who wants to go to a State university like his two older sisters, the single head of a household with three dependents who needs more education to get a job or the 35-year-old whose skills are outdated—these are the people this legislation can help. Do not multiply those examples by any numbers, but fill in the names of your friends and neighbors. When you read this legislation, think of individuals and their educational needs and consider how much impact these tax credits could have on their lives.

Mr. MOYNIHAN. Mr. President, I am today joining with Senator BOB PACKWOOD and 41 cosponsors in introducing the Tuition Tax Credit Act of 1977. This is an event of some significance, not simply because of the widespread and bipartisan interest in this measure that is already evident, but also because of the public policy implications of our proposal.

The legislation we offer is at once uncomplicated and far reaching. It is intended, in the first instance, to lighten the financial burden that is borne by individuals paying tuition to schools and colleges, and by parents paying the tuition of their children. In so doing, it will widen educational opportunity for lower and middle income families, and will broaden the range of school and college choices available to those without great personal wealth.

I wish to be clear that the primary purpose of this initiative is to assist individuals and families, particularly those in the financially beleaguered middle class who are seldom eligible for grant

and scholarship programs but who find it increasingly difficult to pay the spiraling cost of education without assistance.

But we have a secondary purpose as well, and one I wish to make explicit. The United States today boasts the world's most variegated and pluralistic educational system, not just because its governance is divided amongst 50 States and thousands of localities but also because of our splendid array of non-public schools and colleges.

In the main, these institutions do not receive subsidies from local, State, or Federal tax funds, save that contributions to them may ordinarily be deducted from the income tax return of the donor. Indeed, it may be said that one of their defining characteristics, the source of much of their cherished independence, is their freedom from the taut strings that are commonly attached to direct public subsidies.

It follows that these private institutions—some 14,000 grammar schools, 3,700 high schools, and 1,500 colleges and universities—are heavily reliant on tuition as their principal source of income, and that their very existence thus depends on the ability of those who would like to attend them to pay the associated costs. Without funds, the students will vanish. Without students, the schools will vanish. Without these schools, a large measure of the diversity and excellence that we associate with American education will vanish.

I take pluralism to be a valuable characteristic of education, as of much else in our society. In "Beyond the Melting Pot," Nathan Glazer and I wrote of the persistence of pluralism in American life, and of its values. We are many peoples and our social arrangements reflect this disinclination to submerge our inherited distinctiveness in a homogeneous whole.

At the college and university level, we tend to take for granted that diversity is a good thing, that estimable private educational institutions should coexist with the massive public universities as a valuable source of education with qualities that no public institution can supply. My own State of New York is in the vanguard of States that have begun to recognize this value—and the dull and costly fate that would befall us if we failed to assist such institutions to survive—and has developed an imaginative and creative set of measures to provide public resources to private colleges and their students. Federal policy is beginning to recognize—albeit inadequately and only at the level of higher education—the distinctive needs and contributions of private colleges and universities, and to tailor its programs to them as well as to their public sector counterparts.

Precisely the same values inhere in our private elementary and secondary schools, although public policy has been less ready to embrace them. They provide diversity to the society, choices to students and their parents, and a rich array of distinctive educational offerings that even the finest of public institutions find difficult to supply, not least because they are public, and must embody generalized values.

Diversity. Pluralism. Variety. These are values, too, and perhaps nowhere more valuable than in the experiences that our children have in their early years, when their beliefs and attitudes are formed, their minds awakened, and their friendships formed. I cherish these values, and I do not believe it excessive to ask that they be embodied in our national policies for the betterment of American education.

As we look to the future, two facts are fundamental. Tuitions in private schools and colleges continue to soar—as of course do tuitions and fees in State colleges and universities. And the number of persons in the school and college-going population continues to diminish.

Public policy can do little about these underlying conditions. As the costs of providing a quality education keep rising, so must school and college revenues. Whereas public schools and colleges can turn to public sources for those additional funds, private institutions have little recourse but to pass these increased costs through to their "customers" in the form of increased tuitions. As for the population, it is simply the fact that from a peak of 4.3 million live births in 1961, we declined to fewer than 3.2 million in recent years. This shrinkage in the infant population may be translated directly into school enrollments: our elementary schools enrolled 1 million fewer students in 1975 than they did 10 years earlier.

There is little to be done about the birth rate, or its impact on total school populations. But those who value diversity, pluralism, and choice in American education must be sensitive to the fact that our private schools are bearing a grossly disappropriate share of this contraction. Indeed, as the following table shows, our non-public schools have absorbed virtually the entire net student loss at the grammar school level during the past 10 years.

Day school enrollments, K–8, by institutional control

[In thousands]

	1965	1970	1975	Net loss
Public	30,563	32,577	30,545	−18
Nonpublic	4,900	4,100	3,900	−1,000
Total	35,463	36,677	34,445	−1,018

Source: National Center for Education Statistics, DHEW.

Many explanations may be offered, but one stands out: While everyone pays taxes in support of schools, virtually none of that tax money makes its way into nonpublic schools. They derive their support primarily from tuition, but those who must pay that tuition—taxpayers all—derive little or no assistance from their local, State, or Federal governments.

At the college level, the situation is somewhat different. Although the traditional college-going age group is also on the brink of an historic decline, it remains the case that many persons do not attend college at all. No one knows with certainty how many more millions of Americans are eager to continue their educations, if only they could afford to do so. What we do know is that as the "tuition gap" between public and private colleges has widened, the proportion of college students choosing private campuses has steadily shrunk: from 50 percent in the early 1950's to less than 25 percent today. As we begin to contemplate the effects of an overall decline in college enrollments in the next 10 years, we must aso entertain the gloomy possibility that our private institutions will once again bear more than their share of this decline.

Joseph Schumpeter warned years ago that the end of liberal society would not come about through some Marxian convulsion but rather by what he described as the slow but steady "conquest of the private sector by the public sector".

In education today, we still have a strong and vital nonpublic sector. But can it last, given rising costs, dwindling enrollments, and mounting competition for students, without a revision of social policies that today favor only public institutions and that erect sizable barriers to individuals whose educational needs might best be served in nonpublic ones?

It is widely known that the great majority of our private schools, and about half our private colleges and universities, are affiliated with or sponsored by various religious denominations. It is perhaps less widely known that in the early days of this Nation, there was no sharp line of demarcation between "public" and "private" schools, that education was largely a church function, and that our social policies were supportive of such institutions.

In 1961, about to leave for Washington to join the Kennedy administration, I published in the Reporter magazine an article recounting the history of our existing arrangements, a history largely played out in my own State of New York. In the earliest days of the Republic, schools in New York, as elsewhere, were largely church run, and received public support. When public schools were first established, they were in fact, given the background of those who ran them, Protestant schools, and the growing Catholic community of the early 19th century reacted predictably by establishing its own schools. As one commentator has written:

> Catholics (had) their parochial schools and the Protestants (had) the public schools.

Thus there arose the patterns of a dual school system which exists to this day.

And thus there arose the question of whether these Catholic schools would continue to receive public support, or all the available funds be given to the public schools only.

It must be understood that throughout most of our history, the answer to this question was thought to be "Yes"; yes, that is, that nonpublic schools may receive public assistance. In New York, for example, Governor Seward proposed to the legislature in 1840 that Catholic schools receive State aid:

I do not hesitate . . . to recommend the establishment of schools in which they (the children of immigrants) may be instructed by teachers speaking the same language with themselves and professing the same faith.

The next year, Seward's Secretary of State, John Spencer, issued a report once again assuming the justice of the Catholic position:

It can scarcely be necessary to say that the founders of these schools, and those who wish to establish others, have absolute rights to the benefits of a common burden, and that any system which deprives them of their just share in the application of a common and public fund must be justified, if at all, by a necessity which demands the sacrifice of individual rights, for the accomplishment of a social benefit of paramount importance. It is presumed no such necessity can be urged in the present instance.

As the Catholic population grew, and as bigotry against it grew, the issue of public support for private schools came to the center of national attention. Beginning at mid century with the Know Nothing Party, anti-Catholicism became what can only be described as a political movement. In the election of 1876, President Grant took the measure of anti-Catholicism and did not scruple to appeal to it, and his party's platform for that year proposed a constitutional amendment prohibiting aid to Catholic schools. The platform states:

The public schools system of the several states is the bulwark of the American republic; and, with a view to its security and permanence, we recommend an amendment to the constitution of the United States, forbidding the application of any public funds or property for the benefit of any school or institution under sectarian control.

Nothing is clearer from this proposal than the understanding that without such an amendment the Constitution did allow aid to Catholic schools—a proposition accepted even by bitter critics at the time.

Yet, today, how many of us genuinely believe that the Constitution allows aid to church-related schools?

In a line of cases beginning only in 1947, and culminating in 1973 and 1975 with two decisions which take what can only be called an extremist position on constitutional interpretation, the Court, in my view, has rewritten the history of the first amendment. Many have recognized that the Court goes much further than constitutional history allows, and further than the Constitution itself instructs, and some of these are the dissenting Justices on the Court itself. And yet, am I entirely wrong to detect—among those of us deeply concerned about private education in America, and among those of us deeply concerned about Catholic education in America—a loss of conviction? Am I wrong to detect a growing sense, not simply that the Court is persuaded, but that the Court is persuasive, that the Court is right?

The bill we are introducing today calls for tax credits for parents who send their children to public and nonpublic schools and colleges alike. It is a simple proposition, and one supported by both the Republican and Democratic platforms in 1976. Chief Justice Burger has stated, in a dissent to the decision which declared a similar New York State statute unconstitutional, some of the bill's rationale:

It is beyond dispute that the parents of public school children . . . presently receive the 'benefit' of having their children educated totally at state expense; the statutes . . . at issue here merely attempt to equalize that 'benefit' by giving to parents of private school children, in the form of dollars or tax deductions, what the parents of public school children receive in kind. It is no more than simple equity to grant partial relief to parents who support the public schools they do not use.

Now I would say to you that this bill is constitutional, by which I do not mean that I predict the Court tomorrow would hold it so. I mean instead that a fair reading of our Nation's history demonstrates that the first amendment was never meant—and until recently never understood—to bar the sort of aid which we propose.

Consider the text of the first amendment, in relevant part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Now, as I had occasion to remark in my Reporter article in 1961, there can be only one explanation of why it is thought that these words prevent public aid to nonpublic schools:

It is only because most Americans no longer have the foggiest idea what an established religion is that they can be persuaded that the words of the First Amendment mean more than they say.

Consider several earlier versions of the first amendment—"Congress shall make no law establishing religion . . ."; "The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established . . ."; "No religion shall be established by law . . ."

In the debate in the House of Representatives on the amendment, on August 15, 1789, Madison said "he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law . . ." When one representative objected that the language then in question—"no religion shall be established by law"—would aid irreligion. The Annals of Congress tell us that "Mr. Madison thought, if the word national was inserted before religion, it would satisfy the minds of honorable gentlemen."

This, I believe, is precisely the history the Court now forgets. It is true that there is, in our history, an extreme separationist tradition, represented by the views of Madison and to some extent, Jefferson. On this tradition, the Court almost exclusively relies, and thereby we are justified in asking why it does not rely instead on the words and history of the first amendment itself.

One of our greatest constitutional scholars, Edwin S. Corwin, gave us the following definition:

The historical record shows beyond peradventure that the core idea of "an establishment of religion" comprises the idea of preference; and that any act of public authority favorable to religion in general cannot, without manifest falsification of history, be brought under the ban of that phrase.

This view echoes the conclusions of constitutional experts down through our history. Cooley, writing in his classic General Principles of Constitutional Law in the United States in 1898, told us that:

By establishment of religion is meant the setting up or recognition of a state church, or at least conferring upon one church of special favors and advantages which are denied to others . . .

Yet, as Walter Berns sadly notes in his recent book, The First Amendment and the Future of American Democracy:

One looks almost in vain for references in the Court's opinions to what the great commentators—Story, Kent, and Cooley, for example—have written on freedom of speech and religion, or to what the Founders intended with the First Amendment.

It would go too far to say that the intent of the first amendment is undisputed, yet it does not, I think, go too far to suggest that the Supreme Court's present interpretation of that intent is wrong. Let us remember what Justice Story wrote, in 1833, when the intentions of the Founders were easily within the memory of living men: the purpose of the first amendment was "to exclude all rivalry among Christian sects and to prevent any national ecclesiastical establishment which should give to any hierarchy the exclusive patronage of the national government." This, I believe, is what our history teaches us.

But I would offer the thought that even as this history has become more clear, our public policies have grown ever murkier to the point of darkness on the subject of nonpublic education. Increasingly, at the State and Federal levels, we have lapsed into a pattern of avoidance with respect to those institutions not under immediate government control.

I was struck by this a few weeks back at a conference at the Woodrow Wilson International Center for Scholars convened on the subject of "the role of the Federal Government in American education during the last quarter of the 20th Century." The Office of Education had put up the money to engage the energies of five former United States Commissioners of Education to prepare materials, and lead discussions that would lead to a statement on this subject. This is a familiar process in Washington: the Government purchasing the advice it desires to receive. I had a hand in founding the Wilson Center, and served as vice chairman of its board and accepted an invitation to be present. I arrived as the guests assembled for dinner in the splendid great hall of the

castle, as we refer to Renwick's great Smithsonian Building on the Mall. In the glow of the candlelight and the Crozes-Hermitage, 1974, I inquired if in the proceedings so far any mention had been made of the Federal role in nonpublic education. None. Later in the evening at my suggestion one question was asked, but it was not answered. I looked at the guest lists. Not a single representative of Catholic education was present, and as I learned none had been invited. As for the Commissioners' draft document, nonpublic schooling simply does not exist.

Now these are serious men, and I have known each of them in office. They have served under Presidents of both parties, parties which openly discuss this matter in their national platforms. Indeed one of the Commissioners present was the one with whom I negotiated the language of the 1964 Democratic platform, which the Catholic bishops took to be an undertaking to provide their schools a measure of Federal aid. As I have said, the bishops kept their word: The Federal Government did not keep its word, not really.

We now have another opportunity. Secretary Califano assures me that his Department is "interested in any legislative proposals which seek to expand opportunities for aid to education for children enrolled in public or nonpublic schools". We shall eagerly await his testimony on the Packwood-Moynihan bill in January and look forward to administration support for this measure, although it is necessary to acknowledge that such support has not been forthcoming with respect to previous tuition tax credit proposals. Certainly the bill we are introducing today provides all three branches of Government with a fresh opportunity to demonstrate their commitment to the quality and well-being of all our schools, private as well as public, as well as to the broadening of educational opportunity in the United States.

Our proposal would provide modest-sized tax credits to individuals and families paying tuition to nonpublic elementary and secondary schools. But it would also do much more. It would extend those credits to the college level as well, both because we are persuaded that college costs are outstripping the ability of most Americans to pay them, and because we believe that the widest possible range of post-secondary educational opportunities should be available to every citizen with the capacity and the desire to make good use of them.

These opportunities—and their denial—are not confined to the private sector, and most certainly not to sectarian institutions. Fully half our nonpublic colleges and universities have no religious affiliation. And virtually all our State institutions charge tuition and fees now averaging $600 a year. When the costs of room, board, and other necessaries are added, the student matriculating at a public college must anticipate out-of-pocket expenses that average some $2,700 every year, or nearly $11,000 in the course of a 4-year bachelor's degree. How many families can afford such sums for each of their children? How many can afford the additional $1,800 per year that must be found if the child enrolls on a private campus?

The tax credit we are proposing today would not obliterate those difficulties. But it would ease them. Five hundred dollars per student per year, the maximum credit available under our plan, is not an enormous sum in light of contemporary educational costs. But for millions of American families, particularly those teetering on the brink of a decision about sending a child to college, or trying to identify the school best suited to that child's educational and personal needs, it could provide the critical margin of difference.

Tuition tax credits are not a new idea. Similar measures have passed the Senate several times in recent years, although none has yet reached the floor of the House of Representatives. It is an idea with a distinguished lineage in the Senate; long championed by Senator RIBICOFF, kindred measures have recently also been introduced by Senators SCHWEIKER, ROTH, and others. Indeed, I introduced a more limited version of such a bill several months ago, before deciding to combine my own efforts with those of Senator PACKWOOD and the many cosponsors of the present proposal.

But tuition relief is not yet a universally accepted idea. And it is to that end that we intend the hearings on this bill to be wide-ranging, comprehensive, and thorough. Educational policy, fiscal policy, tax policy, and Constitutional interpretation are all involved. For we intend to make certain that by the time the legislative process is completed, we will have crafted a sound and responsible measure that will cause the Supreme Court to take another look.

The proposal we are offering today would aid students and their parents, whether the educational institution to which they pay tuition is public or private, whether it is a grammar school, a high school, a college, or a graduate school. It is broadly based. Yet is remarkably uncomplicated in its constructions. Its sponsors are open to suggestions for modifying and improving it, and look forward to the careful consideration that it will receive as it moves through the Congress.

Mr. CURTIS. Mr. President, I would like to thank and offer support to my colleagues on the Committee on Finance for introducing the Tuition Tax Credit Act.

This legislation which will provide a refundable tax credit for tuition expenses paid up to a total of $500 per student is vitally needed today. For example, I have been informed that the cost of a private college education rose 119 percent between 1964 and 1975. Fees at public universities have risen 98 percent during the same period. While these figures are staggering, their impact has more significance when we learn that those hardest hit by the increase are families with middle-level incomes. They are unable to pay college costs, and yet they do not qualify for Federal financial aid. This bill is a step toward lightening this financial burden and making it possible for higher education to continue to be available to middle-income families.

Mr. President, the role of education in our democratic society cannot be disputed. Well informed and educated citizens form the foundation of our national institutions and the basis of self-government. In addition, as our society becomes increasingly complex, education becomes a vital necessity in the marketplace. One estimate places the difference between a high school diploma and a college degree at approximately $280,000. Thus, education is a good investment for individuals and for society. The individual learns new knowledge and skills that make him more productive and society benefits from the improved skills and ability of its members.

Mr. President, many of my colleagues recognize and support the need for tuition assistance but argue that direct grants or assistance to individuals and educational institutions should be made by the Federal Government. They oppose the use of the tax system to aid a particular segment of the economy and label credits and deductions as "tax expenditures." The theory of tax expenditures is predicated on the assumption that the Federal Government owns all resources except what they choose to rebate to individuals.

Mr. President, it should be observed that mismanaged Government fiscal policy resulting in double digit inflation is a major contributor to the rising costs of education. Further, our so-called progressive tax structure hits hardest at middle-income families and makes it increasingly difficult to educate their children. It is time to recognize and solve this problem through our tax system.

Direct grants, and financial assistance to students and institutions have a surface appeal but one must always keep in mind that Federal regulations closely follow Federal financial assistance. As evidence, look at the many institutions of higher education that are now complaining about Federal interference in the educational process. Further, many schools are now refusing Federal assistance rather than submit to such regulation and direction.

Mr. President, I think we can all agree that there is a need for tuition assistance and that a tax credit is the most simple and direct method of solving what has become a national educational crisis.

Again, Mr. President, I am pleased to be a cosponsor of this legislation and thank my colleagues Senators PACKWOOD and MOYNIHAN for taking the initiative in this vital area.

Mr. DANFORTH. Mr. President, I wish to offer my strong support for this legislation to provide tax credits to Americans who pay tuition for education.

The United States enjoys by far the greatest education system in the world. People everywhere envy our excellent public school system and the rights to free education guaranteed to every American. Our many nonpublic educational institutions supplement the public school system in a combination which encourages quality and—more important—freedom of choice.

In recent years, the Federal Government has significantly increased its direct role in underwriting the costs of public education. But very little has been done to encourage and preserve nonpublic educational alternatives.

It is estimated that in the past 5 years education costs at both public and private colleges and universities have increased more than 50 percent. The well-to-do can absorb these increases; and the availability of public scholarship, loan, and work-study funds for the poor permits many financially disadvantaged people to have access to private higher education. But there has been no relief for the middle-income family. They pay the taxes but are unable to afford the tuition, and their income exceeds the cutoff point for financial assistance.

This proposal takes a major step in helping such families to fulfill their dream of giving their children the best education possible.

The beauty of the proposal is that it maximizes the role of individual choice, and minimizes the intrusion of Government into the education process. Our education system is one of our most valuable national assets. This proposal will help to assure that this resource thrives well into the future.

Mr. DECONCINI. Mr. President, I am pleased to cosponsor the Tuition Tax Credit Act of 1977, introduced today by my good friends and distinguished colleagues, Senators PACKWOOD and MOYNIHAN.

Perhaps no other nation in the history of the world has placed such great emphasis on unimpeded access to educational opportunity for all its citizenry as has the United States. From the earliest colonial settlements, Americans have recognized, albeit imperfectly at times, that the advantages of education could not be confined to a privileged elite, if the ideals of liberty, equality, and individualism were to have anything more than symbolic significance. For a democratic order presupposes that each person has a right to pursue his aspirations and to fulfill his potentialities free of the artificial constraints of tradition, class, or caste. The key to translating this vision of man and his proper relation to society into practical reality has been and continues to be meaningful access to a suitable education. Indeed, the history of this country, and in fact of the Western World, amply demonstrates the indissoluble link between the dispersion of educational opportunity to ever wider segments of the population and the growth and vitality of democratic political and social institutions.

This process of expanding the mass base of the educational system, Mr. President, has been accompanied by an equally salutary diversification of organizational forms and curricular contents. At every level, American education is characterized by remarkable heterogeneity. Thus private preparatory schools have coexisted with both public and parochial institutions in providing elementary and secondary instruction to the Nation's children. And postsecondary education is, if anything, even more richly variegated—ranging from 2-year vocational and technical schools through small State colleges and private liberal arts institutions to world-renowned centers of advanced learning, some of which are maintained by private endowment and some by public funds.

This diversity, Mr. President, is one of the major strengths of the American approach to education; it both reflects and reinforces the social and cultural pluralism from which our country draws so much of its dynamism and vitality and makes it possible for those of varying tastes, interests, and needs to find the kind of institution and/or curricular offering that best meets their particular requirements.

Unfortunately, recent developments threaten to reverse the historic trend toward both wider accessibility and diversity in American education. The crux of the problem is quite simple: Schools and colleges across the country—public and private—are facing a devastating combination of declining enrollment and sharply escalating costs. Moreover, increasing numbers of families are finding it impossible to afford the sort of education they desire for their children. The measure I am cosponsoring today with my good friends from Oregon and New York is by no means a panacea for financial ills of American education. It is, though, a significant step in the right direction. This bill provides a tax credit, subtracted directly from the amount of taxes owed, for tuition expenses paid by an individual for himself, his spouse, or his dependents. The amount of this credit will be 50 percent of tuition payments up to a total credit of $500 per student. Of particular importance to low income taxpayers is that the credit will be refundable—if the taxpayer is entitled to a credit greater than the amount of his tax liability, the difference will be refunded to him in cash.

This approach provides simple and direct financial relief to students of all levels of education without the further expansion of the already massive Federal bureaucracy. More importantly, tax credits will help provide freedom of choice to the educational consumer.

Mr. HATHAWAY. Mr. President, I am pleased to join a number of my distinguished colleagues in introducing the Tuition Tax Credit Act of 1977.

It is particularly gratifying to be joining Senators PACKWOOD and MOYNIHAN and a substantial number of my colleagues on the Committee on Finance in this initiative, and as a member of this committee I look forward to participating in hearings to examine this proposal and to push for its prompt enactment into law.

THE TUITION TAX CREDIT PROPOSAL

The bill introduced today would provide for a tax credit of 50 percent of tuition paid by an individual for himself or herself, or in behalf of any dependent, up to a total credit of $500 annually per student. To be eligible, the tuition payment involved may be to any public or private educational institution, whether elementary or secondary, or post-secondary, including vocational and technical schools.

I am especially pleased to lend my support to this measure as a tax credit rather than a deduction. A credit, by being a direct dollar for dollar offset against the tax liability otherwise owed, serves to benefit all taxpayers equally without regard to their tax bracket. A deduction, on the other hand, inevitably benefits high-income taxpayers to a greater degree, and often gives no benefit whatsoever to those with lower income.

For example, a $100 charitable contribution yields a wealthy taxpayer in the 70 percent bracket a $70 tax saving. The same contribution by a taxpayer in the 20 percent bracket only saves him $20. And a taxpayer taking the standard deduction gets no direct benefit whatsoever. Charitable contributions would continue to be encouraged, but in a more equitable fashion, if a credit mechanism were substituted, or available as an alternative.

Further, and of particular benefit to low-income families, the tuition tax credit would be refundable. That is, if an individual taxpayer is entitled to a credit greater than his or her tax liability in the year in question, a refund from the Treasury in the amount of the excess credit would be forthcoming.

NEED FOR THIS LEGISLATION

This bill will provide a vitally needed boost to our Nation's educational system, which historically has relied heavily on both public and private institutions. This bill will be of special benefit to low- and middle-income families who, without such assistance, might be squeezed out of the educational marketplace. Our society as a whole, and our democratic system of government, is founded on equality of opportunity with special emphasis on equal opportunity through education to pursue any occupation or activity for which an individual is qualified. This notion is at the heart of the so-called American dream.

But without swift and decisive action by Congress this dream will become only a dream, with no realistic possibility of fulfillment. And for many of our citizens it could become a nightmare, holding out false promise and futile hope.

The rising costs of public and private institutions of post-secondary education are well-documented and if help is not forthcoming it will mean doors will be increasingly closed to students from low- and middle-income families. The College Board has shown that over the past 5 years tuition and fees at private 4-year institutions have increased by 54 percent, at public 4-year institutions by 57 percent. At private 2-year institutions the costs have gone up 52 percent, and at public 2-year institutions the increase has been a staggering 130 percent.

Accompanying these increased costs has been a steady decline in participation in postsecondary education by students from lower and middle income families—a decline amounting to 20 percent according to one source.

IMPACT ON PRIVATE ELEMENTARY AND SECONDARY SCHOOLS

These same phenomena are at work with regard to our Nation's private elementary and secondary school system. Approximately 10 percent of our Nation's

school children attend these schools on the basis of free choice and considerable family sacrifice. These schools which in many parts of the country form an integral part of community cultural, religious, and ethnic traditions are in grave financial trouble.

Though in many minds the idea of a private school conjures up images of exclusivity and elitism, the facts by and large do not fit this image.

In fact, in many instances the so-called private school plays a very large public role, and the distinctions to be drawn between public and private schools are blurred in many communities, with private schools serving as critically important and open resources utilized by the surrounding communities.

In this regard I refer my colleagues to the excellent study prepared by the New England Association of Schools and Colleges, entitled "A Study of the New England Academy, a Private School in a Public Role." Examples of these sorts of educational institutions which over many years have played a key role in meeting the educational needs of students from surrounding communities are Foxcroft Academy in Dover-Foxcroft, Maine; Fryeburg Academy in Fryeburg, Maine; George Stevens Academy in Blue Hill, Maine; Lee Academy in Lee, Maine; Lincoln Academy in Lincoln, Maine; Maine Central Institute in Pittsfield, Maine; Oak Grove-Coburn, in Vassalboro, Maine; Thornton Academy in Saco, Maine; North Yarmouth Academy in Yarmouth, Maine; and Washington Academy in East Machias, Maine, to name just a few. Over time some of these schools have become fully a part of the public school system. But others have valued and retained their independence, but in so doing have been no less important to meeting the needs of all their community's citizens.

Overall, private schools offer a more economical education. In 1974, the last year for which complete data is available, private elementary and secondary school students were educated at a per pupil cost of $1,191 versus $1,281 at public schools.

At parochial schools the difference in cost was more sharply drawn. In 1973, the per pupil cost of elementary parochial education was $310, and in secondary parochial schools it was $700.

The continued existence and vitality of these schools contributes toward increased accountability on the part of our public school system. And when sought out by families who must at the same time shoulder the burdens of rising property taxes and rising State and Federal taxes which in combination provide approximately $100 billion in aid to public educational institutions, these private schools stand as a strong example of pluralistic independence and quality.

In the last 10 years, though, enrollment at private schools has declined by 35 percent at the elementary school level, and by 13 percent at the secondary school level. This latter figure is particularly disturbing when viewed alongside a nationwide increase in secondary enrollment of 18 percent.

These declining enrollments are clearly a symptom of overly strained family budgets, which find it increasingly difficult despite preferences and traditions to endure outlays for elementary and secondary tuition payments with public schools available as an economical alternative.

But individual families who are increasingly forced to make this agonizing decision on economic grounds may in the long run create even greater economic problems for every taxpayer.

If the 7.7 million students who are currently enrolled in private elementary, secondary, and postsecondary institutions were to instead enroll in tax supported schools, the increased education bill to the taxpayer would be $17 billion every year.

COST OF PROPOSAL TUITION TAX CREDIT

The bill I am sponsoring would create a revenue loss of $4.7 billion per year, which in any context is an extremely large sum. But when compared with the $100 billion in public funds currently devoted to the support of public education, and when weighed against the potential additional cost of $17 billion per year if all our private educational institutions were to close their doors, the cost of the tuition tax credit seems most reasonable and justifiable.

FREE CHOICE

This tax credit proposal will provide a much needed boost to families, particularly lower and middle income families to provide for the educational needs of their children. It will not solve family budgetary problems nor will it offer an instant panacea to the financial difficulties of all our private schools.

But it will stand as an example of commitment on the part of our Federal Government to provide much needed assistance in this vital area, while at the same time preserving the fundamental values of independence and free choice.

THE TIME FOR TUITION TAX RELIEF IS NOW

Mr. HELMS. Mr. President, I am very pleased to join with my distinguished colleagues, ROBERT PACKWOOD and DANIEL MOYNIHAN, in introducing the "Tuition Tax Credit Act of 1977," to provide tax credits to almost every American who has to pay education tuition. Earlier this year, I was equally pleased to join the Senator from Pennsylvania (Mr. SCHWEIKER) in sponsoring the "Tuition Tax Relief Act of 1977." The substantial difference between these two proposals is that S. 834 provides an alternative of a tax credit up to $250 or a tax deduction up to $1,000, while the legislation we are introducing today provides a tax credit of up to $500.

If enacted, either of these bills would provide freedom of choice for the working, middle class taxpayer who up until now has been shut out of many educational opportunities by the increasing cost of tuition. Today, too many hard-working Americans are simply caught in the middle. They cannot afford increasing tuition costs and yet they do not qualify for Federal financial assistance.

As the Federal tax code is now structured, freedom of choice is available only for those wealthy enough to pay the cost of both public education through taxes and private education through tuition. The legislation we are proposing today will go far to remedy this situation.

During the last 5 years we have witnessed an increase in the cost of college tuition of over 50 percent. A major cause of this tremendous increase in the cost of education is the Federal Government itself. In my own State of North Carolina, for example, a recent survey showed that at Duke University the cost per student of implementing federally mandated social programs has increased from $58 per year in 1968 to $451 in 1975.

Congress could provide every student in the United States with a direct and substantial tuition rebate simply by reducing these federally imposed regulations and their accompanying costs. The millions of dollars now spent implementing Federal regulations could be spent providing thousands of low-income students with a college education and reducing the cost of education for everyone else.

I believe that a reform of the Federal tax laws to provide a tax credit for tuition is an equitable and fair method in dealing with the spiraling cost of education, however for it to provide a long-term, effective solution it must be part of a new effort by Congress to reduce education costs and Federal regulation of our colleges and schools.

Mr. LUGAR. Mr. President, I am pleased to join 42 of my colleagues in cosponsoring the Tuition Tax Credit Act of 1977. Enactment of this legislation would bring financial relief to families with students currently enrolled in school and hope to families who look forward to years of costly education.

The rapid increase in the cost of education provides another example of the devastating effect of recurring inflation. The average tuition and fees at private 4-year institutions have risen by 54 percent during the past 5 years and by 57 percent at public 4-year institutions. Costs at private 2-year institutions have increased 52 percent and public 2-year institutions have risen by a dramatic 130 percent during the same 5-year period.

What all of this means for individuals is that the middle-class taxpayers are being forced out of the public and private higher education system. Education costs are so exorbitant that only the poor who qualify for substantial financial assistance and the wealthy can afford to attend many schools.

What this means for the Nation is that in the long term the educational level of the average American will probably decline. The vast pools of well-educated people our Nation needs to compete in a sophisticated world will not continue to be available.

I believe the Congress must address promptly this deteriorating situation. The legislation introduced today represents a sound approach to the financial problems facing families with students or prospective students. The use of a tax credit allows maximum flexibility for individual choice and avoids additional

government interference in the education market.

I urge my colleagues to take early favorable action on this legislation.

Mr. SPARKMAN. Mr. President, I am pleased to join in the cosponsorship of the Tuition Tax Credit Act of 1977.

This is a legislative remedy that is long overdue. With spiraling educational costs and inflation in nearly every sector of our economy, some relief must be provided to parents laboring under the strain of supporting one or more children in school with all other costs adding to that load.

The bill being introduced today seeks to amend the Internal Revenue Code of 1954 to permit a taxpayer to claim a credit for amounts paid as tuition to provide education for himself, for his spouse, or for his dependents, and to provide that such a credit is in certain instances refundable. This credit would be available in an institution of higher education, a vocational school, a secondary school and an elementary school.

Soaring educational costs make enactment of this bill imperative. I am informed that the average annual student cost of private education in institutions of higher learning has increased 52 percent over the past 5 years. For public colleges or universities this cost has increased over 55 percent during the same period.

I am particularly pleased that this bill provides a tax credit rather than a tax deduction. A tax credit is subtracted directly from the amount of tax owed, rather than, as in the case of a deduction, subtracted from overall income. This bill goes one admirable step further. If the taxpayer owes no tax, the credit is actually refunded. I hope we can pass this bill soon.

Mr. STEVENS. Mr. President, I am very pleased today to join with Senators PACKWOOD and MOYNIHAN in cosponsoring the Tuition Tax Credit Act. This legislation is an embodiment of congressional efforts dating back to the 88th Congress to provide relief for taxpayers overburdened with the high cost of tuition. This type of legislation has increasingly received support and I believe that its time for passage in both Houses of Congress has finally come.

I have been concerned with the ever fewer number of families able to take advantage of our country's educational opportunities due to the skyrocketing costs. Escalating tuition fees are prohibiting many capable people from participating in our vast educational programs on grounds of economics. I am confident that this tax credit will assure that families of all income levels can benefit and thus encourage a broadening of the financial backgrounds of those desiring to choose between the educational options available.

One of the major arguments surrounding the tuition tax credit is raised by those favoring direct Federal grant and loan programs. It is argued that tuition cost relief should be targeted specifically to those families in need. The Packwood-Moynihan legislation provides tax relief for those with all levels of income and is, in my opinion, a much better means for easing tuition cost burdens. First, by providing a blanket tax credit, this bill would allow for freedom of choice to the educational consumer. He or she could keep a larger portion of his or her earnings which would otherwise go to taxes and apply the tax credit toward paying the tuition bill. This appears preferable to the demeaning process of applying for Federal aid in which one must plead poverty and fill out detailed forms just to receive a portion of the money he has already paid in taxes. Second, by providing a blanket tax credit, all income levels can benefit. This is justified by the fact that the benefits of education are enjoyed not only by the individual that is educated, but by society as a whole.

It has been estimated that this legislation would cost the Treasury $4.7 billion in revenue loss. This loss is, however, relatively insignificant when viewed over the long term. The tuition tax credit is no more than an investment in the future; an investment that will be returned in better job opportunities, higher earnings, and higher Federal tax revenues. I am proud to be supporting this future investment and am confident that the already long list of cosponsors of this legislation will continue to grow with the addition of other Members wishing to do the same.

Mr. TOWER. Mr. President, last year I joined with Senator Buckley of New York in an amendment to the "Tax Reform Act of 1976" which was similar to the measure offered here today by Senators PACKWOOD and MOYNIHAN. I am pleased therefore to join them as a cosponsor of the "Tuition Tax Credit Act of 1977."

The bill provides a tax credit, subtracted directly from the amount of taxes owed, for tuition expenses paid by an individual for himself, his spouse, or his dependents. The amount of this credit will be 50 percent of his tuition payments up to a total credit of $500 per student. For the long-forgotten middle income taxpayer, who is too affluent to qualify for educational loans yet is severely strapped by rising educational expenses, the bill will bring welcome and deserved relief.

A major—and to my mind, crucial—part of this bill is that it will apply to all education from first grade to graduate school. Surely, college expenses have increased dramatically; and the bill would deal with that problem simply and generously. But costs have skyrocketed at all levels of education. There has been no assistance to the millions of families who, through their sacrifice and hard work, are keeping alive the independent schools which provide diversity to this country's education. Of importance to low-income taxpayers is that the credit will be refundable. This means that if the taxpayer is entitled to a credit greater than the amount of his tax liability, the difference will be refunded to him in cash.

Affluent Americans have always been able to exercise their parental right to guide the education of their children. But for middle-income families and for the poor, that has been a hollow right. It has been the right to pay twice for schooling, once through taxes to support the public schools and again for tuition to secure the education they prefer for their youngsters. This bill would reduce the financial hardships associated with the parents' right to guide the intellectual and moral development of their own children.

Because the bill addresses the financial problems of education at all levels, because it applies to tuition paid to both public and private schools, and because it provides tax relief to individuals rather than to institutions, I believe it would be equitable, constitutional, and easily administered. It is also long overdue, and I urge my colleagues who have not done so to join Senators PACKWOOD, MOYNIHAN, myself, and 40 other cosponsors in support of this legislation.

Mr. ZORINSKY. Mr. President, I am happy to join a large number of my colleagues in cosponsoring the Tuition Tax Credit Act of 1977.

This legislation is designed to address the increasing costs of education in this country and the burden those costs have imposed on the Nation's vast majority of middle income families and individuals. At the least, the escalating costs of education curtail the freedom to choose among educational institutions, placing strains on public and private sectors alike and threatening the diversity of our educational system. The view toward the future indicates the growing possibility of an educational system accessible only to the relatively poor and rich. It is part of what is becoming a usual refrain in this country: Taxes and inflation combining to erode the standard of living enjoyed by the middle class, the backbone of our society. This legislation is an opportunity—a chance for the Congress to begin to redress that grievance and to establish a policy for the future.

The remedy proposed is simple and fair. The bill provides a tax credit, subtracted directly from the amount of taxes owed, for tuition expenses of an individual or those of a spouse or dependents. The proposal applies to all levels of education: elementary, secondary and vocational schools, colleges and universities.

The Tuition Tax Credit Act of 1977 provides effective relief to overburdened taxpayers without enlarging an overgrown Federal bureaucracy. It allows our citizens to retain the freedom to seek educational services best-suited to individual needs and recognizes the importance of education to all members of our society. The proposed legislation is a sound answer to a problem of national scope, and I strongly urge its early consideration and adoption.

By Mr. KENNEDY (for himself, Mr. THURMOND, Mr. PELL, Mr. HATHAWAY, Mr. CLARK, Mr. MAGNUSON, Mr. CULVER, and Mr. METZENBAUM):

S. 2144. A bill to establish a program of drug benefits for the aged; to establish a Drug Benefits Council and other appropriate management controls to provide for the efficient administration of such program; and to require the conducting of certain studies and experiments, to enhance the capability of the

Secretary of Health, Education, and Welfare to administer such program, and for other purposes; to the Committee on Human Resources.

THE DRUG BENEFITS FOR THE AGED ACT OF 1977

Mr. KENNEDY. Mr. President, a serious problem has existed in our country for many years. Rather than improving, it has grown steadily worse. Without immediate remedial action by Government, it will inevitably continue to worsen.

The problem I refer to is the terrible burden of high prescription drug costs that has been placed upon many of our citizens 65 years of age and over. Because of the nature of the problem, it is obvious to all that its consequences are not simply economic but include lack of adequate preventive therapy, poor health, hospitalization which might have been avoided, suffering, and demoralization, even death.

THE PROBLEM

The circumstances of the problem are these:

Since 1965 medicare has been helpful to older Americans with their hospital, physician and in-hospital drug costs. Medicare does not, however, provide any assistance to the elderly with their often large out-of-hospital drug expenses.

Accordingly, on the average the elderly are expending some 25 cents out of each of their health dollars for the drugs and drug sundries they require to sustain health or mitigate illness. Payments for drugs represent their second highest health care expenditure.

Of the amount they spend on these drugs and drug sundries, over 80 percent is paid out-of-pocket.

The median personal income of elderly males was $4,961 in 1975. For females it was $2,642. The incomes of fully one-fourth of all persons 65 years of age and over were below the near-poverty level classification of an Administration on Aging survey in early 1976.

The National Center for Health Statistics says that the aged spend $72 per person per year on drugs, in contrast with $30 per person per year for all age groups, and only $22 per person per year for the age group 17 to 44. The unfortunate aspect of this statistic is its failure to reflect the extraordinary out-of-pocket expenditures for drugs by those aged who are chronically ill and the perhaps surprising fact that average individual prescription drug expenses in the two lowest classifications of family income—less than $2,000 and $2,000 to $4,999—are substantially more than those of elderly individuals in higher family income brackets. Of the total expenditures for drugs by the aged, only 13 percent are covered by public programs; 87 percent must now be paid out-of-pocket. In other words, just being old greatly increases one's drug expenditures. But being old plus having a low income and/or suffering from serious chronic illness is synergistically worse. The problems fall very unevenly on the elderly. A retired disabled veteran from Virginia reports that his income is only $2,600 per year. He says:

I have a wife and small child. I spend over $1,200 a year in drugs. And I really can't keep up like this.

Consequently, the elderly, while comprising less than 11 percent of the national population, account for one-fourth of the total annual prescription drug utilization.

CHRONIC ILLNESS

Chronic illness is clearly many times more prevalent and disabling among the aged than among younger age groups. Over 40 percent of the elderly suffer from some form of chronic illness which limits their activity. That is twice the incidence of chronic illness among those in their middle years and over five times greater than younger persons.

Among 2,000 respondents to a survey of members of the American Association of Retired Persons and National Retired Teachers Association during 1973–74, most reported spending from $200 to over $1,000 annually on prescription drugs, representing from 10 percent to as much as 45 percent of their incomes.

Mr. President, the concept of an outpatient prescription drug benefit under medicare is not new. It has enjoyed the support of national, State, and local associations of older Americans, of the HEW Task Force on Prescription Drugs, the 1971 White House Conference on Aging, a Presidential Task Force on Aging, and the Social Security Advisory Council. Proposals have been introduced regularly and frequently in the Senate and House since the advent of the medicare program. Indeed, the Senate passed such legislation in 1967, 1972, and 1973, only to see the proposals fail to be sustained in conferences with the House.

I have today introduced the Drug Benefits Program for the Aged Act of 1977, a major bill to provide prescription drug coverage to every American and eligible aliens 65 years of age and older. I am pleased to have Senator THURMOND, the ranking minority member of the Subcommittee on Antitrust and Monopoly, join with me in cosponsoring this bill along with Senator PELL, Senator HATHAWAY, Senator CLARK, Senator MAGNUSON, Senator CULVER, and Senator METZENBAUM.

Our bill is a completely new proposal with workable controls on costs, with an effective and efficient means of administration, and with an adequate timetable for starting up the program, phasing in medications for chronic illness and, finally, providing comprehensive coverage of all necessary drugs for the elderly. It is a planned program that takes its time, not for the sake of delay or parsimony, but to insure that older Americans receive the highest quality drug products in the best therapeutic regimens at the most economical costs to the Government.

The drug benefits program for the aged is being introduced at a time when Congress is devoting much time and attention to the rising costs, the inflationary impact, the problems of access, and the claims of fraud and abuse in our health care system generally and the medicaid, medicare, and private insurance programs specifically. These serious matters have not deterred us from introducing a new health care program. But, they have made us even more aware of the vital necessity to design a drug benefit program that will prevent or avoid similar problems.

Unlike the 1960's when prescription prices declined, between 1970 and 1976, the prescription price component of the Consumer Price Index increased by 13.8 percent. Rising prescription prices have also contributed in part to the 125 percent increase in the cost of providing drug benefits under medicare and medicaid according to testimony of Robert A. Derzon, Administrator of Health Care Financing Administration, when he testified before joint hearings in July before the two subcommittees I chair on Health and Scientific Research and Antitrust and Monopoly. Retail drug prices vary by several hundreds of percent, yet some pharmacists are absorbing part of their cost increases and are experiencing a profit squeeze. Consumers are forced to pay more for products over which their health and prudence permit them no power of discretion. As always, those most aggrieved are the elderly, the poor, and the chronically ill.

The essential provisions of this legislation are these:

COVERAGE

The Drug Benefits for the Aged Act of 1977 covers all of the approximately 24 million residents of the United States, including aliens with at least 5 years residence, who are age 65 or over. The program is not restricted only to those now eligible for social security, medicare, or any other program for the aged.

Those persons 65 years of age or older now receiving prescription drugs under medicaid will, after full implementation of this act, receives their drugs under this new program. This means that this program will totally fund prescription drugs for medicaid beneficiaries, providing a savings to the States of the approximately $200 million they are now expending as their one-half contribution to a drug benefit under medicaid.

Elderly beneficiaries of this drug program will not be obligated to pay any amount for the approved drugs dispensed to them. There is no copayment, no coinsurance, and no deductible.

Cost-sharing proposals inevitably fall inequitably upon the elderly poor, whose past drug needs and expenditures have been shown to be nearly one-third higher than the nonpoor elderly. We also reject a means test for determining financial need because it can be arbitrary and capricious in its determination of assets from wages, savings, pensions, homesteads, et cetera, and because studies have shown that administration costs associated with imposing deductibles in such programs can amount to over $1 per claim. That would double the administrative cost of 50 cents per claim we have budgeted for this program.

ELDERLY RIGHT

Neither do we intend or desire this program to be relegated to the category of welfare for the aged. We consider this program to be in the best general health

and economic interests of our Nation. It is properly a right of older Americans which we acknowledge they have earned throughout their working years.

Senator Thurmond has explained—

Our bill is not one that gives something for nothing. Our bill is a bill which helps those who have worked hard for many years and have earned the right to a full measure of security and hope for the future.

I fully concur.

ADMINISTRATION

Efficient and effective supervision of the drug benefits program for the aged requires it to be administered by a new unit in the Department of Health, Education, and Welfare.

The Secretary of HEW will appoint a Drug Benefits Council whose chairman will be the Assistant Secretary of Health. The Commissioner of the Food and Drug Administration will serve on the Council as well as six members from the fields of medicine, pharmacology, public health and pharmacy, and three members representative of the eligible consumers of the services of the program.

The Council will advise and assist the Secretary with Administrative policy and long-term plans for the program. It will recommend the drugs for approval on the benefits list as well as the reimbursable costs for those drugs.

DATA PROCESSING

A centralized, automatic data processing system is essential for this program in order to handle an estimated claims volume of almost 300 million prescriptions. That is nearly five times the current claims volume under medicare and explains in part why this program should not be tied to medicare or its system of fiscal agents and carriers.

Another important reason why a single, separate and centralized system is vital to this program is the necessity of monitoring the prescriptions for purposes of drug utilization and prescribing review.

The final reason for preserving the integrity of a drug benefits system is the flexibility, experience and continuity that it provides for easily making it a part of whatever form of national health insurance is enacted by Congress. The preparation of uniform accounting and reporting systems, required by this legislation, will provide an information base readily transferable to a prescription drug program under national health insurance.

The Secretary is empowered, however, to contract with and reimburse State agencies to assist with various aspects of program administration.

BENEFITS

The ultimate goal of the Drug Benefits for the Aged Act is to provide comprehensive coverage of all necessary prescription drugs, insulin and a few approved nonprescription drugs for the elderly. The bill will begin this comprehensive coverage in the 6th year following enactment.

The first and second years after passage of the bill constitute the start-up period for the drug benefits for the aged program. This amount of time is needed to establish the Drug Benefits Council and staff, set up the electronic data processing system, determine the approved drugs and their reimbursement prices, contract with participating pharmacies, establish dispensing charges in each State, and get underway drug utilization review, information and education programs. Estimated costs for the first and second years are $100 million and $300 million.

When the program begins operation in the third year, a drug benefits list will be published consisting of the approved drug products arranged by therapeutic categories necessary for treating serious, chronic illness. This list of maintenance or long-term therapy medications is expected to cover about 70 percent of the total prescription drug costs of the elderly.

Coverage of psychotherapy drugs, including tranquilizers, is intended to assist programs aimed at keeping out and getting out the elderly from mental hospitals and other long-term care institutions.

DRUG CATEGORIES

The full list of therapeutic categories of prescription drugs which will be covered during the third, fourth and fifth years of the drug benefits for the elderly program are:

Prescription drugs: Adrenocorticoids, antianginals, antiarrhythmics, anticoagulants, anticonvulsants, antidepressives, antihypertensives, antineoplastics, anti-Parkinsonism agents, antipsychotics, antirheumatics, bronchodilators, cariotonics, cholinesterase inhibitors, diuretics, gout suppressants, hypoglycemics, miotics, sedatives, thyroid hormones, tuberculostatics.

Nonprescription drugs: Insulin.

Program costs for coverage of these drugs for chronic illness are estimated as follows: third year: $2 billion; fourth year: $2.2 billion; fifth year: $2.4 billion.

With comprehensive coverage of all necessary drugs for the elderly in the sixth year, the estimated cost is $3.4 billion.

Financing will be from general revenues with annual appropriations made as necessary.

The primary intent of this legislation is to provide necessary prescription drugs to the elderly. But in achieving this rightful aim, we have sought—and succeeded, we believe—to be fair to all other essential elements of the drug delivery system: The taxpayers, the practitioners, the pharmacists, and the manufacturers.

Taxpayers are protected from rapidly escalating program costs by provisions which will exert a downward pressure on wholesale drug prices, stimulate price competition among equivalent drug products, provide financial incentives to pharmacists to select lower cost products and put a hold on drug prices for 6-month periods, while permitting manufacturers the opportunity to justify and obtain legitimate price hikes to cover increased costs, when necessary.

The bill stipulates that the initial wholesale prices of drug products, reimbursable when the program begins, will be limited to no more than the 80th percentile of the actual costs of acquisition of the products based on surveys of invoices to pharmacies as of July 1, 1977. The provision will help protect projected program costs from being driven up by any large-scale price increases by manufacturers before the drug benefits program can get underway.

Pharmacies agreeing to participate under the terms of the program will be paid for dispensing approved prescriptions at guaranteed and equitable levels of reimbursement. The allowable payment to the pharmacy consists of two parts: First, cost of the drug product dispensed; and second, the dispensing charge.

MAC AND EAC

Reimbursement for the cost of the drug product is an amount equal to either the maximum allowable cost (MAC) if appropriate, or the estimated acquisition cost (EAC). In the case of multiple source drug products, which are determined to be therapeutically equivalent and interchangeable, the Secretary of Health, Education, and Welfare shall establish the MAC as the lowest cost at which the drug is widely and consistently available to pharmacies. Each approved drug is assigned an EAC which is the actual acquisition cost at which 60 percent of the participating pharmacies can obtain the drug product in a commonly ordered package size, as determined by the Secretary based on surveys of invoices for drug products received by participating pharmacies in the immediately preceding 6-month period.

Only those approved drug products and their EAC's and MAC's, where applicable, whose formulators or labelers have agreed to supply participating pharmacies for the purposes of the program at no more than their designated EAC's for 6 months, will be listed in the formulary of approved drug products published twice yearly and be reimbursed by the program.

Reimbursement for the dispensing charge will be established by the Secretary on a State-by-State basis and will be variable among participating pharmacies according to their geographical location—urban or rural, for example—and volume of prescriptions. The Secretary will establish the dispensing charge in each State after negotiation with representatives of participating pharmacies. The dispensing charge will be equivalent to the average cost of filling a prescription in each State, including but not limited to costs of pharmaceutical services and personnel, direct prescription and store expenses, overhead.

Equitable and realistic EAC's and dispensing charges will limit the amount of appropriations from general revenues requisite to funding the costs of the program. Set at levels adequate to cover the average and normal costs of pharmaceutical purchasing, services and profit, they will provide additional profit rewards for pharmacies which buy wisely and operate efficiently while limiting both the program's costs and the pharmacies' profitability for inefficient operations and imprudent buying.

HEALTH CARE COSTS

Costs of health care in this country have skyrocketed beyond belief and

probably, necessity. Their precipitous climb has evoked widespread demand for countermeasures. If and when adequate remedies are able to correct this intolerable situation, considerable needless personnel and financial tragedies will already have occurred.

This legislation intends to prevent these errors of omission from occurring in a pharmaceutical benefit program. The elderly need a prescription drug benefit. But Congress needs to insist that the program they get effectively, efficiently and comprehensively regulates costs at both wholesale and retail levels. This legislation will accomplish this aim.

A reimbursement policy for pharmacies and a price policy for manufacturers are just two ways in which our bill will constrain costs. In many ways, drug utilization review programs, required to be established by the Secretary, could prove to be even more important to controlling costs and, particularly, to raising the quality and propriety of prescribing and utilization. Because the state of the art in controlling prescription drug use is rudimentary and usually limited to closed systems such as hospitals and health maintenance organizations, this legislation mandates the Secretary of HEW to develop a variety of experimental drug utilization review methods and to adopt one or more which prove most efficient and effective.

The Secretary is also required to conduct such information and education programs directed at beneficiaries, participating pharmacies, and physicians as may be useful to assure appropriate use of the program and its benefits, adequate and proper product selection, and rational prescribing.

PHYSICIANS' RIGHTS

Physicians' prescribing responsibilities remain substantially the same under the provisions of the drug benefit program for the elderly. They retain the right either to insist that patients receive a particular brand of drug when medically necessary or permit the pharmacist to select the drug product from the program's approved formulary of therapeutically equivalent and interchangeable drugs. This provision coincides with current pharmacy law in 32 States which generally requires or permits drug product selection by pharmacists except when the prescriber or patient disallows substitution.

We believe that our bill addresses these problems which I have raised in a realistic, comprehensive and manageable manner. We feel that the passage of such critically needed legislation for our elderly is essential.

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

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

S. 2144

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Drug Benefits for the Aged Act of 1977".

SEC. 2. The Public Health Service Act (42 U.S.C. 201) is amended by adding at the end thereof the following new title:

"TITLE XVIII—DRUG BENEFITS PROGRAM FOR THE AGED

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"DEFINITIONS

"Sec. 1801. (a) For the purposes of this title the term—

"(1) 'drug' shall have the same meaning as in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act and each dosage form and strength of a drug is a separate drug;

"(2) 'drug product' means a drug manufactured, packaged, or distributed by one or more specific formulators or labelers;

"(3) 'qualified drug' means a drug product which has been or approved and determined by the Secretary to be qualified to be marketed in compliance with applicable provisions of the Federal Food, Drug, and Cosmetic Act, and which is listed by the Secretary on the Drug Benefits list;

"(4) 'single source product' means a drug marketed or sold by only a single formulator or labeler;

"(5) 'multiple source product' means a drug marketed or sold by two or more formulators or labelers or a drug marketed or sold by the same formulator or labeler under two or more different brand names or both under a brand name and without such name;

"(6) 'generic name' means the established, official, on nonbrand name by which a drug is known, irrespective of its formulator or labeler, as assigned by the United States Adopted Names Council and accepted by the Federal Food and Drug Administration;

"(7) 'brand name' means the registered trademark or trade name given to a specific drug product by its formulator or labeler;

"(8) 'therapautic equivalent' means a drug product which when administered in the same amount will provide essentially the same therapeutic effect or rate of absorbtion as an appropriate reference product containing the same active ingredients in the same dosage form as certified by the Secretary;

"(9) 'estimated acquisition cost' means an approximated cost expressed in price per metric unit measure of the acquisition cost at which 60 per centum of the participating pharmacies can obtain a drug product in the most frequently purchased package size, as determined by in the most frequently purchased package size, as determined by the Secretary based on surveys of invoices for drug products purchased by participating pharmacies and published at least twice annually by the Secretary;

"(10) 'maximum allowable cost' means the lowest price per metric unit measure but not higher than the estimated acquisition cost at which a multiple source drug product is widely and consistently available from any formulator or labeler in a specific package size, as determined by the Secretary;

"(11) 'United States' shall have the same meaning as the term 'State' in section 2(f) of this Act;

"(12) 'hospital' shall have the same meaning as in section 1861(e) of the Social Security Act;

"(13) 'full pharmaceutical services' shall means the provision by a participating pharmacy of a range of services, as defined by the Secretary, to physicians and aged individuals, under the Program, including individual patient profiles, patient counseling with respect to drug utilization, delivery services, and other services designed to improve the use of benefits under the Program;

"(14) 'aged individual' means one who has attained the age of sixty-five or more years who is a resident of the United States, and is either (1) a United States citizen or (2) an alien who has been lawfully admitted for permanent residence who has resided in the United States continuously during the five years immediately preceding the month in which he or she applies for benefits under this title;

"(15) 'participating pharmacy' means any pharmacy establishment (including the outpatient department of a hospital), a clinic or other ambulatory care facility, including health maintenance organizations as defined in section 1301 (excluding dispensing physicians except as provided in section 1806(h) of this title, and Federal facilities), providing pharmaceutical services, which is licensed as such, under the laws of the State in which it is located or in which it otherwise lawfully provides pharmaceutical services and dispenses any qualified drug to a beneficiary of the Program and in accordance with the conditions of participation in section 1807 of this title;

"(18) 'physician' means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he or she performs such function or action;

"(17) 'nonlegend drug' means a drug which does not require a prescription in order to be lawfully dispensed and which is not required by section 503(b)(f) of the Federal Food, Drug, and Cosmetic Act, to contain the warning against dispensing without prescription as part of its labeling;

"(18) 'prescription' means a written direction or order for the preparation and administration of a qualified drug by a physician, as defined herein, which specifies the name of the drug to be given, the amount of the drug to be dispensed (in accordance with the minimum and maximum quantities as determined by the Secretary), and the directions necessary for the patient to use the drug.

"(19) 'prescription drug' means a drug available to the public only upon prescription.

"ESTABLISHMENT AND ENTITLEMENT OF THE PROGRAM

"SEC. 1802. The Secretary shall establish within 24 months after the date of enactment of this title a Drug Benefit Program for the Aged (hereinafter referred to as 'Program') by which an aged individual is entitled to payment on his or her behalf made from funds appropriated under this title to a participating pharmacy for the purchase of qualified drugs dispensed to the aged individual for his or her health and well-being.

"DRUG BENEFITS LIST

"SEC. 1803. (a) The Secretary, after consultation with the Drug Benefits Council, established under section 1805, and after notice and an opportunity for hearing on the record, shall establish the Drug Benefits List within 24 months after the date of enactment of this title. The Drug Benefits List shall include prescription and nonlegend qualified drugs which the Secretary deems

appropriate for the treatment of conditions, illnesses, or injuries to the person or well-being of aged individuals. In determining the drugs to be included in the Drug Benefits List, the Secretary shall take into account—

"(1) the extent to which the benefits provided by the drug can help meet a serious health need of aged individuals, and

"(2) the relative benefits, risks, and costs of the drug as compared with other drugs available for the same health conditions, diseases, or indications.

"(b)(1) The Drug Benefits List shall contain a listing organized alphabetically by pharmacological therapeutic classification and subclassification of qualified drugs, and

"(2) Within each classification, the Secretary shall, as he deems necessary, include in the Drug Benefits List, either as a separate part (or parts) thereof or as a supplement (or supplements) thereto, any or all of the following information for each qualified drug listed:

"(i) the established or generic name;

"(ii) the name of the formulators or labelers who have agreed to charge for a drug product a price no greater than the estimated acquisition cost or the maximum allowable cost to participating pharmacies for drug products and the brand name, if any, under which such drug products are sold;

"(iii) the estimated acquisition cost and the maximum allowable cost, where applicable, for the listed drug products;

"(iv) the therapeutic equivalents;

"(v) such other information as the Secretary deems appropriate in the interest of the health and well-being of aged individuals.

"(c) The Secretary may promulgate such limits on minimum and maximum quantities that may be dispensed for each prescription for which payment under the Program may be made, as he deems appropriate.

"(d) Notwithstanding paragraphs (a) and (b) of this section, for the period beginning 24 months after the date of enactment of this title until 60 months after the date of enactment of this title, the Drug Benefits List shall be limited to qualified drugs within the following pharmacological therapeutic categories:

"Andrenocorticoids;
"Anti-anginals;
"Anti-arrythmics;
"Anti-coagulants;
"Anti-depressives;
"Anti-hypertensives;
"Anti-neoplastics;
"Anti-Parkinsonism agents;
"Anti-psychotics;
"Anti-rheumatics;
"Insulin;
"Bronchodilators;
"Cardiotonics;
"Cholinesterase inhibitors;
"Diuretics;
"Gout suppressants;
"Hypoglycemics;
"Miotics;
"Sedatives;
"Thyroid Hormones; and
"Tuberculostatics.

"SUBSTITUTION OF THERAPEUTIC EQUIVALENTS

"SEC. 1804. (a) In filling prescriptions for multiple source qualified drugs, participating pharmacies may substitute such lower cost, therapeutic equivalents as are designated in the Drug Benefits List in accordance with the following conditions:

"(1) the drug product to be substituted is a qualified drug and a therapeutic equivalent, indicated on the Drug Benefits List, of the drug product identified in the prescription;

"(2) the label affixed to the immediate container by the pharmacist contains the generic name of the drug product, the brand name of the drug product, and the name of the formulator and labeler of the drug product, unless the prescribing physician has specifically requested that this information not be provided; and

"(3) the prescription kept by the pharmacist contains the brand name and the manufacturer and labeler of the drug product dispensed.

"(b) The participating pharmacy shall not substitute a lower cost therapeutic equivalent under the Program when the prescribing physician has indicated, in his own handwriting, that the qualified drug prescribed is medically necessary for the patient.

"(c)(1) Notwithstanding any State law, no State shall enforce any law which prevents, impairs, or prohibits, a participating pharmacy from substituting a lower cost therapeutically equivalent drug product to an aged individual in accordance with the conditions of this section.

"(2) A participating pharmacy shall not be subject to any fine or civil or criminal penalty for substituting a lower cost, therapeutically equivalent drug product to an aged individual in accordance with the provisions of this section.

"(3) No civil action may be brought against any participating pharmacy, or pharmacist actually dispensing qualified drugs in behalf of a participating pharmacy, or dispensing physician pursuant to section 1806, for damages arising out of the proper substitution of a lower cost, therapeutic equivalent in accordance with the conditions of this section.

"DRUG BENEFITS COUNCIL

"SEC. 1805. (a) (1) There is established a Drug Benefits Council (hereinafter referred to as the 'Council') which shall consist of the Assistant Secretary of Health, who shall serve as the Chairman of the Council, a designee of the Secretary and nine members appointed by the Secretary.

"(2) The Secretary shall appoint six members, not otherwise in the employ of the United States, without regard to the provisions of title 5, United States Code, who shall be especially qualified to serve on the Council by virtue of their training, experience, or background and are of recognized professional standing and distinction in the fields of medicine, pharmacology, public health, or pharmacy.

"(3) The Secretary shall appoint three members not otherwise in the employ of the United States Government without regard to the provisions of title 5, United States Code, who are representatives of the eligible consumers of the services of the Program and who are not engaged in, and have no financial interest in, the furnishing of health services, who are familiar with the needs of the eligible population for drug benefits and pharmaceutical services and are experienced in dealings with problems associated with the furnishing of such services.

"(4) Each appointed member shall hold office for a term of four years, except that (i) any member appointed to fill a vacancy occurring during the term for which his predecessor was appointed shall be appointed for the remainder of that term, and (ii) the terms of the members first taking office shall expire, as designated by the Secretary at the time of appointment, two at the end of the first year, two at the end of the second year, two at the end of the third year, and three at the end of the fourth year after the date of the enactment of this Act. No appointed member may serve for a period greater than eight years.

"(5) The Council shall be called to meet by the Chairman of the Council, a majority of its members, or the Secretary. The Council shall meet as frequently as it deems necessary, but not less than four times a year.

"(6) The Secretary shall provide such secretarial, clerical, professional, technical, or other assistance as may be required by the Council to carry out its functions.

"(7) Appointed members of the Council while serving on business of the Council (inclusive of traveltime) shall receive compensation at rates fixed by the Secretary but not in excess of the daily rate paid under GS–18 of the General Schedule under section 5332 of title 5, United States Code; and while so serving 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 section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

"(6) It shall be the function of the Drug Benefits Council to make recommendations to the Secretary on matters of the content and format of the drug benefits list, and to advise the Secretary, as he or she deems necessary, on such matters of general policy in the administration of this title, including the formulation of regulations, and the operation of this title and the utilization of drug benefits under it, and to recommend any changes in the administration of the title or its provisions which may appear desirable.

"PAYMENT

"SEC. 1806. (a) For the purposes of payment under this title, the Secretary shall reimburse participating pharmacies the amount payable for each qualified drug dispensed to an aged individual under the Program as follows:

"(1) The amount payable for a prescription drug shall be the drug product cost multiplied times the units of drugs dispensed, plus a dispensing charge:

"(A) The drug product cost shall be either the maximum allowable cost, if applicable, or when the maximum allowable cost is not established, the estimated acquisition cost.

"(B) The dispensing charge shall be the average cost per prescription as established in each State of providing pharmaceutical services, including but not limited to personnel costs, direct prescription expenses, direct store expenses and overhead expenses, as defined by the Secretary.

"(2) The amount payable for a nonlegend drug (such as insulin) shall be the seventy-fifth percentile of the usual and customary charges to the general public of the pharmacies in the State for these drug products in the standard package sizes.

"(b) Notwithstanding subparagraph (a)(1)(A), beginning with the period 24 months and ending with the period 30 months after the date of enactment of this title, the drug product cost for a prescription drug shall be the maximum allowable cost, if established, or when the maximum allowable cost is not established, the eightieth percentile of the costs of acquisition of the drug products (based on surveys of invoices for drug products by participating pharmacies) that prevailed as of July 1, 1977.

"(c)(1) Notwithstanding subparagraph (a)(1)(A), where the prescribing physician has indicated in his own handwriting that a specific brand name drug product is medically necessary for the patient, and notwithstanding its availability as a generic drug from multiple sources, the drug product cost shall be the estimated acquisition cost of the brand name drug.

"(2) Beginning with the period of 24 months and ending with the period 30 months after the date of enactment of this title, the drug product cost for drugs under subparagraph (c)(1) of this section shall be the eightieth percentile of the costs of acquisition of the drug products (based on surveys of invoices for drug products by participating pharmacies) that prevailed as of July 1, 1977.

"(d) In establishing a dispensing charge,

as defined in subparagraph (a)(1)(B), the Secretary shall—

"(1) develop such dispensing charge on a State-by-State basis after consultation with representatives of the participating pharmacies; and

"(2) vary, as he deems appropriate, such dispensing charge within a State taking into account the pharmacy's volume of total prescriptions (not only prescriptions under the Program), the location of the pharmacies in rural or urban areas, and the provision of full pharmaceutical services by the pharmacy.

"(e) The Secretary shall make no payment under this section for a separate dispensing fee when the participating pharmacy is compensated for dispensing drugs as some other amount payable to a provider of services under titles XVIII of XIX of the Social Security Act.

"(f) Payment for pharmaceutical services furnished an aged individual may be made only to participating pharmacies if—

"(1) a claim is filed for such payments in such form and in such manner as the Secretary may by regulation require, no later than the close of the period of one calendar year following the year in which the services were furnished; and

"(2) with respect to drugs furnished pursuant to and requiring a physician's prescription, such drugs are qualified drugs and the participating pharmacy has such prescription in its possession or some other record (in the case of non-legend drugs) that is satisfactory to the Secretary.

"(g) Any formulator or labeler of a drug product may request of the Secretary that the drug product cost as outlined in section (a) and (b) be increased if such request is accompanied by a written justification of the basis for the requested increase, and if the Secretary, after consultation and review by the Drug Benefits Council, agrees that such an increase in the estimated acquisition cost is reasonable and justified, he shall grant such increase.

"(h) Payment may be made under this section for qualified drugs only when such drugs are dispensed by a participating pharmacy; except that payment under this section may be made for qualified drugs dispensed by a physician where the Secretary determines, in accordance with regulations, that such qualified drugs were required in an emergency and that there was no participating pharmacy available in the locale, in which case the physician (under regulations prescribed by the Secretary) shall be regarded as a participating pharmacy for the purposes of this section with respect to the dispensing of such qualified drugs.

"(i) Within three years after the date of enactment of this title, the Secretary shall report to the Congress his recommendations for inaugurating an improved method of determining and assuring an appropriate allowable drug product acquisition price, including methods for negotiating such price directly with drug product formulators and labelers. Prior to his making his recommendations, the Secretary shall study how the sales of individual products relate to: (a) the maintenance of industry research and developmental activities, (b) the advertising, marketing, and promotion of industry products; and (c) the profitability of the product in question.

"CONDITIONS OF PARTICIPATION FOR PHARMACIES

"SEC. 1807. (a) As a condition of participation in the Program participating pharmacies shall execute a written agreement with the Secretary and therein shall agree to—

"(1) submit bills or other payment requests under the Program in such form, manner and frequency as the Secretary may require;

"(2) make available to the Secretary or his designee, and permits access by the Secretary or his designee, to such relevant information and records for the purposes of audit as the Secretary may require;

"(3) keep such records of the dispensing of drugs as may be required by the Secretary; and

"(4) post in a manner prescribed by the Secretary—

"(i) notice that the pharmacy or establishment providing pharmaceutical services is a participating pharmacy in the Drug Benefits Program for the Aged;

"(ii) lists of prices charged to the general public for a selected list of the most commonly prescribed drug products promulgated by the Secretary; and

"(iii) a list of therapeutically equivalent drugs, as certified by the Secretary.

"(5) dispense qualified drugs listed on the Drug Benefits List within such limitation in minimum and maximum quantities as may be prescribed by the Secretary;

"(6) prepare and affix to the immediate container for all prescriptions filled under the Program labels which contain the generic name and brand name, the strength of the drug product, the name of formulator or labeler of the drug product, and the quantity of the drug product unless the prescribing physician specifically states otherwise in the written prescription;

"(7) submit to the Secretary, in such form, manner, and frequency as the Secretary may specify, copies of invoices associated with the acquisition of the drug products contained in the Drug Benefits List,

"(8) accept as payment in full, the amount payable determined by the Secretary to be reasonable in accordance with section 1806, and

"(9) meet such other conditions of participation relative to quality of pharmaceutical services, accessibility of such services, and financial accounting practices as the Secretary may deem necessary to assure the health and safety of the aged individuals and the fiscal soundness of the Program.

"(b) Notwithstanding subsection (a) of this section, the Secretary is authorized to vary by regulation, as he deems necessary, certain conditions of participation of pharmacies to insure that pharmaceutical services under this Program shall be available to aid aged individuals in all geographical regions and localities of the United States.

"ADMINISTRATION OF THE PROGRAM

"SEC. 1808. (a) In carrying out the administration of the Program the Secretary shall—

"(1) establish effective and appropriate methods of—

"(A) determining initial and continuing eligibility under the Program, utilizing for the purposes of verification of age, eligibility by virtue of age in existing Federal programs, including eligibility under titles XVI, XVIII, and XIX of the Social Security Act, as prima facie evidence of age for the purposes of this Program;

"(B) informing those eligible or potentially eligible for the Program of its availability;

"(C) providing such information as will assist aged individuals to easily understand and comprehend the benefits available under the Program and how to obtain such benefits; and

"(D) issuing identification cards to aged individuals which uniquely identify the aged individual and which cannot be readily transferred from person to person;

"(2) establish and manage effective systems for the processing of claims under the Program in order to assure prompt payment to participating pharmacies;

"(3) establish, after experimentation with a variety of methods, such controls directed at assuring appropriate utilization and quality of services under the Program as the Secretary may find effective and efficient;

"(4) conduct such information and education programs directed at beneficiaries, participating pharmacies, and physicians as may be useful to assure appropriate use of the Program and its benefits, adequate and appropriate product selection, and rational prescribing;

"(5) develop, establish, and utilize methods of classification, identification, and coding of the drug products on the drug benefits list as will be most efficient in the administration and control of the Program;

"(6) develop and establish such methods as may be necessary to control abuse of the Program and possible fraud associated with use of Program benefits, including establishment of methods for suspending participating pharmacies or prescribing physicians, and for denying benefits, in whole or in part, to offending aged individuals; and

"(7) develop and establish appropriate grievance mechanisms and methods to appeal adverse decisions;

"(b) In carrying out this section, the Secretary shall consult with appropriate professional and consumer organizations, and with representatives of the pharmaceutical industry, and with appropriate State agencies.

"(c)(1) In carrying out the administration of this title, the Secretary may contract with appropriate State agencies to carry out any necessary determinations that participating pharmacies meet the conditions of participation, as established, to conduct or monitor utilization review and quality control mechanism, to conduct informational and educational programs, or for other purposes under the Act.

"(2) In carrying out the administration of contracts authorized under paragraph (1), the Secretary is authorized to make advance payments or to reimburse appropriate State agencies for services rendered.

"(d) The Secretary shall investigate the feasibility of utilizing (and if feasible shall install) uniform claims forms for benefits under the Program, automatic data entry systems, and such other systems as may improve the efficient and economical operation of the Program.

"EXCEPTIONS

"SEC. 1809. (a) Notwithtanding any other provision of this title, no payment shall be made by the Secretary under the Program if the Secretary determines that—

"(1) such payment is not reasonable and necessary for the treatment of illness or injury or to improve the functioning of a malformed body member of an aged individual;

"(2) the aged individual receiving the pharmaceutical services or drug products has no legal obligation to pay for the provision of such services or drug product, and for which no other person has such a legal obligation to provide or to pay;

"(3) the pharmaceutical services or drug products were not provided within the United States; or

"(4) the pharmaceutical services or drug products are furnished or administered to an aged individual while in a hospital or while the aged individual is a patient in a skilled nursing facility, as defined in section 1861(j) of the Social Security Act.

"(b) No payment shall be made by the Secretary under the Program with respect to any pharmaceutical services or drug products to the extent that payment for such services or products is covered, or that payment has been made, under a worker's compensation law or plan of a State, or of the United States, as determined by the Secretary.

"HEARINGS AND APPEALS

"SEC. 1810. (a)(1). Any individual adversely affected with any determination under this title as to—

"(A) whether an individual is entitled to benefits under section 1802, or

"(B) whether a participating pharmacy is eligible or has complied with the conditions of participation under section 1807 or requirements of payment under section 1806, or

"(C) whether the amount payable should be increased under section 1806, or

"(D) whether a drug should be listed on the Drug Benefits Lists, under section 1803, or

"(E) the reasonableness or applicability of a regulation promulgated by the Secretary pursuant this title, shall be entitled to a hearing thereon by the Secretary to be conducted in accordance with chapter 5, title 5 of the United States Code, and to judicial review of the Secretary's final decision after such hearing, as is provided in subparagraph b(2) of this section.

"(2) Notwithstanding the provisions of paragraph (1), a hearing shall not be available to an individual by reason of such paragraph if the amount in controversy is less than $100; nor shall judicial review be available to any individual by reason of such paragraph if the amount in controversy is less than $1,000.

"(b) (1) Any order or decision issued by the Secretary under this title (other than an order or decision excluded under paragraph (2) of subsection (a)) shall be subject to judicial review by the United States court of appeals for the circuit in which the affected party is located, or the United States of Appeals for the District of Columbia Circuit, upon the filing in such court within 30 days from the date of such order or decision of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this title. A copy of the petition shall forthwith be sent by registered or certified mail to the other party and to the Secretary, and thereupon the Secretary shall certify and file in such court the record upon which the order or decision complained of was issued, as provided in section 2112 of title 28, United States Code.

"(2) The court shall hear such petition on the record made before the Secretary. The findings of the Secretary if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate, or modify any order or decision or may remand the proceedings to the Secretary for such further action as it may direct.

"PENALTIES

"SEC. 1811. (a) Whoever—

"(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this title;

"(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this title;

"(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit or payment;

"(3) having knowledge of the occurrence of any event affecting—

"(A) his initial or continued right to any such benefit or payment, or

"(B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when of such benefit or payment is authorized, or

"(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

"(b) Whoever furnishes items or services to an individual for which payment is or may be made under this title and who solicits, offers or receives any—

"(1) kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment, or

"(2) rebates of any fee or charge for referring any such individual to another person for the furnishing of such items or services, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

"(c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to dispensing or purchase of a qualified drug for which payment is made under this title shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1812. (a) There are authorized to be appropriated to establish the administration of the Program, $100,000,000 for the fiscal year ending September 30, 1978, and $300,000,000 for the fiscal year ending September 30, 1979.

"(b) There are authorized to be appropriated to administer and to provide the benefits of the Program, for the fiscal year ending September 30, 1980, and each year thereafter, such sums as are necessary.

"(c) The Secretary is authorized to set aside an amount not to exceed 5 per centum of the funds appropriated in any year under this title for the purposes of—

"(1) evaluation of the program performance;

"(2) experimentation with efficient methods of administration;

"(3) demonstration of effective utilization review procedures;

"(4) demonstration of effective consumer, physician, and pharmacist education programs;

"(5) demonstration of incentive reimbursement methods; and

"(6) and other demonstration, research, or experimentation programs, including review of foreign studies and programs, designed to improve the administration, effectiveness, and efficiency of the Drug Benefits Program for the Aged.

"SEPARABILITY PROVISION

"SEC. 1813. If any provision of this title is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the title or the applicability thereof to other persons and circumstances shall not be affected thereby.".

Mr. THURMOND. Mr. President, for sometime I have viewed with great concern the plight of our senior citizens. Many retired some years ago on modest, fixed incomes. Many depend only on social security payments to live. They have seen their dreams of a comfortable retirement go up in the smoke of inflation. I believe it is my duty to do my best to prevent the aspirations and hopes of our senior citizens from becoming a bitter illusion.

Recently, the Senate held a joint hearing before the Antitrust and Monopoly Subcommittee and the Health Subcommittee on drug pricing. The spiraling costs of health care has put adequate medical services beyond the financial reach of many Americans, particularly the elderly. It is in the years after 65 that people are most vulnerable to chronic and disabling illnesses. Many must take prescription drugs regularly. Testimony has indicated that some senior citizens spend between 10 and 45 percent of their income on medication. Others, unable to afford such an expenditure, take less than the prescribed amount of medication, or go without necessary drugs, often with disastrous consequences to their health.

I have always been a fiscal conservative. I believe that before taxpayers' dollars are spent several important questions must be addressed. Any Federal program must answer a need that the private sector is not now meeting or not meeting well. In many cases the Federal Government spends money in areas which would be better handled by the private sector and which simply replace the private sector. But the testimony which I heard on drug prices and their effects on the elderly demonstrated clearly that this is a serious situation and one which will not improve without our immediate attention. The policies of Government have had much to do with the inflation we have all been experiencing. I think it is the responsibility of those in Government to at least offer some assistance to those groups hardest hit by inflation.

Medicare currently covers prescription drugs for beneficiaries only on an inpatient basis. Senator KENNEDY and I are proposing this bill to provide free prescription drugs to all senior citizens over the age of 65 on an outpatient basis. Through the passage of this legislation the elderly will be provided the drugs which they must have to stay out of hospitals and skilled nursing homes.

Twenty-four million Americans, including 750,000 who are not eligible for medicare, would qualify for drug benefits under this program. It would begin by providing 70 percent of all prescription drugs, and would gradually be expanded to include the other 30 percent. The cost of the program, after a phase-in period of 18 months, is estimated at $2 billion for the first full year. This is a small amount to pay to assure better health to a sizable portion of our population.

Some question has been raised on the point that this program will make free medication available to those who do not actually need financial assistance. I have been informed that considerable research has been done on the cost of administering a means test in Federal programs. Evidence obtained indicates that the cost of determining the financial eligibility of elderly citizens would probably cost more than providing the drugs to all persons over 65.

This program is not one which gives something for nothing. This legislation will help those who have worked hard for many years and have earned the right to a full measure of security and hope for the future.

Mr. CLARK. Mr. President, I am very pleased to be an original cosponsor of the Drug Benefits for the Aged Act of 1977. This bill addresses a problem for which I have long been concerned—the way high medical costs drain the incomes of older Americans. I promise my full support for this effort, because it will clearly be of great benefit for the 24 million elderly persons in our Nation who must now pay for prescription drugs out of their own pockets.

In recent years, the medicare program has paid only about $4 of every $10 in health care expenditures of the elderly. In fact, today the elderly must pay $390 per person each year for medical care, as compared to 1965—prior to the introduction of medicare—when they paid just $240.

One of the major noncovered health expenses is prescription drugs that are used outside of institutions. Fully one-quarter of the total private health bill of the elderly goes to pay for these drugs, and only the out-of-pocket cost of nursing home care exceeds that amount.

This problem is especially acute for those who are chronically ill and those who have low-fixed incomes. A recent survey by the American Association of Retired Persons/National Retired Teachers Association found that older persons who fall into these categories pay as much as half of their incomes on prescription drugs alone. This clearly represents a gigantic burden, one that will be remedied through this bill.

The major elements of the bill are the following:

First, all 24 million older Americans will be covered by the program, not just those who are medicare beneficiaries;

Second, the program will use efficient administrative procedures, involving centralized data processing, so that the expected load of 300 million prescriptions per year can be accommodated;

Third, this will be a comprehensive program with coverage for all necessary drugs for the elderly. It will be phased in over 5 years, covering drugs for chronic illnesses as the initial step;

Fourth, the program includes a set of controls for quality, utilization, and cost; and

Fifth, the Federal Government will assume the total cost of the program. The elderly would no longer be forced to pay any portion of their bills for these drugs. Nor would States that now cover prescription drugs under medicaid—including my home State of Iowa—have to pay for the prescriptions of elderly medicaid participants. This will save the State of Iowa $2 million a year.

I consider this bill as just one more step in the long process toward implementing a program of national health insurance. The drug bill has all the components that are necessary for the successful operation of such a program—it is comprehensive, it is efficient, and it has cost controls.

Arthur E. Hess, former Deputy Commissioner of the Social Security Administration, cited the prescription drug program as a idea whose time has come. In his 1975 paper entitled "Next Steps in Medicare," he wrote:

> There are several reasons for starting with such a limited drug program. First, since there are many serious administrative problems associated with the introduction of a drug benefit, a controlled beginning with a controlled population would provide a base of experience for developing processing techniques and for assessing administrative costs. Second, program costs would be limited and manageable. Third, the cost of prescription drugs associated with chronic illness represents a known need which is an appreciable portion of the out-of-pocket drug costs of the aged and the disabled. Finally, it would make a significant contribution in the direction of meeting costs of catastrophic illness.

I have every expectation that Congress will give its close attention to this legislation, as it goes to the root of the inflation problem that is so burdensome for our elderly citizens.

Mr. HATHAWAY. Mr. President, I am pleased to join with my distinguished colleagues in introducing a bill to establish a program of outpatient drug benefits for older Americans. The bill would also establish a Drug Benefits Council and other appropriate management controls to provide for the efficient administration of the program, and would require the conduct of certain studies and experiments to enhance the capability of the Secretary of HEW to administer such a program.

The Drug Benefits for the Aged Act of 1977 would provide for drug benefits for the 24 million residents of our Nation who are 65 years old or older, relieving the burden which has been placed on many of our senior citizens.

Chronic illness plagues more than 40 percent of our elderly. This amounts to twice the number of middle-aged persons affected by chronic illness and more than five times the number of younger persons so affected.

Of all the drugs dispensed in the United States, our senior citizens consume a very substantial proportion. This group now pays 80 percent of its costs for all prescription drugs out of pocket. For many of our senior citizens this absorbs a major portion of their already overstretched incomes. This is largely because medicare does not pay for any outpatient drugs.

The drug benefits bill would remedy this unfortunate situation by providing coverage to all senior citizens 65 years of age or older regardless of eligibility for medicare or social security. It would impose no cost-sharing requirement, thus putting the poor on an equal footing with the wealthier elderly. With a long-range goal of comprehensive coverage of all necessary drugs for the elderly, the bill would in its first year cover about 70 percent of all drug costs by paying for certain designated drugs needed for treatment of chronic diseases. After the first 5 years of the program, 100 percent of the drugs costs of older Americans would be covered.

The drug benefits bill is designed to develop cost control and efficient administration through demonstrations of drug utilization review. In addition, the bill promotes quality and cost control to keep costs down and insure quality of service. Unlike previous proposals, this bill will not be connected with the administrative mechanisms of medicare. It provides for centralized automatic processing; capable of processing claims for the anticipated 300 million prescriptions per year. The bill would cost approximately $2 billion in its first full year of operation, and $3.4 billion annually when fully implemented.

But its benefits would provide ample justification for these costs. The bill would insure that no senior citizen would be deprived of necessary drug therapy. This would promote home health care, and should result in a decreased need for institutionalization in long-term care facilities. It would enhance the dignity of our senior citizens by allowing many of them to stay out of hospitals and nursing homes, and maintain their independence and quality of life in their home environments. At the same time it would foster cost-savings in medicare and medicaid by promoting more timely and appropriate care.

A substantial number of all hospitalizations are due to the misprescribing of drugs. With the centralized data processing mechanism mandated by the bill, controls could be built in to insure correct prescribing practices and prevent overprescription of drugs. If this drug bill can result in reduced admissions to hospitals, it may well pay for itself.

Our senior citizens deserve the assistance which this bill provides. They have worked hard and contributed much to our country. We must not neglect them now when their need is great and their ability to respond to that need is limited. I shall look forward to considering this legislation as it comes before the Health Subcommittee on which I serve.

ADDITIONAL COSPONSORS

S. 247

At the request of Mr. GOLDWATER, the Senator from Montana (Mr. MELCHER)

was added as a cosponsor of S. 247, to provide recognition to the Women's Air Forces Service Pilots.

S. 1243

At the request of Mr. CHURCH, the Senator from Iowa (Mr. CLARK), the Senator from Rhode Island (Mr. PELL), the Senator from Vermont (Mr. STAFFORD), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. ABOUREZK), the Senator from Oregon (Mr. HATFIELD), the Senator from Michigan (Mr. RIEGLE), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Florida (Mr. STONE), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Mississippi (Mr. EASTLAND), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Montana (Mr. METCALF), the Senator from Arkansas (Mr. BUMPERS), the Senator from Montana (Mr. MELCHER), the Senator from Vermont (Mr. LEAHY), the Senator from Nevada (Mr. CANNON), the Senator from Minnesota (Mr. ANDERSON), the Senator from Massachusetts (Mr. BROOKE), the Senator from South Carolina (Mr. THURMOND), the Senator from Indiana (Mr. BAYH), the Senator from Colorado (Mr. HART), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Connecticut (Mr. WEICKER), the Senator from Maryland (Mr. SARBANES), the Senator from Arizona (Mr. DECONCINI), the Senator from Pennsylvania (Mr. HEINZ), the Senator from Florida (Mr. CHILES), the Senator from New Jersey (Mr. CASE), and the Senator from Washington (Mr. JACKSON) were added as cosponsors of S. 1243, to amend title II of the Social Security Act.

S. 1426

At the request of Mr. WILLIAMS, the Senator from Maryland (Mr. MATHIAS) was added as a cosponsor of S. 1426, the Urban Trees Act.

S. 1868

At the request of Mr. MELCHER, the Senator from Kansas (Mr. PEARSON) and the Senator from Nebraska (Mr. CURTIS) were added as cosponsors of S. 1868, to expedite issuance of Federal permits.

S. 1974

At the request of Mr. NELSON, the Senator from Arkansas (Mr. BUMPERS), the Senator from California (Mr. HAYAKAWA), and the Senator from Illinois (Mr. STEVENSON) were added as cosponsors of S. 1974, the Regulatory Flexibility Act.

S. 2099

At the request of Mr. WEICKER, the Senator from Pennsylvania (Mr. HEINZ) and the Senators from New York (Mr. JAVITS and Mr. MOYNIHAN) were added as cosponsors of S. 2099, relating to payment of real property tax obligations owed by a railroad in reorganization.

S. 2130

At the request of Mr. PACKWOOD, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 2130, to amend the Internal Revenue Code.

SENATE RESOLUTION 219

At the request of Mr. ROTH, the Senator from Idaho (Mr. CHURCH), the Senator from Alaska (Mr. GRAVEL), and the Senator from Nevada (Mr. LAXALT) were added as cosponsors of Senate Resolution 219, establishing a senior citizen internship program in the Senate.

SENATE RESOLUTION 269—ORIGINAL RESOLUTION REPORTED AUTHORIZING SUPPLEMENTAL EXPENDITURES

(Placed on the Calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported the following original resolution:

S. RES. 269

Resolved, That section 2 of Senate Resolution 189, 95th Congress, agreed to June 14 (legislative day, May 18), 1977, is amended by striking out "$399,300" and inserting in lieu thereof "$437,700".

AMENDMENTS SUBMITTED FOR PRINTING

MINIMUM WAGE INCREASE—S. 1871

AMENDMENT NO. 1038

(Ordered to be printed and to lie on the table.)

Mr. DECONCINI. Mr. President, I am submitting an amendment to S. 1871, the bill which would increase the existing minimum wage. My amendment would modify section 14 of the Fair Labor Standards Act regarding the payment of a lower minimum wage to full-time students.

Section 14 of the Fair Labor Standards Act permits employers to pay full-time students at the rate of 85 percent of the prevailing minimum wage providing the employer adheres to certain restrictions. Contained in these provisions is a requirement which restricts the number of full-time students an employer may hire. An employer may receive certification to hire up to 4 full-time students without excessive or time-consuming paperwork. However, if an employer wishes to employ more than four full-time students, he is restricted to a certain proportion of the total hours of employment of all employees in his establishment.

This amendment would revise these provisions by: First. Reducing from 85 percent to 74 percent of the minimum wage the amount which an employer must pay a full-time student; second, Expanding from four to six the number of full-time students an employer may hire without having to enter into extensive computations regarding hours of employment of all employees in his establishment; and, third. Exempting employers from the limitations as to the number of full-time students he may hire, providing the employer can show that such an exemption would not have an adverse effect upon full-time employment.

The rationale for establishing 74 percent as the full-time student differential minimum wage is to maintain the wage at its present dollar amount, which is approximately $1.96, when the minimum wage is increased to $2.65. Of course, the dollar amount would increase as the minimum wage increased beyond the $2.65 level.

I am aware of the fact that businesses have not made extensive use of the current provisions in section 14 regarding the employment of students at a subminimum wage. However, reducing the student differential, along with increasing the number of students an establishment could hire, would, in my judgment, provide additional incentives for employers to hire more full-time students.

A recently completed survey tends to support the need for some type of youth differential. Almost three-fourths of the small businesses who responded to the survey indicated that a youth differential would have a moderate-to-major effect on their decisions to hire young people in the future.

Mr. President, my amendment does not go to the extremes that some are advocating—a differential for all youth under a certain age. It is my opinion that such a youth differential, one permitting all under a particular age to receive a subminimum wage, might lead to teenagers dropping out of school to engage in full-time employment, especially among border-line students. My amendment modifies existing law to encourage the employment of students on a part-time basis during the school year with the possibility of full-time employment during periods of vacation. Thus, my amendment would create a situation in which a student could remain in school, gaining the necessary education for future full-time employment, and also work part time, allowing him or her to receive the work experience that will be beneficial in later years.

Further, it has been my experience that many students, mainly college students, are not able to complete school without the financial assistance provided by a part-time job. I believe the concept embedded in existing law is a step in the right direction, assisting those students in financial need; but, I also believe that broadening the concept—as my amendment does—would greatly improve the opportunities for full-time students.

Not only will my amendment help students, it will also prove beneficial to business. In Arizona, as in many other States, many jobs, because of the tourist industry, are seasonal or require quite a few part-time employees. Restaurants, hotels, recreational businesses are but a few of the businesses requiring employees of this nature. With the adoption of my amendment, these establishments will be able to maintain and possibly expand their services.

I hope, Mr. President, that my colleagues will give serious consideration to this amendment which, I believe, is worthy of their support.

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

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

AMENDMENT NO. 1038

On page 12, insert between lines 17 and 18, the following:

LEARNERS, APPRENTICES, STUDENTS AND HANDICAPPED WORKERS

SEC. 5. (a) Section 14 is amended by striking "85 per centum" each place it appears and substituting "74 per centum".

(b) Section 15 (b)(4)(B) is amended by striking "four" each time it appears and substituting "six".

(c) Section 14(c) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary may by regulation or order provide for an exemption from the limitations imposed under subsection (b)(4)(B) upon a showing by the employer that such an exemption would not have an adverse effect upon full-time employment.".

On page 12, line 19, strike "Sec. 5," and substitute "Sec. 6.".

On page 12, after line 25, add the following:

(c) The amendments made by section 5 shall take effect on January 1, 1978.

AMENDMENT NO. 1393

(Ordered to be printed and to lie on the table.)

Mr. HATHAWAY. Mr. President, although European settlements were established in what is today the State of Maine as early as the first years of the 17th century, most settlements did not come until much later.

Indeed, it surprises many people today to learn that vast areas of Maine have never been settled, have no roads or inhabitants. For example, Aroostook County, which is larger than Connecticut and Rhode Island combined, is to this day mostly unbroken forestland which supplies pulp and saw logs to Maine's forest products industries.

Aroostook County's 100,000 inhabitants live on a narrow strip of cleared land which runs north-south along the border with New Brunswick, then west, over the top of the State, to where the fields cease and Maine's border with the Province of Quebec begins.

This area was the last frontier in New England and was first inhabited by white men in the 1820's and 1830's. The bulk of settlement was made just before and after the Civil War, by farmers from southern Maine, New Hampshire, and Massachusetts who sought cheap land.

In the 1890's, the railroad was extended to the southern part of Aroostook, and, at about the same time, a farmer in Houlton invented a structure which enabled farmers to store potatoes through the winter. This combination of events opened up to Maine potato farmers the rich Boston and New York markets, 250 and 500 miles, respectively, to the south.

For at least the last 75 years, the potato has been the most important crop in this part of the United States. It is the foundation for the region's economy and, because everyone has a stake in it, nearly everyone participates in the potato harvest at one time or another.

The schools in Aroostook County start in August—a month early—in order to close for "Harvest Recess" from mid-September to mid-October. Thus, it is safe to say that everyone in that part of Maine has worked in the harvest. It is an event which ties people together in their culture as well as their economy.

The Maine potato harvest has never been part of the stream of migrant labor which traverses other parts of the United States. Until the advent of mechanical harvesters 20 years ago, thousands of people from Canada came over to help in the harvest. Nowadays, the mechanical harvesters bring in about half the crop and only a few hundred people from Canada come over.

When the 1974 amendments to the Fair Labor Standards Act passed Congress, they included provisions which prohibited children under 12 from picking potatoes. This change was greeted with astonishment, then anger, in Maine. It was almost as though the Federal Government was telling the people of Aroostook County how to raise their children.

Over the years, the need for child labor has diminished. And fewer people have been able to justify the practice. We all know why this is. Too many children, especially those of migrant workers, worked year round, under terrible conditions, without benefit of schooling, and with a very dim future in front of them. No one, least of all I, wants to encourage or maintain such abuses. To the extent that the 1974 amendments did away with these abuses, I applaud them.

But we live, Mr. President, in a pluralistic society. And as I hope I have made clear, the situation in Maine's potato harvest is not, and was not, the abuse which our legislation sought to remedy. But we were affected by that legislation, nevertheless.

Families that picked together can no longer do so. They have to leave children under 12 at home. Thus, a babysitter must be found—quite an achievement during the one time of year when every pair of hands can be employed in the fields—or one of the parents must stay home with the child. In turn, this makes it harder for the farmer to bring in his crop and he is forced to consider the purchase of an expensive mechanical harvester.

Thus, a process which threatens the culture of a region is set in motion. People who depended upon one another no longer are allowed to do so.

In November of 1975, Senator PACKWOOD and I held a hearing in Presque Isle, Maine, on the economic problems of small business in the Northeast United States. Laura Parker, of Washburn, Maine, testified about the effects of the child labor amendment and I ask unanimous consent that a portion of her testimony be printed in the RECORD at this point.

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

STATEMENT ON CHILD LABOR LAW—MRS. LAURA PARKER, WASHBURN, MAINE

MRS. PARKER. Senator Hathaway, Senator Packwood, citizens of Aroostook County, my name is Laura Parker and I reside in Washburn, Maine.

I am grateful to Senators Hathaway and Packwood for relinquishing their time that I might come before you and let you know who I am and what I am dong. I am also indeed grateful for the encouragement that I have received from personal contact with people of Aroostook County.

As you know, through the media of radio, television, and newspapers, a few housewives, not content with being told by the Government what is good and what is not good for our children, have organized a campaign to bring about a change to the child labor law, to make it equitable to areas and conditions as they apply.

In reviewing the hearing before the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, 94th Congress, an examination of the provisions of the Fair Labor Standards Act against exploitation of child labor in agriculture, one cannot help but ask oneself, "Could this have taken place in America?"

Not one assertion by Jeffrey Newman, executive director, or Cassanadra Stockburger, director, National Committee on the Education of Migrant Children, is substantiated in their statements. Their testimony is one born of irresponsible conjecture, and with no sincere forethought or consideration of the principles involved; namely, the citizens and farmers of Aroostook County.

Are we going to sit back and let a few unconcerned politicians stagnate the economy of Aroostook County and the State of Maine without speaking out? I say, not until Washington is renamed "the Kremlin."

This fall a demonstration was held here in Presque Isle in front of the Maine Employment Security Commission. The purpose of this meeting was to determine the feelings of other housewives and mothers of the area. The response was so unanimous a decision was reached in favor of a drive to attempt to change this legislation. As a result of this decision, a petition drive was undertaken in northern Aroostock County to petition the elected State and Federal officeholders to work to change the Federal law so that children under 12 years of age may work in the potato harvest. Here again, the support of the people of Aroostook County has been tremendous. In 2 weeks' time, over 6,000 signatures were solicited. As a result of the huge success of this petition locally, it is our intent to expand our outreach to the areas of southern Maine, where the blueberry harvest was so affected by this law. If the reception is as strong there as it has been here, we will reach out further to other agricultural areas of this great land of ours, working hand in hand with people in those areas to gain support of their representatives to amend this law.

We received numerous calls in support of what we are doing. People say to us, "Please do not give up now." They ask, "Can we help?" My answer to you all is, "As long as I have the support of the citizens of this county and this State, which is our home, I will fight for the heritage which is born of us all."

We in Aroostook who work in the potato harvest are not considered as migrants. I defy anyone to statistically prove neglect as regard to the ill effects they claim working in the harvest has on our children's education, health, and mental capacity. I say let them come forward with responsible evi-

dence or let us determine for ourselves how we raise our children.

What we are after is to have this law amended and we want freedom of choice for our own children. We are American citizens and we want to be treated as citizens and see if you can do something for us.

Thank you.

Mr. HATHAWAY. In order to meet the needs of areas like Aroostook County, I intend to propose an amendment to S. 1871 which would give the Secretary of Labor the discretion to grant a waiver of the child labor prohibition when certain strict criteria are met. Through these restrictions, no child could be employed in an unhealthy job nor be allowed to miss school. My amendment, which has already passed the house, would benefit those few areas in the United States where local people traditionally participated to handharvest the crops of their neighbors.

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

AMENDMENT NO. 1393

On page 12, between lines 17 and 18, insert the following new section:

AGRICULTURAL HAND HARVEST LABORERS

SEC. 5. Section 13 (29 U.S.C. 213) is amended by adding at the end thereof the following new subsection:

"(i)(1) The minimum wage and overtime exemption provided by subsection (a)(6) of this section shall apply according to its terms to hand harvest laborers described in this subsection but an employer or group of employers may apply to the Secretary for a waiver of the application of section 12 to the employment of individuals, who are less than twelve years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may grant such a waiver only if he finds that—

"(A) the application of section 12 would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;

"(B) the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being; and

"(C) the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

"(2) Any waiver granted by the Secretary under paragraph (1) shall require that—

"(A) the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

"(B) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

"(C) such individuals be employed under such waiver (i) for not more than thirteen weeks between June 1 and October 15 of any calendar year, and (ii) in accordance with such other terms and conditions as the Secretary shall prescribe for such individual's protection.".

On page 12, line 19, substitute "Sec. 6." for "Sec. 5.".

On page 12, after line 25, add the following new subsection:

(c) The amendment made by section 5 shall take effect on the date of enactment of this Act.

NATURAL GAS POLICY—S. 2104

AMENDMENTS NOS. 1039 THROUGH 1042

(Ordered to be printed and to lie on the table.)

Mr. PEARSON (for himself and Mr. BENTSEN) submitted four amendments intended to be proposed by them to the bill (S. 2104), to establish a comprehensive natural gas policy.

AMENDMENTS NOS. 1043 THROUGH 1049

(Ordered to be printed and to lie on the table.)

Mr. PEARSON submitted seven amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1050 THROUGH 1055

(Ordered to be printed and to lie on the table.)

Mr. NUNN submitted six amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1056

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1057 AND 1058

(Ordered to be printed and to lie on the table.)

Mr. JOHNSTON submitted two amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1059 THROUGH 1063

(Ordered to be printed and to lie on the table.)

Mr. STEVENS submitted five amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1064

(Ordered to be printed and to lie on the table.)

Mr. MORGAN submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1065 THROUGH 1070

(Ordered to be printed and to lie on the table.)

Mr. MORGAN submitted six amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1071

(Ordered to be printed and to lie on the table.)

Mr. MATHIAS submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1072 THROUGH 1283

(Ordered to be printed and to lie on the table.)

Mr. METZENBAUM submitted 112 amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1284

(Ordered to be printed and to lie on the table.)

Mr. DOMENICI (for himself and Mr. DOLE) submitted an amendment intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENTS NOS. 1285 THROUGH 1310

(Ordered to be printed and to lie on the table.)

Mr. DOMENICI submitted 26 amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1311 THROUGH 1316

(Ordered to be printed and to lie on the table.)

Mr. BENTSEN submitted six amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1317

(Ordered to be printed and to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1318

(Ordered to be printed and to lie on the table.)

Mr. BUMPERS submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1319

(Ordered to be printed and to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1320 AND 1321

(Ordered to be printed and to lie on the table.)

Mr. FORD submitted two amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1322

(Ordered to be printed and to lie on the table.)

Mr. FORD (for himself, Mr. MORGAN, and Mr. HELMS) submitted an amendment intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENT NO. 1323

(Ordered to be printed and to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1324

(Ordered to be printed and to lie on the table.)

Mr. FORD (for himself, Mr. RANDOLPH, Mr. HELMS, Mr. BENTSEN, Mr. HANSEN, Mr. DOMENICI, and Mr. TOWER) submitted an amendment intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENT NO. 1325

(Ordered to be printed and to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1326

(Ordered to be printed and to lie on the table.)

Mr. FORD (for himself, Mr. JOHNSTON, Mr. TOWER, Mr. DOMENICI, Mr. BARTLETT, Mr. HELMS, Mr. HUDDLESTON, and Mr. CHURCH) submitted an amendment intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENT NO. 1327 AND 1328

(Ordered to be printed and to lie on the table.)

Mr. FORD submitted two amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1329

(Ordered to be printed and to lie on the table.)

Mr. FORD (for himself, Mr. JOHNSTON, Mr. TOWER, Mr. HUDDLESTON, Mr.

DOMENICI, Mr. HELMS, Mr. BARTLETT, and Mr. CHURCH) submitted an amendment intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENT NO. 1330

(Ordered to be printed and to lie on the table.)

Mr. FORD (for himself, Mr. RANDOLPH, Mr. HELMS, Mr. BENTSEN, Mr. HANSEN, Mr. DOMENICI, and Mr. TOWER) submitted an amendment intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENTS NOS. 1331 THROUGH 1337

(Ordered to be printed and to lie on the table.)

Mr. JACKSON submitted two amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1338 THROUGH 1345

(Ordered to be printed and to lie on the table.)

Mr. HANSEN submitted eight amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1346 THROUGH 1349

(Ordered to be printed and to lie on the table.)

Mr. GLENN submitted four amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1350 THROUGH 1356

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted seven amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1357 THROUGH 1358

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY (for himself and Mr. ABOUREZK) submitted two amendments intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENTS NOS. 1359 THROUGH 1363

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted five amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1364

(Ordered to be printed and to lie on the table.)

Mr. RIEGLE submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1365 AND 1366

(Ordered to be printed and to lie on the table.)

Mr. KENNEDY submitted two amendments intended intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENTS NOS. 1367 THROUGH 1380

(Ordered to be printed and to lie on the table.)

Mr. ABOUREZK submitted 14 amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1381

(Ordered to be printed and to lie on the table.)

Mr. DURKIN submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1382

(Ordered to be printed and to lie on the table.)

Mr. DURKIN (for himself, Mr. BAYH, Mr. BROOKE, Mr. MATSUNAGA, Mr. MCINTYRE, and Mr. RIEGLE) submitted an amendment intended to be proposed by them to the bill (S. 2104), supra.

AMENDMENT NO. 1383

(Ordered to be printed and to lie on the table.)

Mr. DURKIN submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1384

(Ordered to be printed and to lie on the table.)

Mr. DURKIN (for Mr. HATHAWAY) submitted an amendment intended to be proposed to the bill (S. 2104), supra.

AMENDMENTS NOS. 1385 THROUGH 1390

(Ordered to be printed and to lie on the table.)

Mr. HART submitted six amendments intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1391

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

AMENDMENT NO. 1392

(Ordered to be printed and to lie on the table.)

Mr. WEICKER submitted an amendment intended to be proposed by him to the bill (S. 2104), supra.

NOTICE OF HEARINGS

AGRICULTURAL RESEARCH PROCEDURES

Mr. ABOUREZK. Mr. President, the Administrative Practice and Procedure Subcommittee of the Judiciary Committee will hold oversight hearings on agricultural research decisionmaking procedures of the Department of Agriculture on October 19 and 20 of this year. The hearing will be concerned with the manner in which the Department sets its priorities for doing and supporting agricultural research. Particular focus will be given whether the Department is giving sufficient attention to small farm research and to research into farming techniques that do not rely on heavy chemical, energy, or capital inputs. Persons wishing to present testimony to the committee should contact the subcommittee staff.

The hearings will be held in room 2228 of the Dirksen Senate Office Building at 9:30 a.m. each day.

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

Mr. McINTYRE. Mr. President, I am pleased to announce that the Subcommittee on Financial Institutions of the Committee on Banking, Housing and Urban Affairs, will hold oversight hearings on October 6 and 7, 1977, on alternative mortgage instruments.

The hearings each day will begin at 10 a.m. and will be held in room 5302, Dirksen Senate Office Building.

Anyone who wishes further information regarding these hearings should contact Mr. William R. Weber, room 5300, Dirksen Senate Office Building, 202–224–7391.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. PROXMIRE. Mr. President, I wish to announce that the Committee on Banking, Housing and Urban Affairs will hold oversight hearings on distressed multifamily housing projects, insured by the Federal Housing Administration under the National Housing Act. The hearings, which were originally scheduled for Thursday, October 13 and Friday October 14, will be held instead on Friday, October 14 and Monday, October 17, 1977. The hearings will take place in room 5302 of the Dirksen Senate Office Building, and will commence at 10 a.m.

ADDITIONAL STATEMENTS

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFL–CIO) ON UNION POLL

Mr. THURMOND. Mr. President, the importance of early and favorable action of S. 274, a bill to bar unions in the military, is amply illustrated by a press release issued recently by the American Federation of Government Employees.

Although the members of AFGE soundly rejected the proposal by the union's management to organize the military, the interest of that union in this goal was not dimmed.

On September 7, 1977, in a press release announcing the union vote, AFGE President Kenneth Blaylock made the following statement:

> The overwhelming numbers of military personnel who have contacted this union for assistance is sufficient evidence that the idea of unionized military will not soon be laid to rest.

Mr. President, other statements in this news release such as "it will do no good for Congress to ban unionization" and "the results of our poll do not indicate a concession to the clamor of anti-union voices" merely stress the need to press forward with my bill, S. 274.

This bill, passed by a 72 to 3 vote in the Senate, is now under consideration in the House.

For the benefit of my House colleagues and others in Congress I ask unanimous consent that the September 7 press release issued by AFGE be printed in the RECORD.

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

AFGE MEMBERSHIP POLL REJECTS MILITARY ORGANIZATION; BLAYLOCK PLEDGES POLICIES WILL REFLECT THAT DECISION

American Federation of Government Employees (AFL–CIO) Local unions have rejected the concept of organizing military personnel into the Federation by a margin of 80 percent against, 20 percent in favor.

The poll was in the form of a mail ballot sent to each one of AFGE's 1,556 Local unions. More than 60 percent of the union's membership was represented by the poll results, which were: 151,582—no (approximately 80 percent of those responding); 38,764—yes (approximately 20 percent of those responding).

The poll was mailed to the chief officer of each Local in May with instructions that the issue be placed before the next available membership meeting of the Local

union. When the membership voted, the results were registered on the ballot and returned to the AFGE National Office. The response of each Local union was weighted by the actual voting membership of the Local union.

The Poll question: "Should the national President of AFGE be directed to commence organizing and representing members of the uniformed military service?"

In announcing the results of the survey, AFGE National President Kenneth T. Blaylock said:

"It is my intention to live by this decision. Press speculation to the contrary, we will not be acting to organize military personnel now, nor at any time in the foreseeable future.

"However, the poll results should not be misconstrued as a rejection of the idea that military personnel need representation. I personally believe that they do. I believe that eroding conditions for military personnel—cutbacks in pay, medical benefits, subsistence and many others—will force military personnel into a more militant posture. The overwhelming numbers of military personnel who have contacted this union for assistance is sufficient evidence that the idea of unionized military will not soon be laid to rest.

"In fact, the rejection vote seems to be based on the perception by AFGE members that we should first organize a larger percentage of the Federal civilian workforce. Along those lines, we have begun a year-long worldwide membership campaign to accommodate that feeling.

"The spinoff of this two and one-half years of debate is that Congress, the Pentagon and the American people have been forced to confront the ugly results of ill-advised austerity programs and neglect of the people—the men and women—who are expected to defend this nation at all costs.

"So too, the military associations, who have for years purported to represent the interests of military personnel, must evaluate the shortcomings of their soft policies and adopt more responsive positions.

"It will do no good for the Congress to ban unionization and proceed headlong ignoring the obvious signals being sent by rank and file military personnel that they will not stand still for cutbacks in pay and benefits. Injustice and inequity generate automatic responses which cannot be outlawed. It makes far more sense to identify the causes of damaged morale and attempt to remedy them.

"Finally, the results of our poll do not indicate a concession to the clamor of anti-union voices who have dominated the decision of the Senate Armed Forces Committee to propose an absolute ban on organization by military personnel. This union is discussing the ramifications of the bill (S. 274) with the American Civil Liberties Union to make certain that such unwarranted legislation, if enacted, will not go unchallenged in the courts."

AFGE represents 725,000 Federal civilian employees.

For further information, contact: Greg Kenefick, Director, Public Relations, 1325 Massachusetts Ave., N.W., Washington, D.C. 20005, (202) 737–8700.

WOMEN ALLOWED TO SERVE AS STRATEGIC MISSILE SILO CREWS

Mr. PROXMIRE. Mr. President, I would like to recognize and praise the belated Air Force decision to allow women to serve as strategic missile launch crews. It is long overdue and much remains to be accomplished before discrimination barriers are eliminated for women in the military, but it is a solid step forward.

On July 22 the Air Force testified before the Subcommittee on Priorities and Economy in Government of the Joint Economic Committee that women were precluded from serving as missile launch control officers because it was a "combat" job. They said that the military leaders and Congress were "uncomfortable about imposing this responsibility on women."

What nonsense. It was a simple case of discrimination, and they knew it. At least they had the good sense to change their minds.

The Air Force informs me that 15 women officers and 25 enlisted women will start training for Titan II ICBM missile silo duty early in 1978. The officers will undergo a 19-week course of instruction, and the enlisted women will have 23 weeks of training.

Eventually they will be assigned to Titan II sites at Davis-Monthan Air Force Base, Ariz.; Little Rock Air Force Base, Ark.; and McConnell Air Force Base, Kans. They will serve side by side with men in these units.

The decision was made by the Secretary of the Air Force and the Chief of Staff of the Air Force.

My advice to the Air Force is "Don't stop there." Look for other job classifications that can be opened to women. Ask for repeal of the legislation that prohibits women from flying or navigating aircraft that might be used in combat. Open up all Air Force jobs on the basis of individual qualifications and who can accomplish the task—not sex. And start promoting women on an equal basis with men.

The Navy has already requested changes in legislation to allow women to serve on board combat ships and in combat aircraft during peacetime. The Air Force should seek the same relief.

And the Army, which has no legal barriers to women serving in any capacity, should scrap their outdated "policy regulation" and open up all jobs to women who want to serve.

HAROLD LINDSELL OF "CHRISTIANITY TODAY" REPORTS ASTONISHING PROGRESS IN TAIWAN

Mr. GOLDWATER. Mr. President, I often have pointed to the relationship between our Nation's long-standing commitment to human rights around the globe and our resolve to maintain diplomatic and defense ties with the Republic of China on Taiwan. Moreover, I have time and again reminded my fellow Americans of the moral posture involved in keeping our friendship with the free Chinese on Taiwan in view of their open enjoyment of religious rights compared with the total annihilation of religious freedom on mainland China.

The Chinese Communists have transformed churches into stables and government meeting halls. They have banned religious schools and hospitals. They bar entry to missionaries and prohibit religious broadcasts.

Yet, off the southeastern coast of the Chinese mainland, on Taiwan and the other islands governed by the Republic of China, freedom of religion is flourishing. For example, more than 2,500 Buddhist temples are in active use and are attended by nearly 7,500 monks and nuns. There is a mosque in Taiwan used by some 20,000 followers of Islam.

In addition, there are over 800 Catholic churches with a membership of nearly 300,000 persons and 2,000 Protestant churches with more than 500,000 members. Christian religions operate 20 theological seminaries, several Bible schools, 35 hospitals, 3 universities, 7 colleges. and at least 35 high schools.

How our Nation's leaders could ever consider the possibility of abandoning our diplomatic and defense relations with a government that guarantees and provides religious freedom in practice for a government that is openly atheistic and destructive of religious worship is bevond me. Yet, from time to time, it is speculated that this is exactly what some officials in our Government are considering.

Mr. President, in this connection, I have recently read a thoughtful report on conditions in Taiwan by the editor of one of this country's best known religious magazines, "Christianity Today." The article is by Dr. Harold Lindsell, who visited Taiwan for almost 4 weeks of intensive investigation this summer.

His article makes the point that it would contradict the most fundamental of God's laws for a nation of religious people, as the United States is, to break their word to another people. Thus, Dr. Lindsell urges President Jimmy Carter "to issue a resounding endorsement" of our relations with the Republic of China and the rejection of the immoral and unethical proposal that we break relations with Taiwan.

Mr. President, I believe it would well serve each Member of Congress to read this excellent report by an objective and truthful observer who had freedom to journey wherever he wished in Taiwan, and so I ask unanimous consent that the article by Harold Lindsell be printed in the RECORD.

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

[From Christianity Today, Aug. 26, 1977]

HAROLD LINDSELL REPORTS FROM TAIWAN

I recently returned from a fascinating and instructive trip to Taiwan, the Chinese bastion of freedom in the Far East. After almost four weeks of intensive investigation I have formed impressions and had opinions solidified about the state of affairs *visa a vis* the Republic of China in relation to Red China, to the United States, and its position in the struggle for freedom.

Taiwan is certainly not a paradise. It has slums, its educational opportunities are limited, its people work long hours, it has a lower standard of living than the industrial nations of the world, and its medical facilities appear sub-standard when compared with the United States. Sanitation facilities are somewhat primitive in suburban areas and the restrooms at some of the bus stops resemble those of Turkey. But the same things could be said about many other nations around the world. The media in the United States have treated Taiwan unfairly and it's time someone pointed out the positive and constructive aspects of a small na-

tion that has made astonishing progress in a few decades.

During my journey I talked to various groups in Taiwan. Just about all of them said the same things. I spoke to Taiwanese and mainlander pastors, to university students (Christian and non-Christian), to missionaries, to representatives of the media from the United States including Time, the New York Times, NBC, and the Wall Street Journal, and to government leaders. I talked with a staff member from Senator Goldwater's office who did research for Mr. Goldwater's strong statement to the press about the responsibility of the United States to the Republic of China (ROC).

The picture I saw is quite different from that commonly bruited about by religious agencies such as the World Council of Churches, which in its Fifth Assembly in Nairobi spanked Taiwan for lack of human freedoms, and the United Presbyterian Church whose General Assembly adopted a resolution that included an erroneous statement about the lack of freedoms in Taiwan.

The ROC constitution (Religion Article 13) guarantees religious freedom. Unlike a similar guarantee in the Soviet constitution (and none in the constitution of Red China), the people of Taiwan are genuinely free from religious oppression. There are more than eight thousand churches and temples in Taiwan, including 1,246 Buddhist and 3,746 Taoist places of worship. There are 832 Catholic churches and 2,102 Protestant houses of worship. There is a church or temple for every 2,000 people. Billy Graham recently conducted an effective evangelistic crusade in Taiwan. This he could not do in Red China.

On an island slightly larger than New Jersey, there is a population of more than sixteen million people of whom three million came from mainland China since World War II. In 1975 Taiwan ranked ninth in the world in the sale of Bibles. Last year more than six million Bibles were sold. There are 1,000 missionaries representing thirty different nationalities. I met and talked with a Finnish physician and his wife. And one acquaintance landed up in a hospital that had been built by World Vision and is providing high grade medical care not far from Sun Moon Lake, a spectacular resort area on the small island.

Not only do the ROC people have religious freedom; they also enjoy freedom of speech. It is not unlimited freedom of speech anymore than Americans have such freedom. Radio and TV broadcasts do not feature those who might advocate the overthrow of the government. But neither do the networks in America. I talked with two top men who control radio and television outlets that cover the island. They started from scratch and under free enterprise have built media outlets with approximately two thousand employees. There are virtually no houses in Taiwan that do not have television. Television aerials, in fact, are omnipresent and their existence makes it clear that electricity is to be found everywhere.

Taiwan has a mixed economic situation in which privately owned shops abound. And private industry is found everywhere. One of the truly revolutionary developments on Taiwan involved land redistribution. Interesting land reform was brought about without revolution. Approximately 38 per cent of the economic activity of Taiwan is devoted to agriculture. The farmers own their own land and work that land intensively; they produce three rice crops a year. Mechanization is gathering momentum, though the farmers do back-breaking work. Latin America would do well to follow the pattern set by Taiwan.

The island has virtually no industrial resources. Iron and coke, as well as tin, copper, and aluminium must be imported. The ROC has lifted itself up by its own boot straps and produced an industrial society from what was almost exclusively an agrarian civilization. One of the world's shipyards has been constructed. I saw a 445,000-ton tanker that had just come down the ways. The keel for another one of the same size has been laid. I visited a major steel plant equal to anything found in the West. I visited an export center where I saw the wide variety of products manufactured for sale abroad. The ROC is fiscally prudent and enjoys a favorable balance of trade. One of the great dangers faced by this tiny nation is the possibility of economic strangulation if its sources of raw materials are cut off.

Socially, Taiwan is a mobile nation. Its main means of transportation include a good railroad system (which operates on time), a network of buses, and what seems to Westerners an almost unlimited number of bicycles and motorcycles. Automobiles are expensive and are heavily taxed. But motorcycles are the choice of the masses. I saw hundreds of motorcycles loaded with mom, pop, and/or a young child. Taipei, Kaohsiung and Taichung are the three major urban cities with a combined population of almost four million inhabitants. Air pollution is found in these cities as in any other modern metropolis. The temperature in the summertime rises above ninety degrees almost every day and the humidity keeps pace with the thermometer. The houses are built to let the breezes blow through, and air conditioning among the masses is limited.

Citizens and foreigners are relatively unrestricted in their travel. There are no closed areas except for military installations. I was free to roam as I pleased—by air, by bus, by railroad, or on foot. The ever-present language barrier exists for the foreigner. The written language is a baffler and makes most Westerners distrait. This is also true for the Chinese themselves. Mandarin and Taiwanese are the two major languages. I was interpreted in either of the two languages depending on the groups to which I spoke. I preached in the largest church on the island on a very hot day. It was a Taiwanese language group. I spoke on two different nights to enthusiastic audiences who sweltered under the heat. When the invitation was given at one of these two meetings a dozen people came forward; most of them were young. In a college-age conference a number of non-Christians made decisions for Christ. In Taipei, Dr. Paul Han, the president of a medical school (they have five on the island), interpreted for me at a Sunday worship service. He has a Ph.D. and an M.B.; he worked under and with Dr. John Brobeck, a Wheaton College alumnus who teaches at the University of Pennsylvania School of Medicine. Dr. Han is a second-generation believer whose father is a member of the Gideons. He has an excellent understanding of the Bible. The family fled from mainland China when the communists took over.

The political aspect of Taiwan's life is its most complicated problem and its persistent nightmare. This is true internally as well as externally. Externally its freedom is at stake, and it wants to wrest control of mainland China from the hands of its communist foes. The communist menace is fully understood by the ROC's governing officials and their hatred of the system is unalloyed. The perennial threat of an invasion of Taiwan by the communists exists and one military spokesman declared that if the communists were willing to pay a frightful price in the loss of life an invasion might occur.

Internally the problem of national democratic elections persists. President Chiang Kai-Shek brought his office with him when he fled the mainland and held it until his death. National elections have not been held because to do so without participation by the mainland Chinese would contradict the foremost ROC claim. The government based on Taiwan claims to be the only legal government of *all* China. The situation for local government is different: most of the mayors of the cities, including the three largest, are native Taiwanese. A few Taiwanese nationalists make much of this difficulty and complain abroad about mainlander rule. But most Taiwanese seem to accept the present situation. Increasingly the mainlanders are elevating Taiwanese into the national government; obviously it is desirable that this trend continue.

While I was in Taiwan two important events took place. The first was the speech given by Secretary of State Cyrus Vance, a speech that alarmed the government and brought forth a spate of statements designed to keep the Carter administration from deserting Taiwan as the U.S. pursues normalization of relations with the People's Republic of China. Vance's failure to give any assurances to the ROC even as he opened the door wide to "normalization of relations" with Red China could only be interpreted as a drastic change in policy. The second event was the desertion of the MIG 19 jet pilot who brought his plane to Taiwan amid the plaudits of millions. It gave the nation a psychological shot in the arm at a time when the Vance speech brought dismay and an impending sense of isolation.

The ROC officials seem to be genuinely puzzled by Jimmy Carter. From their perception of America's role in the world they see no possible gain for the nation to break diplomatic relations with the ROC and establish them with Red China. They think it incredible that Red China should make demands that the United States must first fulfill if diplomatic relations are to be established. Rather, they feel the United States should set up conditions that the Red Chinese should meet, not the least of which is to grant the people human rights, religious and political freedom. Some high officials expressed dismay about Mr. Carter's policy for some very specific reasons.

Mr. Carter refused to grant an audience to Ambassador Shen in Washington despite a request to speak face to face with the President. The ROC takes this refusal to mean that Carter does not wish to hear both sides of the story and without the ROC's story they think he is in no position to make a fair decision. Moreover, they feel that this approach is an inconsistent application of his Christian principles. One official, who has a Ph. D. from the United States, went even further. He expressed how unreasonable it seems to him that Mr. Carter should excoriate the Soviet Union on human rights while he has never said a word about the absence of human as well as religious rights on mainland China. He feels that this failure casts doubt on the President's Christian profession. He said America's enemies seem to get preferential treatment over America's friends. The implication was plain—if you assault America and write the worst things about it and demean it as an enemy you get better treatment than if you act as its friend.

The ROC sincerely believes that the United States has a treaty with it that can be broken only at great loss to the United States. The pledged word of America would then mean less and less to other nations with whom it has treaties. They regard their treaty with the United States as sacrosanct and for a Christian to abrogate it would be eminently unfair from Mr. Carter's own Christian perspective. Moreover, they believe normalization of relations with Red China will desta-

bilize the Far Eastern situation whereas the status quo will at least prevent aggression in the area. They believe the Japanese will probably obtain nuclear arms if the United States breaches its treaty with Taiwan. And they do not think normalization of relations with mainland China will help the United States in its relations with the Soviet Union. They know the Red Chinese hate the Russians and hotly dispute the ownership of vast tracts of land they share as border neighbors. And while Taiwan has no use for the Russions, it is theoretically conceivab'e that if the United States were to break diplomatic relations with them Taiwan might be forced into some kind of rapprochement with the Soviets.

The ROC people believe that they are true representatives of the free world and particularly of free Asia. Certainly they have shown the world and Red China what can be done by a hardworking, energetic people who feel themselves to be politically, economically, and religiously free, and who are willing to suffer and die for their freedom. Neither Mr. Carter nor the American people should for one moment suppose that Taiwan will capitulate or let down its guard. The ROC will endure any hardships and make any sacrifices necessary to maintain its independence and keep its freedoms. The ROC is a militant nation and the people in high places make clear they are at war with mainland China and want to resume control of it as soon as possible.

Taiwan wants no part of two Chinas any more than the Red Chinese want it. Both Red China and the ROC claim to be the real government of the whole of China. There is little sympathy in Taiwan for United States recognition of both Chinas as in the case of West and East Germany. Since the People's Republic of China is a de facto government this fact does not seem to alleviate a sort of intransigence when it comes to the two Chinas' situation from Taiwan's standpoint.

Some Taiwan officials think Mr. Carter is well meaning but not fully instructed on international matters. They hope he will see the dangers of communism more clearly and keep the ROC as a linch pin in the Far Eastern policy of the nation as it finds itself facing the worldwide communist threat to all democracies. If the United States were to break relations with Taiwan and acknowledge the People's Republic of China as the *de jure* and only real government of all China it would create a situation that could have catastrophic consequences. If mainland China were to invade Taiwan it would be virtually impossible for the United States to help Taiwan. It would be an internal Chinese affair in which aid to Taiwan would be considered an act of war against mainland China. And it is easy to imagine what the Third World countries would have to say about Yankee imperialism.

I think the Taiwanese have a good case. I think Senator Goldwater expressed the sentiments of the American people when he recently argued that the United States must keep its treaty agreements with the ROC. We can be sure that if Taiwan goes down the rest of the Far East likely will go down as well. And the Japanese situation will be compromised almost beyond repair. If the Christian faith has any part in molding foreign policy the least it must do is to create the understanding that morality and ethics are essential components of any national policy. It must also make clear that nations that break their word shall in their turn be broken by God's natural laws and their impartial application by the Supreme Ruler of the universe.

It will be a sad day if President Carter carries out what seems to have been implied in Mr. Vance's speech. The best thing he can do for the nation and for his administration is to issue a resounding endorsement of the existing Taiwanese policy that goes back several decades and has been recognized by Democrats and Republicans alike, and has proved to be a successful foil to communist desires to take over all of the Far East.

PROFESSOR THUROW ON THE ECONOMY

Mr. McGOVERN. Mr. President, it is becoming increasingly clear that the traditional techniques for dampening inflationary pressures—namely, tight monetary policy and slackness in the economy—are not having their desired impact. The rate of inflation continues to hover in the 6-percent range, while unemployment remains in excess of 7 percent. A credible explanation for this anomaly is offered by Prof. Lester C. Thurow in the September 12 issue of the Wall Street Journal. Mr. Thurow, a professor of economics and management at Massachusetts Institute of Technology, cogently argues that the resistance of inflation to traditional remedies is due to indexing which is spreading throughout our economy. Mr. Thurow correctly points out that while indexing prevents the rate of inflation from falling, it does not prevent it from rising. Then what can be done? Of three possible policy options, Mr. Thurow sees only one as viable: an income policy. While admitting that such a policy is not particularly attractive, Professor Thurow correctly concludes—

To maintain the current level of idle resources in the face of their demonstrated impotence to reduce the rate of inflation is simply an exercise in national masochism.

I heartily draw my colleagues' attention to Mr. Thurow's article and ask unanimous consent that it be printed in the RECORD.

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

OPTIONS FOR DEALING WITH INFLATION

(By Lester C. Thurow)

Despite the quick denials, it is quite likely that incomes policies are being discussed in the back rooms of the Carter administration. Incomes policies are being discussed for a very simple reason. Tight monetary and fiscal policies simply are not reducing the U.S. rate of inflation.

After the first impacts of the price shocks administered by the OPEC oil cartel, the dollar devaluation and the weather-induced surge in grain prices had passed through the economy, the U.S. rate of inflation quickly fell from the double digit rates of 1974 to the 6% range in early 1975. Since then, however, there has been little or no change in the rate of inflation.

Over that 2½-year period, conventional macroeconomic tools have been vigorously used to reduce inflation. The money supply (M1) has grown less than one-half as fast as the nominal GNP. Long-term corporate bond rates have subsided only slightly from 1974 credit-crunch levels. The full employment surplus of federal, state and local governments (the difference between revenue expenditures if the unemployment rate had been only 4.9%) has been large, ranging from $15 billion to $31 billion.

It's true, of course, that the federal government in fact has continued to run a large deficit and that other measures of the money supply continue to show substantial increases by historical standards. And doubtless this newspaper's editorial writers, among others, would argue that monetary and fiscal policies simply haven't been tight enough.

Yet the fact remains that we already have been given a stiff dose of the old time religion—and that the chief effect has been to create a huge reserve of idle productive resources without making a dent in inflation. Unemployment has ranged between 7% and 9%. Over the same period of time, from 17% to 29% of the manufacturing capacity has been idle, according to the Federal Reserve's index of capacity utilization.

Since one percentage point of unemployment represents about $60 billion in output lost annually, a very expensive war against inflation is being fought with little or no payoff. Nor is there any sign of the "light at the end of the tunnel." If one looks at forecasts, the optimists predict the rate of inflation will remain in the 6% range for the rest of the decade (no one predicts much further into the future), and the pessimists predict an acceleration of inflation. Almost no one is predicting that the current war against inflation will be won. Why?

INDEXING PHENOMENON

If one seriously asks why idle resources are not reducing the rate of inflation, the answer is not hard to find. It lies in the phenomenon of "indexing." Since 1974 and the scare of double-digit inflation, labor, business and government have sought to protect themselves from the uncertainties of future inflation by adding cost of living indexes to all their future commitments. By putting cost of living escalators in all their price and wage contracts, labor and business prevent themselves from being hurt by future increases in the rate of inflation. Adding cost of living escalators to private contracts is a perfectly rational response to inflation on the part of both business and labor, but it fundamentally alters the nature of the economy and the effectiveness of monetary and fiscal policies.

This is most clearly seen if we imagine an economy that has been legally indexed. In an indexed economy all contracts are signed in current dollars, but every contract also contains a legally mandated cost of living clause. If the cost of living goes up 15% from the time the contract is signed until the product or labor is delivered, then the buyer or the employer must pay the amount agreed upon plus 15%. The basic objection to legal indexation is that it prevents monetary or fiscal policies from reducing the rate of inflation.

The reasons for this are easy to see. Imagine that the inflation rate has been running at 6% per year. If the inflation rate of the past year was 6%, then every price and wage will go up by 6% this year due to the legally mandated price and wage increases. But the legally mandated increases lead to a 6% rate of inflation this year. Hence with escalators the rate of increase will also be 6% next year. Tight monetary and fiscal policies can reduce demand and increase the quantity of idle resources, but they cannot reduce the rate of inflation. With a legally indexed economy, only external events (such as an appreciation in the exchange rate or a reduction in the price of oil or grain on international markets) can reduce the rate of inflation.

What is even more troublesome is that indexing leads to an upward ratchet effect on the inflation rate. Indexing prevents the rate of inflation from falling, but it does not prevent the rate of inflation from rising. Suppose some policy—let's say President Carter's proposal to raise the price of domes-

tic energy to world levels—raises the rate of inflation to 7%. Once a 7% rate happens indexing will prevent it from falling. As a result, every piece of bad luck or price raising policy leads to higher and higher rates of inflation.

The U.S. economy is not 100% legally indexed, but it has rapidly become heavily indexed since 1974 with the introduction of *de jure* and *de facto* escalators by government, industry, and labor. Cost of living escalators are increasingly being built into government programs and wages.

Nonunion workers don't have legal cost of living escalators, but companies that provide cost of living protection to their unionized workers almost always grant the same increases to their nonunionized workers. Similarly, nonunion employers in fact index their wages to prevent their best employees from gradually leaving for employers who do index and to keep labor unions out of their plants.

While indexing is growing because of private actions rather than formal government actions, the effect is exactly the same as if the government had legally installed indexing. Monetary and fiscal policies no longer have any capacity to lower the rate of inflation. Because of indexing the 6% rate of inflation has become a structural problem that can be solved only by structural means.

THREE OPTIONS

Basically there are three policy options. Policymakers could attempt to crack the current system of private indexation by creating truly enormous quantities of idle resoures. If policymakers were willing to re-create the Great Depression they might be able to destroy the current system of private indexing, but this would require an enormous price in terms of lost output and human suffering. The second option is simply to sit back and admit that there is nothing that can be done about the inflation rate. Since the economy is almost completely indexed informally, the indexing might as well be made formal to cover those small parts of the economy that are not now protected by cost of living clauses. After all, with indexing inflation does not hurt anyone—or so the argument goes.

If neither of these solutions is acceptable, the only remaining solution is "incomes policies." What the incomes policies have to do is clear. How to do it is much less clear. Assume an indexed economy with a 6% inflation rate. Inflation will go down only if everyone agrees to a cost of living raise less than the previous year's rate of inflation. If everyone agrees to raise his or her wage or price by only 4%, even though inflation has been running at a 6% rate, then this year's inflation rate can be reduced to 4% instead of 6%. But the essence of such a policy is an economy where people are willing to accept something less than the full protection afforded by their escalator clauses.

The trick, however, is not what to do, but how to get the agreement that wages and prices go up only 4% rather than 6%. This agreement is the essence of any incomes policy, but with our current system of private indexing such an agreement is virtually impossible to get. Converting the current system into a legally indexed system would give the government a handle to reduce the allowable index adjustment below the previous year's rate of inflation, but enforcing such a reduced escalator would be equivalent to wage and price controls.

Unfortunately, in an indexed economy there are no other solutions. None of the three alternatives is particularly attractive, but one of the three, or some combination of the three, must be chosen. Our current choice is to tolerate a level of idle resources which is high enough to cause enormous losses in output and wasted human opportunities but not high enough to crack indexing and lower the inflation rate. To maintain the current level of idle resources in the face of their demonstrated impotence to reduce the rate of inflation is simply an exercise in national masochism.

LAW AND THE REAL PUBLIC INTEREST

Mr. GARN. Mr. President, since I entered public life, I have heard a great deal about "the public interest" and far more than I care to from those who claim to know what it is, and worse yet, to speak for it. Indeed, a great deal of the time spent in taking testimony before the Banking Committee is spent in listening to those who claim to be anointed to translate the public will into legislation for our benefit.

Of course, the genius of this country, Mr. President, lies in the fact that its founders recognized the impossibility of any one person discovering the "popular will," and our Government was designed to act as a broker, or harmonizer, of the thousands of special interests that make up our country.

We are all consumers, and thus it is in our interest to have low cost, high quality goods. At the same time, we are all taxpayers, and if governmental regulation designed to produce those low cost, high quality goods costs more than the goods are worth, who can say that the public interest is served? At a further remove, we are all wage-earners, and the goal of low-cost goods conflicts with the maximum salaries we would like to have. Virtually all of us are stockholders, either directly, or through the pension funds we contribute to. The goal of maximum return on our investment conflicts again with the goal of low costs.

These and many more conflicts exist in a free society. We can eliminate them, but only at the cost of our freedoms, a cost that I, for one, am unwilling to pay The genius of the market system is that it permits the resolution of these conflicts in ways of the greatest benefit to society as a whole. Thus the "public interest," whatever it is, can be said to be served. But I would not be egotistical enough to say that I know what it is. Certainly there are "externalities," effects of the markets operation which impose costs on innocent third parties, and these must be mitigated through governmental action. Such are the effects of the pollution that result from treating air, water, and land as "free goods." In mitigating this pollution, government must play a role, though I would argue that even there the market mechanism can play a greater role than it traditionally has in our history.

But to return to those who claim to speak for the public interest. By and large, these individuals, the "consumer advocates," "public service lawvers," and so on, do not represent the public. They have stood for no election, have no mandate from society, and represent, in fact, a narrow-minded group, the intellectuals of the land who think they know better than the people themselves what is good for the Nation. For too long now, they have been unchallenged in their assertions. They have been free to enter lawsuits on the side of the trees, and consumer disputes on the side of "motherhood." The results have not been an unmixed blessing. In many cases costs have been driven up, and the range of choices available to consumers have been restricted. Lawsuits against the Government have forced the Government to act in cases where the Congress did not want it to go, and where bureaucracy knew it had no business.

A few years ago, there was a heartening development. The founding of the National Legal Center in the Public Interest indicated that the monopoly of the so-called public service lawyers was about to be broken. The National Legal Center in the Public Interest, despite its title, does not know what the public interest is any more than Ralph Nader does. Its organizers and lawyers do know that there is a broader public interest than that suspected by Ralph Nader. They know that the public is not served by bigger government, by higher costs imposed by unwise and costly business practices unrelated to the safety and protection of the worker or the environment. While the NLCPI is not directly connected with the Pacific Legal Foundation, though there is cooperation between the two, and they have similar aims.

The purpose of my taking this time today is to call to the attention of my colleagues a conference on the philosophical issues underlying the formation of the NLCPI. The center is sponsoring this weekend a national conference on "The Role of the Judiciary in a Democratic Society." It will be held at the Georgetown University Law Center Friday and Saturday of this week. Let me list a few of the participants, and I think the Senate will see the importance of this conference. There will be presentations from Prof. Nathan Glazer, Department of Sociology of Harvard University; Prof. Ralph Winter, Yale University School of Law; Robert Bork, former Solicitor General of the United States; Prof. Walter Berns, Department of Political Science, University of Toronto; the Honorable Charles Renfrew, U.S. district judge for the northern district of California; Hon. Wilbur Pell, U.S. Court of Appeals, Seventh Circuit; Hon. Malcolm Wilkey, U.S. Court of Appeals for the District of Columbia; Hon. Richard P. Conaboy, judge of the court of common pleas, Lackawanna County, Pa. and Hon. Myron H. Bright, U.S. Court of Appeals for the Eighth Circuit.

It is especially appropriate that this conference be called at this time, when the unelected and potentially unrepresentative nature of the Federal judiciary is being examined as never before in the history of the Nation.

Throughout most of our history the people as a whole have been content to ignore the fundamentally undemocratic nature of our Federal judicial system. That is because until very recently, the

judiciary has exercised restraint. It has refused to interject itself into disputes which are fundamentally political, where the efforts of a court to impose a solution of one kind or another would have to provoke attacks on its actions.

Thus we see today a nation which decisively rejects the ideas of busing for school integration, and yet children are bused; we see a nation which wants prayer in its schools, and yet prayers are forbidden; we see a nation which wants filth and perversion taken off its newsstands, and yet anything goes; the Nation rejects abortion on demand, yet the killing goes on. In these and dozens of other instances there is strong evidence that the Federal judiciary is out of step with the majority in the country, and out of step with those that the majority has elected to its legislatures. In light of that lack of agreement, it is being brought home to people that the Federal judiciary is unelected. It is accountable to no one; it has a life tenure.

The result is predictable: Bills in the Legislature restricting the scope of the courts, limiting the tenure of judges, providing for periodic reconfirmation, or for review of Federal decisions by panels of State judges. We can expect more.

In light of these developments, the NLCPI conference is especially timely, and I think Senators and their staffs would be well advised to attend it, and to participate in the discussions it will generate. If we do not now give some attention to this controversy, we will shortly find that it has passed us by while we were wondering what has happened.

Mr. President, I ask unanimous consent that a press release issued by the National Legal Center for the Public Interest be printed in the RECORD, along with the complete program for the conference.

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

PRESS RELEASE

WASHINGTON, D.C., September 26.—Dr. Ernest Van Den Haag, the noted author, educator and sociologist, will be the feature speaker at the Friday evening dinner during the two-day conference on the "The Role of the Judiciary In A Democratic Society" on September 30–October 1 in Washington, D.C.

Sponsored by the National Legal Center for the Public Interest, the Conference is the first ever convened to examine the unique role of the judiciary in the American political system. Outstanding jurists, academicians, journalists, lawyers and scholars will be in attendance.

Dr. Van Den Haag will address participants on the topic: "The Judiciary and the Protection of Society."

Dr. Van Den Haag has been a teacher and lecturer at City College and Brooklyn College in New York; at the Universities of Colorado and Minnesota. He has lectured at the University of California-Berkeley, Columbia, Yale and Harvard. He is currently Adjunct Professor of Social Philosophy at New York University and Visiting Professor of Political Science at Queens College of the City University of New York.

A well-known author, Dr. Van Den Haag has written in a wide variety of fields, and his works include: "The Fabric of Society" (1957); "Passion and Social Constraint" (1963); "Political Violence and Civil Disobedience" (1972).

The NLCPI Conference is at the Georgetown University Law Center, 600 New Jersey Ave., NW.

CONFERENCE SCHEDULE

Friday, September 30, 1977

REGISTRATION

Welcoming Remarks: J. Robert Fluor, Chairman, NLCPI; Chairman, Fluor Corporation.

Introduction: Leonard J. Theberge, President, NLCPI.

Panel I

Moderator: Charles F. Barber, Chairman, ASARCO, Incorporated.

Speaker: Professor Walter Berns, Department of Political Science, University of Toronto, "The Least Dangerous Branch, But Only If . . ."

Commentators: Robert Goldwin, American Enterprise Institute; Rita Hauser, Esquire, Stroock & Stroock & Lavan, New York; Professor Philip Kurland, University of Chicago School of Law; and Hon. Charles Renfrew, United States District Court, Northern District of California.

LUNCH

Panel II

Moderator: Hon. Wilbur F. Pell, Jr., U.S. Court of Appeals, Seventh Circuit.

Speakers: Professor Nathan Glazer, Department of Sociology, Harvard University, "The Judiciary and Social Policy"; Professor Ralph Winter, Yale University School of Law. "The Growth of Judicial Power."

Commentators: Professor Kent Greenawalt, Columbia University School of Law, Max M. Kampelman, Esquire, Fried, Frank Harris, Shriver & Kampelman, Washington, D.C.; Professor Herbert Storing, Department of Political Science, University of Chicago; Professor Robert G Dixon, Jr., Washington University School of Law.

OPEN DISCUSSION

Reception—Dinner

Dinner Speaker: Dr. Ernest Van Der Haag.

Saturday, October 1, 1977

Panel III

Moderator: Hon. Malcolm Wilkey, U.S. Court of Appeals, District of Columbia.

Speakers: John W. Finley, Jr., Esquire, Brashich & Finley, New York, "The Courts and Affirmative Action"; Michael Uhlmann, Esquire, former Assistant Attorney General, U.S. Department of Justice, "The Judiciary and Political Representation."

Commentators: Robert Bork, Esquire, American Enterprise Institute, former U.S. Solicitor General; Professor Steven Schlesinger, Department of Political Science, Rutgers University; Professor Jan Vetter, University of California, Berkeley School of Law.

LUNCH

Panel IV

Moderator: Frank H. Morison, Esquire, Holland and Hart, Denver.

Speakers: Edith Efron, author and columnist, "The Law and Product Bans"; L. Manning Muntzing, Esquire, Doub, Purcell, Muntzing & Hansen, Washington, D.C., "The Courts and Energy Policy"; Arch Puddington, Executive Director, League for Industrial Democracy, "The Economic Impact of Recent Judicial Decisions."

Commentators: James G. O'Hara(Esquire, Patton, Boggs & Blow, Washington, D.C.; Suzanne Weaver, Editorial Writer, The Wall Street Journal; Hon. Myron H. Bright, U.S. Court of Appeals, Eighth District.

NATIONAL WATER POLICY

Mr. McGOVERN. Mr. President, in his environmental message of May 23, the President called for the creation of a "national water resources management policy."

To accomplish that goal, the Water Resources Council, the Office of Management and Budget and the Council on Environmental Quality were directed to review existing water resource policy and recommend reforms within 6 months.

Field hearings have been held and the Policy Committee of the Water Resources Council will shortly begin their deliberations to finalize the recommendations to be submitted to the President.

Issue and option papers on the dimensions of the President's proposal appeared in the Federal Register of July 15 and July 25, 1977. In my view there has been insufficient time for public comment on what realistically amounts to a major change in national water policy.

Hopefully, through the Congress next year there will be a full and fair opportunity for everyone to be heard.

I believe it is important that every citizen who is concerned on water development and policy participate in this national discussion.

Mr. President, I ask unanimous consent that my statement to the Water Resources Council be printed in the RECORD.

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

STATEMENT OF SENATOR GEORGE MCGOVERN

I am pleased to have this opportunity to respond to the invitation of the Water Resources Council—acting in concert with the Office of Management and Budget and the Council on Environmental Quality—to provide comments under the Presidential directive to develop a "national water resources management policy".

My comments, while submitted directly to WRC, should be made a part of the record submitted by the Missouri River Basin Commission States and principally involve water related issues that are present in the MRBC area.

It has been instructive to note the "Issue and Option Papers" appearing in the Federal Register of July 15th and 25th, 1977, as well as the various public comments by the President, Secretary of Interior and others on the basic challenge for water resource planning.

While I welcome this Administration's strong focus on revision of our National water policy, a case can be made that the timeframe for these hearings and comment from the public and private sectors is unnecessarily abbreviated, allowing insufficient time for studied response. I believe, however, this problem can be overcome once the President presents his proposals, based on this review, to the Congress for a more thorough review. Organizations in both the public and private sector should have an additional opportunity for comment on the final proposals through the Congressional hearing process—and through their own Members of Congress.

If similar, more studied local reviews take place upon Congressional initiative, I believe the Congress can present the President with the full-range of comment I believe he wants and his proposals need. I am confident that together the President and the Congress can carry out the great task this Administration has begun. It is a welcome and overdue task we are beginning together.

It is logical to require that plans for the use of water resources be prepared, kept up-to-date and implemented. However, I find

three primary faults in Federal planning to date. First, they are excessively detailed and rigid. As a result we have a second problem, the plans are either not implemented or are put into action so slowly that they are obsolete by the time the plans come off the shelf. Finally, the agencies involved are often at odds with one another in their approaches to particular plans. It becomes very difficult to resolve these problems and differences on the local level and to implement a particular plan. Hopefully, a comprehensive approach to water resource management to meet today's and future standards will help overcome these problems.

To avoid these difficulties, the longer range comprehensive water use policy should focus to a maximum degree on administrative policies and intergovernmental procedures, including guidelines on the sharing of costs; on the general shape of planned programs; and on a "bank" of proposed alternative actions. This includes structural management measures, which may be drawn upon as needs arise. Such a broad flexible plan should be accompanied by a specific "program" drawn up for a short-term period of years, stating specifics of the projects and measures to be undertaken during that period and in approximate time priority. Such a program could well be reviewed annually.

There will still be an on-going requirement for a substantive amount of conceptual development, organization and education in both the public and private sector. In general, the public is still regrettably uninformed on the various essential aspects of water resources development and water utilization.

The Executive agencies involved in carrying out water resource development are fragmented in their responsibilities. In working with my constituents, it is all we can do to assist them in winding their way through the maze involved in attempting to implement water resource developments, no matter what their scope.

It is incumbent upon these same Executive agencies to work more cooperatively with one another, first, and then to conduct closer liaison not only with Congress, but with states, local people, and regional entities as well. Whether the agencies are the actual architects of a particular type of development or agencies which will affect those developments, they must convey information to those affected in order for them to evolve local developments efficiently and comprehensively.

With these factors in mind, I would like to comment on the five areas surfaced by WRC which will serve as the basis for the Policy Committee's review:

1. *Revision of Water Resources Planning and Evaluation Criteria and Procedures:*

The growth of the western United States has been predicated to a large degree on the availability of water. Concentrations of population have not, however, necessarily developed in direct adjacency to natural river courses or subsurface water resources. It has been the practice in the past—and the Colorado River is perhaps a prime national example—to move water to the people, rather than to encourage the people to settle near the water.

The structural response to these water requirements is everywhere in evidence in the far West; based on early plans and development shortly after the turn of the century.

It is certainly true, that the impoundment, channelization and transfer of water does not increase the net total of water available, but it does bring it to the point of need, rather than permitting it to flow unused to its terminal or merger point.

It is not necessary here to recite the complex array of economic, political, social, and related pressures that have been brought to bear on water development; but it is sufficient to note that it has been a complicated procedure at best that has not developed in accordance with any realization that water would be in short supply.

Unlike specific energy sources where some alternatives may be available, there is no substitute for water.

In order to meet these perceived needs for water transferral, the U.S. Army Corps of Engineers and the Bureau of Reclamation, in cooperation with the Congress, evolved a system of study and Congressional review of various developmental opportunities. As a criteria for determining the "merit" of a given proposal, the benefit/cost (b/c) ratio was conceived. The b/c ratio standard, however, is not a precise measurement and is susceptible to unwarranted tinkering by assigning a greater weight to secondary values or peripheral benefits when the agency wants to construct a given project, or the downgrading of primary benefits in relation to cost when the agency is disposed against a particular water development proposal. This has created a substantial inter-play between and among Federal agencies, and Congress, state and local interest, environmental groups and others on individual projects. The b/c ratio standard, if continued, needs to be substantively revised with specific guidelines and criteria than can be universally applied and checked by others than those who initiate and promote a specific project.

In light of this Administration's review of water projects, the failure of Teton Dam, and the influence of the environmental movement's activism, I believe two more elements suggest themselves for weighing by the Congress before authorization of any future project. These elements are environmental impact and safety.

These two elements are not easily quantified using mathematical formulas, but I believe the need for some sort of quantification exists for review purposes.

As things stand, the Congress is portrayed as insensitive when it authorizes projects according to economic criteria and local support alone. These authorized projects are often later held up because of litigation dealing with environmental and safety questions. We must devise a method of bringing these increasingly important criteria to the front of the authorization process.

I do not propose that a full environmental and safety analysis be prepared. That analysis should come on the heels of preparation of definite plans as it does now. But if enough of a plan exists prior to authorization to allow economic analysis, then enough plan exists to allow some degree of environmental and safety analysis. All three factors can then be weighed during the congressional review process.

The most recent example in the Upper Missouri Basin that underscores these multiple problems is the consideration this year of the Public Works Appropriations Bill for FY/78.

Under the Pick/Sloan (Flood Control) of 1944, the Oahe Irrigation Project in South Dakota and the Garrison Diversion Unit in North Dakota were conceived together as part of the benefit that these up-stream water storage states would derive from the utilization of substantial amounts of land for the Missouri River impoundments. These dams and their associated reservoirs were basically cosntructed to provide flood control for down-stream states, assure a year-round source of navigational water, and to provide hydro-electric power generation. The first phase of that Act has been completed, but up-stream development remains.

There are few projects that are as similar as Oahe and Garrison. Despite this similarity, however, the Congress funded, and the President approved, only Garrison for FY/78, leaving Oahe with no appropriated monies. If there is substance to the argument that projects should proceed on their merits, then it is difficult to square that view with the position taken by the Administration and the Congress in relation to 1977 action on these two projects. This certainly brings into sharp focus the need for more definite and certain policy on project development.

The troubles the Garrison and Oahe projects face when they are discussed in Washington are due to local opposition, either by local farming interests or environmental interests on a local or national scale. The story we hear in Washington is that the operating Federal agency, the Bureau of Reclamation, appear inflexible concerning project design and construction, and in adequately addressing environmental concerns. While I believe the Bureau is making an effort to be flexible in both areas, there is an obvious need for improvement. However, I believe part of the problem is time.

Both projects indicate the absolute necessity of faster implementation once projects of this nature are authorized. How can we expect projects designed 25 years prior to the start of construction to meet today's standards? How can these designs incorporate sufficient flexibility to allow them to conform to changing standards not even envisioned at the time of their planning? If these problems are to be avoided with similar projects in the future, then we must incorporate the new standards I have suggested in the Congressional review process.

These two projects problems are sympathetic of the frustrating nature of today's problems in water resource development. In their way, these projects point the direction we must take in the future as we review our National water policies and standards.

Beyond this, however, there is a need to bring water resources planning under control and relate it to not only state and local requirements, but also coordinate it with river basin and inter-basin systems. The 'first in time—first in line' idea of water utilization needs to be reviewed. Subsequently, identified water needs may well take precedence over earlier water withdrawal patterns. Unfortunately, much of this has been locked into state and federal law and will be difficult to change in the absence of a well defined national consensus to do so.

2. *Cost Sharing for Federal Projects:*

The present policy envisions federal financing for major water development with pay-back features projected into the future predicated on project use. Revenues from hydro-electric power generation, irrigation contracts and assigned "values" for municipal and industrial water along with fish and wildlife benefits are factored into a complex formula that—over time—envisions a return of the federal investment.

Had such a policy not been in place, it is unlikely that most of the existing and operating projects—such as the great dams on the Missouri River—could have been built.

In an inflationary period, this procedure has not been as satisfactory as one might hope. Even as basic project costs are revised upward as a result of inflation so too are the payback provisions benefitted by return inflated dollars to the treasury to replace earlier expenditures of "higher cost" dollars.

A case can be made for more state and local financial participation in a project during its construction and early operational phases. It should be noted, however, that such a procedure will, in a sense, transfer indebtedness from the Federal government to State government and its subdivisions. While this may be desirable from a Federal budgetary viewpoint, it is certainly open to question on the merits in terms of the already heavy obligations carried by most states, municipalities and re-

lated entities. This is especially true when one notes the relatively limited tax base available for this kind of development in a local or state context as compared with the Federal government. It is difficult, also, to envision a firm national policy on this matter which would be equitable for all sections of the country. As noted previously, the structural response to water supply needs in many states has been completed, but in other areas, such as South Dakota, we have yet to maximize our utilization of the Missouri River or other water sources to the extent that is necessary to meet in-state requirements.

A mandatory policy of substantive state and local financial participation before a project becomes operational would probably preclude any further water development in South Dakota and certain other states of the kind that circumstances require.

Cost sharing, while acceptable in the abstract, must be based on a policy that takes into account the financial resources available in a given jurisdiction. Flexibility must be the key factor in any adjustment in the present program.

3. *Institutions and Institutional Arrangements:*

The multiplicity of Federal, regional, state and local entities involved in water policy planning, project development and related water uses almost defies description—and certainly is not understandable to anyone other than professional water planners. No one seriously suggests that the present situation can be allowed to continue if we are to have a truly national policy on water utilization and development that is responsive to current and future needs.

It would be an error, in my view, to attempt to find a way through existing institutional and administrative arrangements to implement any new water plan. Instead, the Administration should develop a 'uniform water code' which can be adopted by the several states under the well defined Federal guidelines.

Such a code should be sensitive to the over-all thrust of national policy on water utilization, but permit substantive latitude within individual states and river basins. Water development should have its beginning locally, as it does now in many cases, and not be dictated by those frequently far removed from local problems and conditions.

Water planning should be simplified and structured to respond to local interests so that a proposal, once conceived, can be promptly evaluated and an early decision reached. The specific and total water needs of a given area should be factored into water availability. Non-structural alternatives should be considered where feasible and the full utilization of other projects should be evaluated in meeting needs outside the immediate project area. The governmental and administrative mechanisms to accomplish the desired goals should be flexible enough to meet any perceived needs, but definite enough to provide an easily understood conduit for information and a timetable for the decision process at each stage of the project consideration.

It should be as flexible as possible to permit on-going changes in any development as needs change during the construction life of the project.

The failure of our present institutional arrangements to evolve a workable and pragmatic approach to problems of water supply is nowhere in more evidence than it is in the application of existing law and regulation to the efforts by smaller communities to bring themselves into compliance with environmental concerns on water quality.

Let me cite the experience we have had in South Dakota, where small towns, some of only 100 or several hundred people, have been told by EPA to upgrade their waste-water treatment and/or discharge practices. Yet these towns have been frustrated at every turn in locating sites which are environmentally sound and yet financially possible.

One very small town in northeastern South Dakota was discharging sewage into a wildlife refuge lake. In 1966, they began the long journey toward modernizing their system. That project, just completed this summer, hit every bureaucratic snag conceivable. The climax occurred when the site they chose for a small 6-acre stabilization pond was challenged by the Fish and Wildlife Service as a wetland and therefore untouchable for this purpose.

This was a gravity flow system—certainly what a town of 200 people would choose. There were 10 other wetlands in the same square mile, 571 in the township and 6,574 in the county. The 120-acre wildlife refuge lake which they were polluting was near the six-acre site. They were told by personnel of the Fish and Wildlife Service that they should go across the road on a hill and dig their pond. The townspeople rightfully saw this as ludicrous. It would have taken productive farmland, it would have required a lift station and fulltime maintenance, would have increased the cost of the project by 25% plus the cost of the land and, what they all knew, the six-acres in the wetland did not have a high record of attracting wildlife.

Regulations on the National Environmental Policy Act of 1969 stated that if an EPA action (grants for sewer projects) may affect wetlands, the responsible official shall consult with the appropriate offices of the Department of Interior and Corps of Engineers during the environmental review to determine the probable impact of the action on the pertinent fish and wildlife resources and land use of these areas.

Also, an environmental impact statement will be prepared when any major part of the treatment works will be located on productive wetlands or will have significant adverse effects on wetlands, including secondary effects.

We also have Executive Orders which instruct all agencies of the federal government to evaluate their actions to strive for minimum energy needs and minimum inflation features.

All these were violated in the attempt to prevent this small town from using the six-acre wetland.

Had this been the only instance of an agency wearing blinders, it still would have been a remarkable case. However, small towns across our state are running into this attitude that it is sufficient to identify a wetland not necessary to evaluate it in terms of the surrounding environment and against the existing pollution.

Our experience with EPA has been that most often they have been willing to evaluate a situation from all perspectives—what is the town's problem? What environmental damage are they currently causing? What risk to the health of their citizens are they currently taking? What are the relative merits—financial and environmental—of each proposed site? What can this town afford to do which will cause the least environmental damage?

Fish and Wildlife most often says: "We will tolerate no environmental damage and we don't care what that leaves you."

I am not environmentally insensitive and fully support the concept that treatment facilities should not be built on locations which degrade the environment. But any responsible person must then ask: What environmental damage are they causing now? And how much can they and the federal government afford to get out of it?

The environment includes people too. Any agency which has the power to block needed development and interprets its mandate in a narrow and self-serving manner, is not acting in the public interest.

All federal programs should enhance the possibilities for people to have basic services to improve the quality of life in rural and urban areas. But when it takes a small town ten years to finance and construct a basically simple sewer project it makes us wonder just how helpful the federal government really is.

The language in the 1969 National Environmental Policy Act is still valid. The Act seeks to maintain conditions under which man and nature can exist in productive harmony and fulfill the social economic and other needs of present and future generations. In many respects, the spirit of that Act and the Congressional Intent evident in its enactment have been frustrated by federal agencies who have interpreted their responsibilities under the Act to mean representation of a specific and identified constituency. This practice all too often leaves the public interest far behind.

4. *Indian Water Rights and Federal-Reserved Water Rights:*

The water rights of Indian people, both as individuals and as tribal entities, have not been handled in a way that reflects credit on the federal government or other water policy planners.

Indian water utilization has suffered from the general lack of economic activity on the Reservations. In the interim, other water users have, to some extent obligated water that might, under a more equitable policy, have been reserved for Indian use.

Some effort has been made to quantify Indian water rights, but this has met with opposition from some Indian leaders and others who make the case the Indians should be allowed to withdraw water on the basis of present and future needs; rather than on some predetermined formula.

It is not my purpose here to set out a finalized Indian water rights policy, but rather to suggest that more discussion and consultation is needed if this matter is to be settled in a mutually satisfactory way. The elements of compromise of the difficult and interlocking legal and supply problems do not appear to be present at this time. But it certainly must be the policy of the Federal government to vigorously pursue the options that may be available.

It is clear that the Federal Government has proceeded in the past on the basis of its 'title' to waters impounded as a result of federal projects and/or waters that develop on public lands. The Memorandum of Understanding, between the Secretaries of Army and Interior relative to marketing of reservoir waters in the upper Missouri Basin left little doubt as to 'whose water' is involved. There needs to be a more exact definition of Federal waters, and, to the extent possible, these need to be quantified as to availability so that state and regional water planners can determine what withdrawal rates can be requested without doing violence to overall River Basin demands for water utilization. I would favor returning to the Regions and the States as much control over water stored and generated within their respective boundaries as possible and in keeping with over-all national water guidelines as to withdrawal and use. There needs to be a more closely defined use pattern of Federal waters to determine what uses can be met and still return water into the system. As an example, hydroelectric power is a non-consumptive use; whereas removal of water from a given water course for irrigation, municipal or industrial use makes varying demands on total water availability within a given river system. The Federal interest should be maintained within the framework of the identified national interest, but to the extent that may be excess to demand, control should be returned to regional and state jurisdiction.

5. *Water Conservation:*

At the present time, the value of water is negligible. The price of water at the irrigation head gate, the power plant or the faucet is realistically no more than the cost of the storage and distribution system required to bring it to the point of use.

As demand for water exceeds the supply, however, it is apparent that consumptive use—and conservation—can only be achieved by the assignment of an economic value to the water itself.

In addition, of course, the concept that a heavy water user qualifies for a lower rate must be reversed. Manufacturers of water related appliances and fixtures must be encouraged or required to provide built-in devices to minimize the amount of water utilized.

Estimates vary, but it is safe to say that upwards of 30% of the total water used in this country is wasted based on outdated technologies, ignorance about the finiteness of our usable water supply and a general insensitivity to our individual and collective impact on total water availability. A great deal more needs to be done to educate the public on the dimensions of water supplies. In some water-short areas of the west, for example, public understanding of limited water supplies can result in substantive savings.

More attention must be given to recycled water use. We are presently using an irrational water flow principle rather than a natural water recycling concept that could ultimately increase the actual amount of water that is available.

I am encouraged to believe that with more public awareness of the need for conservation and the problems involved—that individually and collectively we can substantially improve our water supply situation.

Conclusion:

Water is an essential part of our life support system. We have not always used it wisely or well in the past, but circumstances demand that we do so in the future.

We can no longer regard water as a limitless resource. As is the case with energy, water is becoming in shorter supply and the distribution mechanisms are becoming more expensive.

We cannot continue as we are now in terms of water development, but neither can we afford to remain in a static position in terms of transferral systems to move water from storage points to areas of need. Some accommodation will be required and all parties of interest will find the need to compromise on their original views and conclusions. This is not an easy task in view of the historic perception of water utilization, but it is vitally necessary if this country is to continue to grow and prosper.

I am convinced that a national water policy can be developed to meet our needs and to insure that there is water available for everyone. This may ultimately require some adjustment in population growth patterns and some aspects of our individual life styles. The realization of the limitation of water supplies is an important ingredient in our overall understanding of resource policy and the need to deal with the realities of our nation's present and future.

THE SOUTHWEST MINNESOTA LAKE IMPROVEMENT ASSOCIATION

Mr. ANDERSON. Mr. President, one of the more important sections of the Clean Water Act of 1977 that the Senate passed on August 4, 1977, was the amendments to section 314, the clean lakes program. The Senate provided additional direction to EPA on the implementation of lake restoration projects around this country and authorized an additional $500 million for the program.

I believe the language of the Environment and Public Works Committee report on the clean lakes program is particularly appropriate to recall at this time and I ask unanimous consent that that section of report 95–370 be printed in the RECORD at this point.

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

CLEAN LAKES

SUMMARY

This section amends section 314 by requiring the Administrator to provide financial assistance to the States to prepare surveys to identify and classify freshwater lakes and to issue biannually information to the States on methods and procedures to restore and enhance freshwater lakes. Section 314 is further amended to authorize $450 million for fiscal years 1978, 1979, and 1980 for the ocean lakes program.

DISCUSSION

The 1972 act recognized the urgent need for a lake improvement program to restore the significant number of the Nation's 95,000 freshwater lakes that were in eutrophic and deteriorated conditions. The clean lakes program was conceived to respond to this problem: $100 million was authorized for lake pollution research; $350 million for grants for restoration and improvement projects on lakes throughout the country.

In the 5 years since Public Law 92–500 went into effect, lake restoration programs essentially have not even begun. Only 15 percent of the 95,000 freshwater lakes in this country have been investigated pursuant to section 314. The EPA has not requested any of the research funds authorized for lake pollution. Previous administrations never once requested funds for the clean lakes program. Only $40.3 million has been appropriated since fiscal 1975. Even of those inadequate funds appropriated through fiscal year 1977, the EPA has allocated only $19 million. With tens of thousands of lakes warranting the use of clean lakes project grants, the EPA has only funded 54 projects to date.

The committee hearing record clearly demonstrates that there is a great interest in lake areas in the restoration and preservation of degraded freshwater lakes, that the clean lakes grants that have been made have had some impact and that additional research and demonstration efforts are necessary so as to successfully implement clean lakes projects, especially in urban areas.

The committee believes that the basic structure of 314 is adequate. The amendments are technical in nature and intended to correct two inadequacies of the program. First, the Administrator is directed to provide the States with financial assistance to survey lakes to determine their condition. The lake surveys are the first step to a successful lake restoration program. Pursuant to this amendment and funds available therefrom to the States, all States should have the capability to initiate lake surveys to determine the priority lakes for restoration projects.

Second, the Administrator is directed to biannually issue to the States information on the state of the art of lake restoration techniques and practices. The committee believes publication of this material is necessary on a regular basis and this amendment so provides.

The provision authorizes $450 million for the clean lakes program for fiscal years 1978–80. The committee believes this authorization represents a level of effort that reflects the expectations of the Congress for this program, recognizing that the problem of lake eutrophication and deterioration nationwide far exceeds even this authorization level.

The committee is hopeful that the new administration will act to make lake restoration a key element of the EPA's water pollution control program contrary to the EPA's implementation of this section to date.

Finally, the committee intends in subsequent legislation to be reported to the Senate to provide additional authorizations for lake pollution research.

Mr. ANDERSON. Mr. President, examples of freshwater lakes in need of restoration are continually brought to my attention. On September 16, 1977, the Minneapolis Tribune reported on the efforts of Mr. Pete Kooiman of Slayton, Minn., and other members of the Southwest Minnesota Lake Improvement Association to fight lake pollution in the Southeastern part of my State. With the relatively small number of lakes in that area of Minnesota, the restoration of polluted and eutrophied shallow lakes is particularly important to provide recreational opportunities for the citizens of the area.

Mr. President, the Tribune article, "Wading Back Into Swamps May Cut Lake Pollution," is a very informative commentary on the problems of lake pollution, that the clean lakes program of the Clean Water Act is designed to combat. I am hopeful that the expanded clean lakes program authorized in S. 1952, will be accepted by the House of Representatives and be then available to help Mr. Kooiman and his friends as they work to restore Lakes Shetek, Heron, Wilson, Maria, and Long Lake for the future enjoyment of themselves, their friends, and their children and grandchildren.

Mr. President, I ask unanimous consent that the article by Minneapolis Tribune Reporter Tom Hamburger of September 16, 1977, "Wading Back Into Swamps May Cut Lake Pollution," be printed in the RECORD.

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

WADING BACK INTO SWAMPS MAY CUT LAKE POLLUTION

(By Tom Hamburger)

SLAYTON, MINN.—Pete Kooiman, a farmer and drainage contractor, has spent much of his life draining swamp and wetland areas in southwest Minnesota. Now he's pushing to create marshes.

Kooiman is part of an organization looking at the redevelopment of marshes in southwestern Minnesota to halt lake pollution. And he's urging the organization to get farmers and feedlot operators to change their land-management practices to prevent nutrients and soil runoff from flowing into the area's dying lakes.

Lakes in southwest Minnesota have needed help for some time. But until early this year when Kooiman and a dozen others got together, there never was an organization to protect them.

That organization was formed none too soon.

Several lakes in the area have already died. Their bottoms have filled with farm soil. The fertilizer, soil and human and animal wastes that flowed into them caused a boom in the growth of algae and other aquatic plants. Shallow fishing lakes like Heron, Wilson, Maria and others have become unsuitable for humans and most fish in recent decades, according to Michael Sobota, regional planner with the Southwest

Regional Development Commission. Only the carp population is booming.

When 3,600-acre Lake Shetek, the largest in southwest Minnesota, showed signs that it too might die, action began. Shetek is the most important recreation center of southwest Minnesota, the region of the state with the fewest lakes and the fewest areas left in their natural condition.

"Southwest Minnesota has only 1.9 percent of natural environment land while there is 19.3 per cent in the Twin Cities," said Sobota. Naturally, the lake is an important recreation area, drawing tourists from several states.

Precisely because of its location, it is in danger of being destroyed.

Shetek's watershed has one of the highest feedlot concentrations in the state, according to Sobota, and it is surrounded by agricultural land. The effects of farming, combined with heavy recreational use, have created serious problems.

The shallow lake—it's only 10.5 feet at its deepest point—is getting shallower at the rate of .4 of an inch a year as the area's unusually fine soil flows from the farmland into the lake.

As the lake gets shallower, it warms up, encouraging algae growth already spurred by the high nutrient content from cattle manure fertilizer and human waste. Swimming has never been restricted at Shetek, but residents became alarmed that if conditions persisted, it could be.

As the lake was becoming increasingly gummy from algae growth in the summers, folks who made their money from the lake, and those who enjoyed it, began talking last year about the need for action.

Lake improvement is a touchy subject in the rolling, rich prairie farm land. Farmers and feedlot operators don't want to change their farming practices. Attempts to discuss restrictions on their activities in the past have met with angry refusals.

But the Southwest Minnesota Lake Improvement Association is having some success. It's finding support from a cross section of the region's population, including farmers, probably because the organization has skirted the issues of runoff and feedlot control.

It has concentrated on a novel approach that everyone can endorse: The development of marshes to control pollution.

The organization has hired a contractor to study the idea and is preparing an educational package to present to county commissioners.

The creation of marshes, or sediment basins, at key locations around the lake would provide a natural filtering system for water feeding into the lake, according to Sobota.

The marsh would catch pollutants before they enter the lake. It would use up the large supply of nutrients that is causing the algal bloom, which turns lakes like Shetek green and smelly by midsummer.

The marshes would slow the water running into the lake enough so that soil, manure and chemical pollutants could settle out before the water reached the lake. The nutrients would be absorbed by the heavy marsh plant growth.

One of the areas being considered for development of a marsh to protect Lake Shetek is Long Lake, a small lake that flows directly into Shetek. Long Lake has already suffered eutrophication (becoming too rich in nutrients). It is surrounded by grazing land and cattle can often be seen standing in the lake.

Sobota said the association will likely recommend that Long Lake be drained, permitting cattails and other reeds to develop. The lake would then be refilled and the marsh filtration process could begin.

In recent years scientists have begun to realize the importance of marshland in controlling sedimentation and pollution of area lakes. Minnesota tightened its regulations controlling destruction of marshland in 1973, and experiments with creation of marshes are beginning across the country.

Officials of the state Department of Natural Resources say the Lake Shetek proposal is probably the most extensive in the state's history. The idea has also caught the interest of DNR employees interested in establishing wildlife management areas on the newly created marshes.

Where the money for the marsh project will come from is uncertain, Sobota said. The association hopes to apply for federal funds when an engineers' report on the project is complete. No cost estimate for the project was available, Sobota said. He said he hopes the DNR might come up with funds.

"DNR people are interested in establishing wildlife management areas here, where agricultural management practices have depleted most natural vegetation," Sobota said. "DNR is looking at areas like Long Lake that would increase vegetation. It's a bald lake now."

The association is interested in expanding from Lake Shetek to other lakes, the members say. "We decided to concentrate efforts on Shetek," Sobota said, "because there were studies done on the lake and because it's such an important regional resource."

Kooiman thinks that ideas like the marshland proposal will instruct farmers and others that efforts to clean up the lake need not threaten their livelihoods.

If we can show farmers how easy it is to eliminate the problem," he said, "I think we can solve this."

"STARLAWS AND SPACELAWYERS"—REMARKS BY SENATOR HARRISON SCHMITT

Mr. STEVENSON. Mr. President, my distinguished colleague Senator HARRISSON SCHMITT, who serves as ranking minority member of the Subcommittee on Science, Technology and Space, recently presented a speech to the American Bar Association, entitled "Starlaw and the Enterprise." In his speech, Senator SCHMITT emphasized the need for "starlaws" to meet demands of future exploration of our space environment and the space resources that will soon become available to us. He envisions numerous legal and regulatory problems arising from our continued space exploration which must be dealt with by spacelawyers and a judicial system geared to our interactions in a changing space environment. I commend him for his forsight in probing this dimension of the space frontier. I urge my colleagues to read and ponder Senator SCHMITT's remarks.

I ask unanimous consent that the text of Senator SCHMITT's speech be printed in the RECORD.

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

STARLAW AND THE ENTERPRISE

(By Senator Harrison Schmitt)

The Space Shuttle Enterprise flies alone in a few days; the first major milestone in our leap from Apollo to Star Trek. The explorers of the near frontier of Earth have passed; the pioneers have arrived; civilization and "starlaw" will soon follow.

Compressed into one decade of activity in space, history has seen the equivalent of two centuries of exploration of the great American West. History is not in the habit of waiting for us to proceed further; history is proceeding with or without us in a rather impersonal way. Nations traditionally have some difficulty in recognzing or remembering this fact until events suddenly indicate, in no uncertain way, that it is time to move or be left behind.

We have been more than just part of history during the past decade; we have been part of evolution. By the use of his mind, man has made evolution through technology historically equivalent to biological evolution. By constructing a shield for life around himself, man has made the universe an accessible part of his environment.

The evolution of man into space has opened new opportunities for us and for all men. There are now new resources, in the broadest sense of that word, which never before have been available to mankind. These resources are available for research, for manufacturing, and possibly most importantly, for service to our fellow man. One of the major questions before the nation, as I see it, is whether or not we of this generation will continue to develop our technological capability to use these new resources. The answers to this question lie within the limits of our imagination. The first movements into space, which culminated in Apollo, catalyzed our imagination. Skylab gave direction to our imagination. The Space Shuttle now gives license to our imagination.

The Space Shuttle is the first major step in a positive answer to the question of our space future. Once the Space Shuttle exists, that is, when we have relatively economical and convenient access to the near-Earth space environment, then imaginative use of that environment becomes possible. To evaluate the benefits of the Space Shuttle to this and future generations, let us look first at the nature of our new space resources.

The resources of near-Earth space are basically three in number: 1) instantaneous and continuous view of the Earth, the sun, and of deep space; 2) an infinite quantity of clean; ultrahigh vacuum; and 3) a weightless environment, that is, an environment free of gravitational stress.

An instantaneous and continuous view of the Earth and its total environment makes possible a wide spectrum of space activities. Observatories become possible from which research and services in meteorology, oceanography, geology, and environment can be conducted and from which broad-scale explorations for new terrestrial resources can be carried out. Man's application of his eyes and mind to the direction of old and new remote sensing systems has presently unlimited potential.

Starlawyers must quickly come to grips with the implications of this new view of Earth. Litigation involving a wide variety of problems concerning weather, ocean, land and environment will have increasingly new and potentially definitive evidence with which to deal. Knowledge of the distribution of earth and ocean resources will become general knowledge with increased complexity for international and anti-trust litigation.

The sun remains the major contributor to the stability and the changes of our magnetic atmospheric, oceanic, and biological environments. However, our knowledge of how the sun's energy and magnetism influence changes in our environment is extremely limited. A continuous view of the sun outside the shielding effects of the Earth's atmosphere first will allow attempts at understanding processes taking place on and in the sun and the nature of their interactions with the Earth. Then, even-

tually this view will allow efforts to forecast and protect against, or take advantage of, the effects of these interactions.

As our understanding of the detailed nature of the interaction between Sun and Earth increases, so will our ability to monitor and assign blame or credit for changes in that interaction. As we work to expand the limits within which mankind can survive and prosper on Earth, so must we develop the technical and legal means to monitor the global effects of this expansion. For a case in point, we need look only as far as the controversy over the effect of fluorocarbons on the ozone in the ionosphere and in turn, its effects on the incidence of skin cancer.

The continuous view of the sun from near-Earth space offers another potentially great resource. Our short-term energy problem is that of producing more fossil fuel, whereas our long-term problem is the conversion of a society dependent on fossil fuels to one where fossil fuels are a minor source of energy. Solar power stations in space are some of many potentially feasible alternatives to fossil fuels, alternatives that we as a nation must develop soon.

There are numerous legal and regulatory questions that arise when one contemplates solar power systems in synchonous orbit around the Earth. How do we establish national and/or international rates for the power generated and transmitted to receiving points on Earth? As more and more men and women work in space stations like this, what laws and judicial system will govern their inter-relationships?

One of man's greatest sources of intellectual strength and scientific vitality is in his continued observations of the universe and his attempts to understand the stars and interstellar space. The greatest discoveries of the future probably lie in investigations of stellar and interstellar phenomena. The nature of gravity; the origin of planets; the limits on our ability to manipulate matter, energy, and time; and our future as explorers of the universe are all issues at stake.

One of the major limitations to experimentation and manufacturing in many areas of physics and chemistry is the difficulty in creating and maintaining clean, ultrahigh vacuums in large volumes. The existence and accessibility of such a vacuum and high pumping rates in near-Earth space open new dimensions to the study and use of physical and chemical theory.

The continuous absence of gravitational stress, that is, weightlessness, provides a unique experimental and practical environment heretofore unavailable to man. Extensive experimentation and manufacturing never before have been possible where convection does not exist, where containers for fluids are not required, and where unconstrained crystal or biological growth can occur.

Possibly the most urgent area of Starlaw that requires attention is the extension of medical, corporate and patent law to cover the infinite range of treatment, research and industrial activities that will soon begin in space. Precedents are being set which may not be in the right direction either with respect to the interests of business, the interests of future consumers, or the interests of our country.

In spite of the obvious limitations on our ability to have all that would be useful all at once, the Space Shuttle will allow us to bring the benefits of our new space resources to more and more of mankind. Our obligation to the present and to the future is to move with all deliberate speed into the new era and into the Earth's frontier now open before us. Now is the time for Starlaw to be born and take its permanent place in the history of society. As we consider our national and international priorities, I hope that we find the compassion and wisdom to survive the present, but I also hope that we find the imagination and wisdom to see the future.

THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, today the Committee on Foreign Relations began an extension series of hearings to consider the Panama Canal treaties. Today the committee heard testimony from Secretary of State Cyrus Vance and our two negotiators for the treaties, Ambassador Ellsworth Bunker and Mr. Sol M. Linowitz.

I ask unanimous consent that the statements of each be printed in the RECORD. I believe that these statements will be of interest to my colleagues and other readers of the RECORD, in view of the intense interest in the treaties.

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

STATEMENT BY SECRETARY OF STATE CYRUS R. VANCE ON THE PANAMA CANAL TREATIES

Mr. Chairman, Members of the Committee:

Today I seek your support for new treaties governing the Panama Canal.

First, these treaties protect and advance the national interests of both the United States and Panama.

Second, they provide for an open, neutral, secure and efficiently operated Canal for this hemisphere, and for other nations throughout the world.

And third, they will promote constructive and positive relationships between the United States and other nations in this hemisphere.

These treaties, in my judgment, will gain us respect among other nations of the world—both large and small—because of the responsible way they resolve complex and emotional issues which have been with us for most of this century.

The treaties are the culmination of 13 years' work by four American Presidents of both major political parties, and their Secretaries of State.

They are the outcome of patient and skillful negotiation since 1964 by a number of dedicated political leaders, diplomats, and military men. They have been achieved because of valuable counsel and support offered by members of this Committee and by representatives of American business and labor who have seen these new treaties as being in their own interest and in the larger national interest.

They are, above all, a triumph for the principle of the peaceful and constructive settlement of disputes between nations. That is a principle we seek to apply in all aspects of American foreign policy.

It is quite proper that this Committee, the Senate, and the American people should consider carefully the content and implications of these treaties. For they should not at some later time be made the subject of partisan or divisive debate. In my opinion, they should be beyond partisanship.

They should now be examined in detail by this Committee, and by the nation. Basic questions are being asked—and should be asked—about them.

These questions express the same concerns and goals that have been on our minds during the negotiations.

Do these treaties safeguard our national security interest in the Canal?

Do they establish a long-term basis for open and effective operation of the Canal?

Do they enhance our relationships with nations of this Hemisphere?

Do they place any new burden on the American taxpayer?

Do American workers in the Canal Zone get a fair shake?

And, without the treaties, what might happen?

I am satisfied in my own mind that these questions have been properly answered, thanks to the skilled and hard bargaining by our negotiators. I will discuss these questions briefly this morning.

LONG-TERM OPERATION OF THE CANAL

The United States will control canal operations through a new U.S. government agency—the Panama Canal Commission—to be supervised by a board composed of five Americans and four Panamanians. The Commission will operate the Canal until the end of this century. The present Panama Canal Company will be discontinued.

The United States will maintain responsibility for managing the canal, setting tolls, and enforcing rules of passage until the year 2000. Until the year 2000 the U.S. will also maintain primary responsibility for the defense of the Canal. After that, the United States will have responsibility to maintain the permanent neutrality of the Canal to assure that it will remain open to our ships, and those of all other nations on a nondiscriminatory basis.

The treaties further allow for the modernization of the Canal through construction of a third lane of locks and foresee the possibility of construction in Panama of a new, sea-level canal. This would provide access for many modern super-tankers and warships too large to pass through the present Canal.

HEMISPHERIC RELATIONS

I believe the ratification and implementation of these treaties will be the single most positive action to be undertaken in recent years in our relations with Latin America.

Only last month, in Bogota, the democratic governments of Venezuela, Costa Rica, Colombia, Mexico and Jamaica issued a joint communique urging the United States and Panama to conclude the new treaties rapidly. For years, Latin American peoples and governments have viewed our negotiations with Panama over the Canal as a litmus test of our intentions toward their countries.

The treaties, as negotiated, represent a fair and balanced reconciliation of the interests of the U.S. and Panama. They create a partnership under which our two countries can join in the peaceful and efficient operation of the Canal. They symbolize our intentions toward the Hemisphere. And they prove, once and for all, the falsity of the tired charges that we are imperialistic exploiters bent only on extracting Latin American raw materials and using the continent for our own economic interests.

NATIONAL SECURITY ASPECTS

Representatives of the Joint Chiefs of Staff worked closely with the treaty negotiators on the security provisions, and played a major role in drafting the neutrality treaty. The United States will retain all military bases and facilities—all the lands and waters—that we require for the Canal's defense until the year 2000. We may keep the same force levels we now maintain in the zone—about 9300—and can increase them if necessary.

After the year 2000, as I indicated earlier, the United States will have a permanent right to maintain the Canal's neutrality, including the right to defend the Canal if necessary. Our warships are given the right to use the Canal expeditiously.

Article IV of the Neutrality Treaty says:

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two contracting parties."

This means there is no limit under the Treaty on the freedom of the U.S. to assure permanently the Canal's neutrality.

THE ECONOMICS

Under the treaties, Panama will receive payments which more fairly reflect the fact that it is making available its major national resource—its territory. But the treaties require no new appropriations, nor do they add to the burdens of the American taxpayer.

The treaties provide that Panama will receive 30 cents per Canal ton for traffic transiting the Canal; a fixed annuity of $10 million per year; and an additional $10 million per year provided canal revenues permit. Panama would initially receive about $60 million per year under this formula, which will apply until the year 2000. All of these payments are to be made from Canal revenues. Panama will thus have a strong interest in insuring unimpeded and efficient use of the canal.

We have agreed, outside the treaty, to certain arrangements which will assist the general economic development of Panama and enhance its stability. We have formally told the Panama Government that we are prepared to develop a program of loans, loan guarantees and credits to Panama—including up to $200 million in Export-Import Bank credits over a five-year period; up to $75 million in AID housing investment guarantees over the same period; and a loan guarantee of up to $20 million from the Overseas Private Investment Corporation. All the loans concerned require repayment. There are no grants. In addition, over a 10-year period, Panama will receive up to $50 million in foreign military sales repayment guarantees, so that its armed forces can be better prepared to help defend the Canal. Most of this assistance will be used to purchase American equipment. These programs would be subject to all relevant U.S. legal requirements and program criteria.

AMERICAN WORKERS IN THE ZONE

Some 3,500 American employees of the Canal enterprise and their dependents live in the Canal Zone. Some have spent all their working lives there; most of these American workers will continue to be employees of the U.S. Government until their retirement. The treaties protect their basic conditions of employment. If they remain they will be free to continue living in government housing and to use the American schools and hospitals in the areas. Until the year 2000, the treaties guarantee American employees and their dependents basic civil rights, similar to those that apply in the U.S., in Panamanian courts, and other benefits and protections similar to those enjoyed by other U.S. Government employees overseas. The AFL–CIO, which represents both Panamanian and U.S. workers in the Canal Zone, supports these treaties.

WHAT IF THE TREATIES ARE REJECTED?

It would be all too easy for me to emphasize today that if 13 years of effort were lost, and these treaties rejected, our relations with Panama would be shattered; our standing in Latin America damaged immeasurably; and the security of the Canal itself placed in jeopardy.

Indeed, all of these things could and might happen if these treaties were not ratified. But that is not the major reason for supporting them.

They deserve support because they are in our interest, as well as the interest of Panama.

For the people and government of Panama, there is the knowledge that they, eventually, will assume full jurisdiction over their own territory. There are also the economic benefits to be gained from canal revenues, and from the guarantees, loans and credits—not grants—we have pledged to consider on their behalf. Panama, as a result, will be a more stable and prosperous country.

For us, there is our knowledge that the Canal will be open, neutral, secure and efficiently operated, for our benefit and that of other nations in the world. We are not appropriating American taxpayers' money to accomplish this. And we will have gained respect throughout Latin America and the world for addressing this issue peacefully and constructively.

It is our interests, not foreign pressures, that led us to these treaties.

OTHER QUESTIONS

Let me address, very briefly, some doubts about the treaties that have been raised, but can be dispelled as the facts become better known.

We are asked whether the new treaties may encourage Panama to nationalize the Canal. But our new treaty rights would be no less binding than our rights under the existing treaty. Moreover, a Panama which is cooperating with us in canal management and will eventually exercise full management responsibility has no reason to seize or obstruct the Canal. Any Panamanian government will have an interest in preserving the treaties because the treaties are in the interest of Panama—as well as ourselves. These treaties reduce the chance of such an event.

It has been suggested that the new treaties could diminish our ability to maintain the neutrality and security of the canal. But, in fact, the Joint Chiefs of Staff are satisfied that the treaties enable us to keep the canal open indefinitely.

It has been suggested that we are "paying the Panamanians to take the canal away from us." But payments to Panama will come from canal revenues, not from American taxpayers.

Finally, let me address briefly another question which has been raised: human rights in Panama.

The Panamanian government has in the past been charged with abusing the civil and political rights of some of its citizens. And we have discussed this issue with that government. The closer relations between our two countries that will grow out of the new treaties will provide a more positive context in which to express such concerns, should it be necessary in the future.

Already, there are encouraging signs. On September 13 Panama invited the Inter-American Human Rights Commission to send a team to investigate human rights conditions in Panama. In addition, it has invited the United Nations to send observers to its plebiscite on the new treaties next month.

At the same time, the Panamanian government has made continuing and real commitments to the economic and social rights of its citizens. Its economic development plans give priority to upgrading the housing, nutrition, health care and education of the ordinary Panamanian citizen.

How we respond to an issue such as these Panama Canal treaties will help set the tone for our relations with the rest of the world for some time to come.

Both we, and others, are under considerable pressure in our domestic economies. There is a tendency toward economic protectionism. And there is question about the most appropriate ways to use our power in a world grown so complex.

Panama is a small country. It would be all too easy for us to lash out, in impatience and frustration, to tell Panama and Latin America—and other countries around the world—that we intended both to speak loudly and carry a big stick and to turn away from the treaties four Presidents have sought over so long a time.

But that, in my judgment, would not be conduct appropriate to a responsible world power or consonant with the character and ideals of the American people.

Any nation's foreign policy is based, in the end, not just upon its interests—and, in Panama, our interests are clear and apparent. It also is based upon the nature and will of its people.

I believe the American people want to live in peace with their neighbors . . . want to be strong, but to use their strength with restraint . . . want all peoples, everywhere, to have their own chance to better themselves and to live in self-respect.

That is all a part of our American tradition.

And that is why I am convinced that after the national debate they deserve, these treaties will be approved without reservations by the Senate, with the strong support of the American people.

STATEMENT BY HON. SOL M. LINOWITZ

Mr. Chairman and Members of the Committee: Although I have not been involved in Panama Canal diplomacy for as many years as Secretary Vance and Ambassador Ellsworth Bunker, I have for a long time been deeply concerned about the Panama Canal issue and its implications for our whole relationship with Latin America.

For three years prior to my designation as Co-Negotiator of the new Canal treaties, I served as Chairman of the Commission on United States-Latin American Relations.

In the Report which our Commission issued on December 20, 1976 we said: "The most urgent issue the new Administration will face in the Western Hemisphere in 1977 is unquestionably the smoldering dispute with Panama." We went on to say: "1977 will be a crucial year for resolving the volatile Panama issue; if negotiations do not produce an equitable solution during this coming year, deepened hostility seems inevitable." We urged the new President "to exercise prompt, vigorous and decisive leadership in negotiating an acceptable compromise with the Panamanian Government while serving our own interest in the Canal. Such an action will also indicate our desire to address the issues which concern the United States and Latin America in a more cooperative and mutually respectful atmosphere."

Our recommendation was: "The new Administration should promptly negotiate a new canal treaty with Panama; it should involve members of both parties and both Houses of Congress in the negotiations; and it should make clear to the American public why a new and equitable treaty with Panama is not only desirable, but urgently required."

Mr. Chairman, the treaties which we have negotiated and which are now before you in large measure follow that prescription. We have negotiated treaties which are, we believe, fair and equitable and which fully preserve our interest in the canal while taking into account Panamanian aspirations. In the course of the negotiations, we have involved members of both parties and both Houses of Congress. And the terms we have agreed upon clearly reveal a more cooperative and mutually respectful atmosphere in hemispheric relations.

There are, I believe, three basic facts which must be understood about the Panama Canal issue.

First, it is an issue which involves far more than relations between the United States and Panama. For it is an issue which affects all United States-Latin American relations. In the eyes of our Latin American neighbors, the Panama Canal runs not just through the center of Panama, but through the center of the Western Hemisphere. All the countries of the hemisphere have made common cause in looking upon our position in the canal as the last vestige of a colonial past which evokes bitter memories and deep animosities. So in going forward with these new treaties with Panama, the United States will be improving its position with virtually all the countries of this hemisphere whose attitude towards us as a nation will be importantly

influenced by how we conduct ourselves on the Panama Canal issue.

Second, our primary interest in the Canal is, and always has been, to assure that it remains secure and open, on a neutral, nondiscriminatory basis. Viewed in this light, it is unmistakably clear that the greatest threat to the operation and security of the Canal would be to try to insist upon retention of the present outmoded treaty and its anachronistic provisions—provisions which have in the past, and can so easily again in the future, trigger hostility and violence. The simple fact is that if we do not agree upon treaties which are mutually agreeable and acceptable, the time may come when we may find ourselves in the position of having to defend the Canal by force against a hostile population and in the face of widespread condemnation by the countries of Latin America and even the rest of the world.

Third, it is, therefore, clear that the best way to preserve an open, accessible and secure canal and to maintain its permanent neutrality would be to substitute for the 1903 Panama Canal Treaty a new arrangement which will be mutually fair, which will properly provide for Panama's just aspirations, and which will take into full account our own national needs. Putting it another way, a new treaty arrangement is the most practical means for protecting the very interests we are seeking to preserve in the Canal.

We believe that the new treaties meet this test by preserving for the nation the important interest it has in assuring that the Canal remains secure, accessible and open on a nondiscriminatory basis—and in a manner which will both advance our national security interests and further our hemispheric objectives.

With your indulgence I would like to recall a few words of history about how we got where we are in the Panama Canal.

During the middle of the 1800's we were, as a young nation, interested in the possibility of constructing a canal across the isthmus in order to connect the Atlantic and Pacific Oceans. This need was dramatically underlined when, during the Spanish American War, it took the battleship *Oregon* 67 days to get from the Pacific coast to its Atlantic battle station.

At the end of the 1800's the French Canal Company had undertaken to construct a canal through the Province of Colombia known as Panama. By the end of the century it acknowledged failure—failure because of disease, because of technological and scientific problems which seemed unsurmountable, because of lack of financing, and finally because of lack of spirit and morale.

At that time an engineer, Phillippe Bunau Varilla, who had worked for the French Canal Company, spurred an effort for the United States to take over the French company's assets and enter into a treaty with Colombia for the completion of the canal. Such a treaty was rejected by the Colombian Senate.

At that point it was suggested that the Province of Panama might undertake to declare its independence from Colombia and then enter into a satisfactory treaty with the United States. On November 4, 1903 a revolution occurred in Panama and a few days later the United States recognized Panama's independence. Thereupon a treaty was entered into known as the Hay-Bunau-Varilla treaty.

The treaty granted the United States rights "in perpetuity" to construct a canal within a zone 10 miles wide over which the United States would exercise the "rights, powers and authority" it would have if "it were the sovereign." Secretary of State Hay candidly wrote to a leading Senator that the treaty was "very satisfactory, vastly advantageous to the United States and, we must confess with what face we can muster, not so advantageous for Panama." The treaty was ratified in 1904 and construction of the canal was begun immediately. It was completed in 1914 after a brilliant engineering and scientific performance by American engineers, doctors, scientists and builders who were determined to conquer the unconquerable and make the canal a reality.

Today the Panama Canal stands as an engineering marvel, as one of this country's greatest accomplishments. In a very real sense it was our moon shot of the early 1900's. Any American must view with pride this highly complex, integrated hydraulic system of locks, dams and artificial bodies of water designed to move ships over the uplands of the isthmus for 50 miles from ocean to ocean.

And we can also point with pride to the way we have operated the Canal. For 62 years it has been run as a public service for the nations of the world rather than as a business. Tolls have been set as low as compatible with meeting costs and providing a modest return, and world commerce has been a major beneficiary of the Canal operation. The toll rate when the Canal opened in 1914 was $1.20 per Panama Canal ton; today it is $1.29.

But while the Canal has been a source of deep pride to the United States, it has been a troubling and festering presence in Panama. Under the treaty the United States exercises jurisdiction over the Canal Zone courts. It has established the Zone's schools, jails and its police force. It has set up what the Panamanians have regarded as a colonial enclave splitting their country in two and using 550 square miles of their territory. And the Panamanians have made known their resentment at the United States doing so pursuant to a treaty which was not even signed by a Panamanian.

It is against this backdrop that these new treaties must be evaluated.

Several arguments have been widely advanced against a new treaty arrangement with Panama. Secretary Vance has already discussed the sovereignty issue, and I would like to touch upon several other major concerns which have been asserted in connection with the new treaties.

First, will the new treaties in any manner prejudice our national security? Your Committee will have the benefit of the testimony of our foremost defense authorities on this score; but it is important to stress that in all of our negotiations we have worked closely with the Department of Defense and the Joint Chiefs of Staff to assure that our national security interests would not in any respect be prejudiced under the new treaty arrangements. And we have been assured by them that the treaties we have agreed upon will not only preserve but indeed enhance our national security interests.

Second, will the new treaties seriously affect United States commercial interests? The new treaties, we believe, are the best protection of our commercial interest in the Canal. The simple fact is that the commercial value of the Canal has diminished considerably as world commerce patterns and technologies of shipping have changed. Today supertankers and other larger vessels cannot use the Canal. In percentage terms the Canal is much more important to the various countries of Latin America than it is to us. Today approximately 7 percent of total United States international maritime trade passes through the Canal each year. About 4 percent of the trade between the East and West coasts traverses the Canal. It is, therefore, clear that though the Canal is still important, it has, to a substantial extent become economically obsolescent.

Third, is the present Government of Panama the one with whom we should be negotiating these new treaties? For over 13 years we have been engaged in negotiations for a new Panama Canal treaty. The present Chief of Government, General Omar Torrijos, who has been in power for almost 9 years, has been committed to trying to work out a new treaty with the United States and in doing so he is supported by the people of his country and is following in the footsteps of every Panamanian Head of State since 1903—irrespective of ideological differences. Moreover, pursuant to the Panamanian Constitution, the treaties will now have to be submitted to a plebiscite in Panama next month so that the Panamanian people will be able to express their judgment with respect to these treaties.

Secretary Vance and Ambassador Bunker have already described to you the major terms of the new Panama Canal treaty, and I would like to focus my remarks on the neutrality treaty. This treaty commits the United States and Panama to maintain a regime of permanent neutrality for the canal. Under the rules of neutrality set forth in this treaty, the Canal is to be open to merchant and naval vessels of all nations at all times without discrimination as to conditions or charges of transit. A special provision authorizes United States and Panamanian warships to transit the Canal expeditiously in both peace and war without being subject to any restriction as regards means of propulsion, armament or cargo.

Under this provision no question can be raised about the right of U.S. naval vessels to transit the Canal with all their weapons nor can any restriction be placed on the type of cargo they may carry. Further, we are assured of a preferential right to expeditious transit of our naval vessels whenever we consider this necessary.

Under the treaty the United States is in a position to assure that the Canal's permanent neutrality is maintained and there is no limitation on our ability to take such action as we may deem necessary in the event the Canal's neutrality is threatened or violated from any source.

The precise type of response we might determine to make would of course depend upon all the political, military, legal, economic and other factors involved in a particular situtation. But the key point is that it is for the United States to make the determination as to how we should respond and how we should defend our rights under the Canal's regime of permanent neutrality. Thus the treaty provides for the United States maximum freedom to determine how to carry out its responsibility for Canal neutrality. We are under no obligation to consult with or seek approval from any other nation or international body before acting to maintain the neutrality of the canal nor does the treaty in any other way limit our ability to act.

This permanent neutrality treaty will also apply to any other international waterway that may be built in Panama in the future. In short, the neutrality treaty provides a firm foundation for assuring that our long-term interest in the maintenance of an open, accessible, secure, efficient Canal is preserved—now and in the future.

In order to emphasize the importance of the regime of neutrality to world shipping there is a protocol to the neutrality treaty which will be open to accession by all the countries of the world. The signatories to this protocol will, in effect, endorse the neutrality treaty by specifically associating themselves with its objectives and by agreeing to respect the regime of permanent neutrality of the Canal both in time of war and in time of peace. The Instruments of Accession will be deposited with the Secretary-General of the Organization of American States.

The lasting and deeply significant implications of this treaty have been fully recognized by the Panamanians. In signing the

treaties at the Pan American Union here in Washington on September 7, 1977, General Torrijos clearly told the people of Panama, the people of the hemisphere, and the people of the world: "We have agreed upon a neutrality treaty that places us under the protective umbrella of the Pentagon. This pact could, if not administered judiciously by future generations, become an instrument of permanent intervention."

Both countries recognize that this treaty is designed not only to assure that our own interests will be fully preserved but to assure the other countries of the world that the United States will be in a position to do whatever may be required in the future to preserve the openness, security and accessibility of the Canal.

It is vitally important that the American people study these new treaties carefully and open-mindedly and recognize what is at stake. The issues involved are far too complex and significant to be compressed into a slogan or reduced to the size of a poster. In these agreements we believe we have a rare opportunity to demonstrate to the world how a large nation and a small nation can settle their differences amicably and with mutual respect and enter into a lasting partnership of which future generations will be proud. They will bear witness to our intentions to build a balanced, constructive, and lasting relationship among the countries of this hemisphere.

Theodore Roosevelt put it very well:

"We have no choice as to whether or not we shall play a great part in the world. That has been determined for us by fate. The only question is whether we will play that part well or badly."

STATEMENT BY AMBASSADOR ELLSWORTH BUNKER

With the opening today of these hearings, the resolution of one of our nation's most difficult and pressing foreign policy problems enters a new stage. You have before you two new treaties designed to assure our interest in a secure and efficient Panama Canal.

Those of us who have participated in the negotiations have completed our task. It is now up to the Senate to examine the agreements and to make a judgment on them.

My first involvement with Panama Canal diplomacy came in 1964, when I was serving as Ambassador to the Organization of American States. From that vantage point it was possible to see at firsthand how urgent was the need for the United States to modernize its relationship with Panama and how important such a step forward was for our position in the Hemisphere.

My direct association with the Canal negotiations began in 1973. At that time the two sides began working out a set of principles to serve as a guide in preparing new treaties. These principles—which have guided the subsequent negotiations—were embodied in the Joint United States-Panamanian Statement signed at Panama City in February 1974. In January of this year these principles were reaffirmed by Secretary Vance on behalf of the Carter Administration. This action followed a thorough policy review in which the incoming Administration established its positions on the principal issues at stake in the negotiations.

The fundamental concept in the 1974 principles is that of United States-Panamanian partnership. Throughout the discussions of the past three years, our objective has been to shape a close and enduring partnership between the United States and Panama in maintaining an open and efficiently operated canal. That is the concept which underlies the treaties you have before you today.

The partnership envisioned in the new treaties has three aspects:

The United States and Panama will be partners in the operation of the Canal through the end of this century. During this period the United States will continue to shoulder the responsibility of managing the canal enterprise, building on a tradition of safety and reliability developed in over sixty years of experience. At the same time, we will be preparing Panamanians to carry on this tradition after the year 2000.

The United States and Panama will also be partners in protecting the Canal. For the duration of the Panama Canal Treaty, the United States will have the primary responsibility for defense of the waterway and will retain bases and troops in Panama for that purpose. Panama will also contribute forces to canal defense. While the forces of the two countries will work in coordination, they will retain their separate lines of command. We will be able to act unilaterally to maintain canal security if need be.

Finally, the United States and Panama will share a long-term responsibility for maintaining the Canal's neutrality. The United States role in assuring neutrality will continue for as long as the Canal remains in operation—even after management of the waterway passes to Panama.

Let me now explain more specifically how the United States-Panamanian partnership in operation of the Canal will function.

The Panama Canal Treaty provides for the creation of the Panama Canal Commission, which will manage and operate the Canal through December 31, 1999. The Commission, which will replace the existing Panama Canal Company, will be a United States Government agency constituted in accordance with legislation to be sought from the Congress.

The Commission will be supervised by a nine-man Board consisting of five Americans and four Panamanians. The Commission's executive officers will be an Administrator and a Deputy Administrator. Until 1990 the Administrator will be an American and the Deputy Administrator a Panamanian. After that time, the Administrator will be Panamanian and the Deputy, American.

The United States will appoint all officials of the Commission, including the Administrator, Deputy Administrator, and the nine Board members—Panamanian as well as American. The Panamanian appointees will, however, be proposed by Panama.

United States control of Canal operations throughout the treaty period is fully assured. The United States will have a majority on the Commission Board; it will appoint Commission officers; it can remove the Commission executive officers at will. Most importantly, the Commission will operate in accordance with United States law.

At the same time, the participation of Panamanians at the highest levels in the Canal enterprise—both as Board members and executive officers—will permit Panama to attain the managerial expertise to operate the Canal after the year 2000. When Panama assumes responsibility for canal operation, Panamanians will have had the benefit of twenty years of involvement in the direction of the Canal enterprise.

The Treaty grants to the United States the rights needed to carry out its responsibility for operating the Canal. These include the authority to establish and collect tolls, make and enforce rules pertaining to navigation and marine traffic control, and regulate planning relations with employees. The Treaty also grants the United States the use of all lands, waters and facilities required for Canal operation. The areas and facilities reserved for this use and specifically identified. They include the Canal itself and related installations.

The Panama Treaty encourages continuity and quality in the Canal work force. The provisions governing employees are designed to encourage experienced personnel to remain with the Canal under the new Commission. Salary levels, and the terms and conditions of employment, will remain generally as favorable as they are now.

An important difference for employees will be the change from United States to Panamanian jurisdiction in what is now the Canal Zone. For the United States employees—most of whom reside in the Canal Zone and who will therefore be most deeply affected by the shift—the treaties provide special guarantees which commit Panama to apply specified procedural standards in criminal cases involving United States citizen employees. In addition, an agreed minute provides that Panama, as a matter of general policy, will, in such cases, transfer jurisdiction to the United States at the latter's request.

As with management, there is provision for development of a qualified Panamanian work force to man the Canal enterprise. In hiring new employees the Panama Canal Commission will give preference to qualified Panamanians. The Commission will also provide training programs to develop Panamanian workers with all the requisite skills needed by the Canal enterprise. During the more than two decades of the Treaty period, it should therefore be possible to build up a fully qualified Panamanian work force. We, of course, start from a strong base. Seventy-four percent of current Canal employees are Panamanian.

A sound financial structure is also important to the success of the Canal enterprise. We have kept this objective very much in mind in working out the economic arrangements under the new Treaty.

At the start of these negotiations—in the 1974 Kissinger-Tack Joint Statement of Principles—both countries agreed that Panama should receive "a just and equitable share of the benefits derived from the operation of the Canal in its territory". In line with this principle the United States consistently maintained during the negotiations that payments to Panama for its contributions to the Canal enterprise should be drawn entirely from Canal revenues—that is, that the payments should reflect the Canal's economic value as measured by its revenue-generating capacity. Panama initially sought much larger payments, which far exceeded what could be financed by Canal earnings.

The United States concept has been followed in establishing the payments to be made to Panama under the Panama Canal treaty. These payments—as Secretary Vance explained—will come entirely from Canal revenues. The amounts established are based on what we consider sound and realistic projections of the Canal's earning capacity.

The economic and military assistance—of up to $345 million, which—as Secretary Vance has stated—we have undertaken to provide Panama, has been kept entirely separate from the Canal treaty and from Canal operations. This aid is not linked in any way to our rights and obligations under the new Canal treaties and will not be a burden on the Canal operation. At the same time, it will, we believe, enhance the successful implementation of the new treaties by contributing to Panama's economic development and thereby helping to foster a climate of stability conducive to efficient and secure Canal operation.

We are confident that the economic arrangements worked out will contribute to the success of the United States-Panamanian partnership. The payments Panama will received from Canal revenues will give it a stake in the success of the Canal enterprise.

At the same time, they are set at a level within the Canal's projected earning capacity. And the economic assistance to be provided outside the Treaty—while in no way tied to Canal operations—will contribute to the success of the new arrangements.

I am confident that the Treaties provide the basis for efficient operation of the Canal under United States stewardship until the end of the century and with Panamanian management thereafter. They build on effective operating procedures already established. They provide for an orderly shift to Panamanian operation. They ensure that over the long term the Canal will have an effective management, qualified work force and a sound financial base—three of the essential elements for any successful industrial enterprise.

I am also confident that the United States and Panama can work together effectively in carrying out all aspects of the new relationship which these Treaties envision.

In our preoccupation with differences over the Canal, both Americans and Panamanian tend to overlook the many positive elements in our long association. The United States and Panama have been working together for three-quarters of a century. It is fair to say that there is no other nation with which Panama maintains a closer relaionship than the United States. This relationship has centered on the Canal, but it has not been limited to that. Important ties of trade and investment link our two countries. For thirty years the United States and Panama have also been allies under a mutual defense treaty—the Rio Pact. And on a personal level, thousands of Panamanians have attended schools and universities in the United States.

The United States and Panama are well prepared to enter on an area of closer cooperation in the Canal enterprise. They begin from a solid foundation of mutual understanding and concrete accomplishment. Without that, these Treaties would never have been concluded. That is why I am convinced that the partnership envisioned in these Treaties will be productive and successful.

GREAT PLAINS CONSERVATION PROGRAM

Mr. McGOVERN. Mr. President, on Wednesday, the Senate agreed to my amendment which makes the Great Plains conservation program permanent, and I would like to thank the majority leader, Senator BYRD, and the minority leader, Senator BAKER, for their efficient handling of this amendment. It is a great pleasure to realize that such early action has been taken to extend a valuable conservation program that would otherwise have been terminated in 1981, without reaching its original goal to treat 16,000,000 acres of fragile and erodible plains area. Now, with the Great Plains conservation program a permanent part of the current effort to extend to individuals the opportunity to develop soil protection plans that require technical assistance from trained conservationists, it is possible for destructive droughts, winds and floods to be significantly controlled. The support that I received for this amendment from South Dakotans is also appreciated. The provided statistics showing that, in spite of extreme drought conditions in the State last year, Great Plains program participants were in much better financial and production condition than those who were outside the program. It is my hope that the extension that has been approved and the limitation of the total appropriations available for the program will significantly ease future climatic hazards.

Now that the Western States have been included in this program under related legislation also passed Wednesday, there is a good chance that the original acreage goals will be increased by several thousands. Also, the inclusion for formerly ineligible counties not classified as semiarid will make the program more realistic because few counties have been untouched by the lack of rainfall in the years since 1956 when legislative authority for the Great Plains conservation program was enacted.

Again, I would like to thank both leaders of the Senate for their cooperation in securing approval for S. 896, and Senator TOWER and METCALF for their cosponsorship and support. I hope that the other House concurs with Wednesday's action by moving quickly for approval.

GENOCIDE: THE CASE OF MELOS

Mr. PROXMIRE. Mr. President, for over a decade now I have attempted to keep the issue of ratification of the Genocide Convention before the Senate and the American people. This convention was an important human rights document when it was first drafted and it remains just as important today.

Quite frankly, one of the most pervasive problems that the supporters of this convention, and similar ones, face is apathy. Genocide is viewed as a remote and isolated experience of the Second World War. Tragically, this is a total misconception. I offer a notable historic example to you; that of the destruction of the people of Melos in fifth century B.C.

Fifth century Athens is associated with culture; Plato, Socrates, Aristotle, and many others lived in Athens around 500 B.C. Athens was also noted for its democracy and civilizing influence on the world. Yet despite this, in 416 B.C., Athens carried out genocide on the peaceful people of Melos because the people of Melos refused to pay a nominal tribute to Athens. For this "crime" Athens decided to make an example of Melos and killed the adult male population and sold all the women and children into slavery. The controversy in Athens and the Greek world at the time was over the excessive use of force employed rather than implications of genocide as Athenians preferred to think of Melos as part of its domain and hence not a separate people. Yet the people of Melos considered themselves a separate people and by strict definitions of genocide this destruction of a people does constitute genocide.

Genocide can occur anytime, anywhere. Even countries and peoples considered to be civilized have been known to commit genocide. We must not think that we can afford to ever relax our vigilance in forestalling this crime against humanity. For this reason I urge my fellow colleagues to give their support to ratify the genocide treaty.

CONSERVATIVES SUPPORT THE PANAMA TREATIES, TOO

Mr. CRANSTON. Mr. President, the national debate over the Panama Canal Treaties sometimes gives the impression that this is a liberals versus conservatives dispute, with so-called liberals favoring the treaties and so-called conservatives opposing them.

That is an erroneous perception, as a column by Emmett B. Ford, Jr., who calls himself a card-carrying conservative, makes eloquently clear.

Mr. Ford, who supports the treaties, writes a weekly column for the Charlottesville, Va., Daily Progress. One of his columns was reprinted in today's Washington Post.

In it, he accurately points out that there is "a considerable body of conservatives in good standing," that also supports the treaties.

The reason, as he puts it, is simple:

In the final analysis . . . it really does not matter whether we bought the canal, paid for it, built it or stole it. That is all in the past.

In deciding whether or not to ratify the Panama treaty, the Senate . . . must very simply decide which future course is in the best interests of the United States.

The course offered by the new treaty can serve only to enhance the international prestige and moral authority of the United States. By neutralizing a potential hot spot and cutting down on the numbers of those hostile to us abroad, it effectively strengthens our overall defense posture.

How can an avowed conservative object to that?

Mr. President, I ask unanimous consent that Mr. Ford's article, as it appeared in the September 26, 1977, issue of the Washington Post, be printed in the RECORD—except for one sentence, which I have deleted, because I do not want to give wider audience to some critical remarks about some Members of the Senate and their supporters.

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

[From the Washington Post, Sept. 26, 1977]

CONSERVATION SUPPORT

(By Emmett B. Ford, Jr.)

Everyone seems to asume of late that all Americans on the conservative end of the political spectrum are united in their opposition to the recently signed treaty giving Panama unrestricted sovereignty over the Canal Zone.

* * * * *

There remains a considerable body of conservatives in good standing, including Gerald Ford, Bill Buckley and Henry Kissinger, who firmly support the Panama treaty. And, as a card-carrying conservative, I support it myself.

I support it because it corrects a gross injustice that we perpetrated against Panama, Colombia and indeed all of Latin America three-quarters of a century ago. (Is the perception of injustice and inequality reserved only for liberals?)

I support it because it slowly and subtly phases out an anachronistic colonial arrangement that has increasingly soured our relations not only with Panama, but with all of our neighbors to the south.

I find that I can, in good conscience, support it because I am persuaded absolutely

that our vital security interests in the canal are safeguarded. A Panama with which we have concluded a mutually satisfactory agreement is far less likely to create difficulties for us over the use of the canal than would a Panama with a permanent 10-mile-wide strip of foreign occupation right through its middle.

Moreover, under the terms of a separate treaty to be signed later by every country in the Western Hemisphere, the United States will guaranee the neutrality of the canal and its accessibility to world shipping (that is, we will have the right to intervene militarily).

Opposition to the treaty seems to be based more on nostalgia for the late 19th-century era of "manifest destiny" than anything else. One can almost hear Ronald Regan saying (to paraphrase Winston Churchill): "I did not become Mr. Conservative in order to preside over the liquidation of the American Empire."

What Regan actually did say about the canal during the election campaign last year has gradually become the rallying cry of the opposition: "We bought it, we paid for it, we built it. And we are going to keep it." We are going to keep it, he said, because it is ours, and to cede anything that is ours constitutes ignominious retreat.

But there is a good deal of loose rhetoric in this position. Certainly there is more emotion than fact in his arguments.

To begin with, the Canal Zone is not "ours" and never has been. Even in 1903, when we could have dictated any terms we wished to impose upon the newly created Panamanian state, we did not choose to acquire full and sovereign rights to the territory.

According to the treaty of that date, Panama granted to the United States, in perpetuity, "all the rights, power, and authority . . . which [it] would possess and exercise if [repeat, if] it were the sovereign" of the zone. Thus, as we confirmed in a subsequent agreement with the Republic of Panama, that country has always retained legal sovereignty over the Canal Zone, despite the fact that we exercise full control in perpetuity over it.

Similarly, we may have paid out enormous sums as rent, construction costs and bribes, but we have never "bought" the Canal Zone from anyone. A few years after we had successfully separated the Republic of Colombia from its province of Panama, we paid Colombia the sum of $25 million as "a gesture of goodwill." And, of course, we spent over $350 million to build the canal itself.

None of these expenditures, however, can be (or is) legally regarded as the purchase price of the property. The Canal Zone was never purchased outright for a specific sum of money as was the case with Louisiana, Alaska or the Gadsden strip. Panama, in effect, still has the deed, while the United States plays the role of an unwanted tenant with a very long-term lease.

That lease is the 1903 treaty, upon which all rights exercised by the United States in the Canal Zone are based. It is historically of enormous significance to the Panamanians that no Panamanian had anything to do with drawing up the document that rented out part of their country forever.

The 1903 treaty was negotiated in Washington between Philippe Bunau-Varilla, a French businessman serving as Panama's envoy to the United States, and John Hay, the American Secretary of State.

It was approved by the U.S. Senate before the arrival of the official Panamanian delegation and ratified later by the Panamanian provisional government under threat of the withdrawal of American military protection. A thoroughly sneaky and discreditable performance.

But if we could not be proud of the manner in which we acquired the right-of-way for the canal, we covered ourselves with glory in the building of it.

By the time it was completed, Dr. William Gorgas had conquered yellow fever, and Maj. Gen. George W. Goethals had overcome the incredible engineering problem of cutting through the mountains of a continental divide. It was—as many have already noted—the moon shot of its day.

In the final analysis, however, it really does not matter whether we bought the canal, paid for it, built it or stole it. That is all in the past. In deciding whether or not to ratify the Panama treaty, the Senate, which will begin hearings this week on approval of the treaty, must very simply decide which future course is in the best interests of the United States.

The course offered by the new treaty can serve only to enhance the international prestige and moral authority of the United States. By neutralizing a potential hot spot and cutting down on the numbers of those hostile to us abroad, it effectively strengthens our overall defense posture. How can an avowed conservative object to that?

IN OPPOSITION TO THE WASHINGTON, D.C., CONVENTION CENTER

Mr. PROXMIRE. The convention center that we have all been hearing so much about from the Washington business community requires a $110 million loan from the U.S. Treasury. While these funds would be paid back by the city government over a 30-year period, it should be noted that part of the funds the city would use to pay back the U.S. Treasury would also be Federal funds that come to the city in the form of the Federal payment. At the present time the Federal payment represents 34 percent of local revenues. It can be seen, therefore, that the convention center involves a great deal of Federal money from taxpayers all over the country. This is not just a local project to be paid for by the local community.

The downtown business community in Washington which stands to profit from the convention center wants the convention center a great deal. They have not, however, been willing to help pay for the construction of the center. If the business community were willing to help finance the convention center in the amount of $20 to $30 million or more, I as one U.S. Senator would feel differently about this proposal. Currently, as proposed, all of the risks of the project are being borne by the U.S. taxpayers and from what I have been able to learn from the many letters and visits to my office, the citizens in Washington, D.C., are not willing to pay for a project that would not benefit them directly and would likely result in an increase in their taxes.

The proponents of this convention center have cast their arguments in the terms of a home rule debate. Current law requires the Congress to enact a budget for the District of Columbia. The current arrangement between the city and the Congress is a partnership arrangement. It would not be fair to ask one partner's role to be limited only to helping pay the bills. There is no city in the United States that could expect to have a unilateral voice in the decision of whether or not the U.S. Treasury would loan it $110 million. While the home rule argument has emotional appeal, in this case it has a hollow ring.

I do not oppose the concept of a convention center for the District of Columbia. For example, I would not oppose a convention center that had been approved by a referendum vote by the citizens of the District of Columbia. This convention center has not been put to such a test. I would not oppose a convention center that would be funded in part by the business community which would benefit from such a proposal. This convention center has no financial contributions going to it from the business community. I would not oppose a convention center that cost 30 or 40 percent less than the one currently being proposed by the city. The city clearly could build a convention center for $60 to $70 million by putting the convention center on land already owned by the city or the Federal Government.

CONGRESS SHOULD BLOCK AIR BAG ORDER

Mr. GRIFFIN. Mr. President, on June 30 of this year, Secretary of Transportation Brock Adams issued an order mandating air bags (or "passive restraints") in new American automobiles.

As I commented on the day the order was issued, "Secretary Adams' decision will put Big Brother in the front seat of every American automobile—so it's both ironic and appropriate that his target year to finish the job is 1984."

I think air bags should be available to those who want them. However, I strongly oppose a Government mandate which forces air bags on all car buyers in the absence of more extensive field testing.

Secretary Adams' order will become effective October 10 unless overturned by both Houses of Congress.

Accordingly, I have introduced a Senate concurrent resolution (S. Con. Res. 31) disapproving the Adams directive.

This resolution of disapproval is now before the Senate Commerce Committee. Hearings have been held, and I have urgently requested the full committee, through Chairman MAGNUSON, to act as quickly as possible and report the resolution to the Senate floor for a vote.

Whatever the outcome, I believe the Senate and the House owe the American people an up-or-down vote on the merits of this important issue.

In my judgment, Secretary Adams' rule is premature and unwarranted, for the following reasons:

First. Cost. A well respected independent research firm, Economics & Science Planning, Inc. (ESP), has estimated that air bags, including installation, replacement, insurance, and fuel costs due to increased weight, will cost consumers a net $25 billion over the next 20 years.

Second. Air bag relative ineffectiveness. ESP also calculates, based on the limited field data accumulated so far by the Department of Transportation (DOT), that air bags have been less ef-

fective than seatbelts—and not much better than no restraint at all.

Third. More information is needed. DOT admits, in its own statement of justification for Secretary Adams' rule, that there is "substantial room for uncertainty and argument as to the true observed effectiveness of the various restraining systems." In particular, there is hardly any information on (a) inadvertent deployments—estimated by DOT to occur at the rate of 7,000 per year once bags are installed in all cars—and (b) accidents where bags do not inflate.

Fourth. Loss of choice. The person who currently uses his belt will be forced to spend an estimated $200 for a product which is demonstrably less effective in preventing injury or death than the product he already uses.

This is not the first Senate challenge to the bureaucratic intrusions of DOT's super-regulators. In September 1974, the Senate voted 64–21 to overturn the DOT seatbelt interlock requirement.

Although the air bag—unlike the seatbelt interlock—is a passive instrument, the DOT air bag rule is more troublesome to me because (a) it is far more costly and (b) its relative effectiveness is, at the very least, open to serious question.

Premature Government action to mandate air bags may turn out to be very costly in terms of both dollars and lives. Unlike the seatbelt interlock decision, the air bag decision—once implemented—will be difficult, if not impossible, to reverse.

Alternatives—such as additional field testing of the air bags and other restraint systems, and intensive campaigns to increase the use of seatbelts—need to be pursued, and quickly. If the air bag decision becomes final due to congressional inaction, those alternatives may be lost.

Therefore, Mr. President, it is particularly important that all Senators weigh this issue on its merits—carefully—and quickly.

Congress has less than 2 weeks left to act, and the consequences of our action—or inaction—will be far reaching.

I ask unanimous consent that a number of editorials and articles which have appeared in leading newspapers around the country be printed in the RECORD.

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

[From the Muskegon, (Mich.) Chronicle, July 24, 1977]

AIR BAGS TOO COSTLY, RELATIVELY INEFFECTIVE

The Automobile Club of Michigan, a number of auto safety experts and the U.S. Department of Transportation's own researchers have bolstered arguments against the federal order that every car buyer must pay extra for a set of air bags or other "passive restraint" system by 1984.

The Ralph Nader forces whose lobbying prompted the mandatory bags-or-belting order made much of the argument that the bags would reduce auto insurance costs.

The truth, according to the Auto Club's statistics, is the opposite.

The organization said that while air bags might reduce the average insured's personal injury premium 30 percent ($13) rates on collision coverage would jump 39 percent ($45).

The projection was based on a $700 cost for replacing a deployed air bag system, a cost that would be above other damage caused by an auto accident.

Once an air bag has been inflated in a collision (at 12 miles an hour or more), or by accident (Congressman Bud Schuster of Pennsylvania predicts 30,000 accidental deployments a year if all cars are air bag equipped) it must be replaced.

The Auto Club, whose Insurance Group is Michigan's largest, said that while collision costs would rise with a mandatory air bag system, there is no certainty of reduced medical premiums since insurers now granting a 30 percent reduction in medical provisions have too little experience to determine whether it is justified.

What evidence there is from the limited testing of cars equipped with air bags indicates the personal injury rate would be much higher than for cars equipped with the shoulder harness.

There have been only 143 accidents involving air bag-equipped cars, including four deaths and 21 serious injuries, and 12 deployments of bags when they should not have deployed.

That rate is far higher than for harness-equipped cars, even averaging in accidents in which the shoulder harness was not in use.

The Wall Street Journal quotes Dr. Howard Goldmuntz, who has been conducting auto safety research under federal contracts for six years, as saying that harnesses were in use 44.2 percent of the time in 1975 cars involved in tow-away accidents, and that "even at the 1975 voluntary usage rates, 30 percent more lives would be saved with harnesses than by mandating the air bag.

"For those of us who use the harness," he added, "requiring that we use the less safe air bag is a cruel and unwarranted imposition."

The superior safety afforded by the harness is evident from the DOT's own research and there is very little crash data on the only passive restraint seat belt now in use—in the Volkwagen Rabbit.

The Journal reports that this system pulls a strap across the driver and passenger when the car door is closed and utilizes "knee bolsters" to prevent driver and passenger from sliding under the strap.

We haven't seen this system, but we have a feeling the public will respond to it the same way it did to being forced to belt-up with the starter-interlock seat belt system—with outraged defiance.

That system forced you to buckle up in order to start the car. The public found ways to bypass it, and was so vocal about its dislike for it that Congress was forced to scrap it.

The same thing could easily happen again.

There are other problems, cost among them.

DOT Secretary Brock Adams said air bags "could" cost an added $100 or $200. The Journal reports the lowest estimate by a major automaker is GM's $193. Ford's cost $235 and Chrysler estimates it at $250.

They also add up to 60 pounds to the weight of the car, require maintenance—the bag can be dangerous if its deceleration sensor is mishandled by a mechanic—and, as noted, once inflated they have to be replaced.

The Auto Club, which opposes federally mandated air bags, paid one accident claim involving an air bag-equipped car, shelling out $629 to replace the system, including $126 for labor.

A General Motors study, as well as one by Dr. Goldmuntz, shows that auto occupants are safer with the current lap-shoulder belt system at the current far-too-low 20 per cent usage than they would be if all cars had air bags.

So that's it. We're to be made to accept a safety system that costs a ton and is not as effective as the lap-shoulder system.

We don't like it, and in that we're not alone.

Apart from many other objections, we don't like the Big Brother implications of Brock's bureaucratic mandate.

The papa-knows-best bureaucracy not only knows what is good for us, it is going to make us be good.

We've sacrificed too much freedom already to bureaucrats bent on protecting us from ourselves. Let the car buyer decide himself how much safety he wants. Let him decide himself whether he wants to be safe or sorry.

Government has no mandate to protect an individual from what it considers his own foolishness.

Whether the air bags and passive restraint belts are effective or not, they should be offered as optional equipment; made available after adequate testing, yes, but optional.

Congress has about six weeks left to review Adams' plan, and unless it objects, the plan becomes law. It should object—loudly—and reject it.

We think Congress will—if enough of us write and urge the members to scrap the mandatory bag-and-belt plan, leaving us the choice as to how safe we want to be.

The addresses are:

Sen. Robert P. Griffin, 353 Russell Office Building, Washington, D.C. 20515, Sen. Donald W. Riegle, Jr., 1207 Dirksen Office Building, Washington, D.C. 20515, and Rep. Guy M. Vander Jagt, House of Representatives, Washington, D.C. 20515.

Please write soon!

[From the Grand Rapids Press, July 6, 1977]

AIR BAGS MANDATED

U.S. Transportation Secretary Brock Adams has jumped deep inside the car safety thicket, and like his predecessor, he has hounds baying relentlessly on all sides.

Mr. Adams last week ordered automakers to install front-seat passive restraints in all cars by 1984.

The only such restraints now in use or in the experimental stage are air bags and a belt system that opens and closes with the doors. The order will go into effect unless it is rejected by Congress within 60 days.

As in their debates on other issues directly related to public health and welfare, many friends and foes of Secretary Adams' order are for and or against the mandated system for the wrong reasons. Chrysler and American Motors oppose the ruling—they're fighting for a larger share of the market and will be hurt by price hikes; General Motors is neutral—it has a long lead in air bag technology; Ralph Nader is opposed—he wants the order to take immediate effect, and one might wonder whether Mr. Nader isn't hoping that higher car prices might someday force Americans to rely on them less; some major insurance companies support the order—passive restraints will help to trim the size of the claims. (But will premiums go down? No, because the resulting higher prices for cars, and the more complex equipment in them, will boost the cost of insurance to car owners, and especially for the low-risk drivers.')

Ordinarily, Mr. Adams' order wouldn't have a chance of standing up in Congress, but recent support from UAW President Douglas Fraser (more jobs, more union members) indicates that the issue will be closely fought before lawmakers start their vacation on Aug. 6.

There is no question but that government has a proper role to play in reducing the number of highway deaths and serious injury. Design and engineering can contribute to a product's safety or its hazard—there is even more need for cars to be built for safe use than, say, home appliances to be free of electrical faults, or that amusement park rides be inspected regularly.

And car safety no longer is a matter of "protecting us from ourselves." Mandatory insurance laws, the high cost of highway safety features, economic deprivation of survivors or the care of those permanently injured—in fact the enormous impact of the motor vehicle industry on the nation's economy—make car safety a public, not private, matter.

One trouble with Mr. Adams' passive restraint order is that it is so expensive and so obnoxious to so many drivers that its implementation may be in doubt.

Passive restraints are expected to cost the car buyer from $100 to $300. The price is high enough to be a valid objection to the Adams order. But the issue would vanish if the states and members of Congress would acquire the gumption to move aggressively toward reliance on seat and shoulder belts.

The seat belt interlock, which prevented the car from starting unless belts were buckled, was foolishly abandoned by Congress several years ago because the system was a petty annoyance to drivers. At the time The Press noted—accurately, as it turned out—that rescinding the interlock order would speed the day when the more expensive, and possibly even less effective, air bags would become mandatory.

No one can contend that laws and car design can assure 100 per cent seat belt use, but they can go a long way toward encouraging a good habit—which is what wearing belts is all about.

The refusal of states—including Michigan—to require seat belt use has the effect of suggesting that the system isn't important, and that is a serious act of omission. It is ironic that the state can require drivers to carry certain types of insurance but will do nothing to encourage the use of seat belts.

Experience in Canadian provinces and other foreign countries indicates that mandatory seat belt laws increase their use significantly, thus reducing highway deaths and serious injury accordingly.

Blithely ignoring the possibility of a similar reduction in this country is simply shirked responsibility on the part of lawmakers.

[From the Detroit News, July 13, 1977]

NEW AIR BAG ISSUE—U.S. URGED TO CHECK CLAIM OF HIGHER INSURANCE RATES

Will the consumer suffer a substantial increase in auto insurance rates when—and if—air bags are installed in cars?

The Automobile Club of Michigan says that although the car owner will probably get a $13 decrease in premiums for medical protection on an "air bag" car, this cut will be more than offset by a $45 increase in property damage rates to protect against the cost of reinstalling an air bag system that has been deployed.

The AAA says the bill for air bag reinstallation will be $700. General Motors Corp., which has sold a fleet of 11,000 cars equipped with air bags, uses the same figure. Since GM is the only company with extensive experience, it ought to know the cost of replacement.

This raises a serious question that ought to be answered before Congress decides what to do about the order of Transportation Secretary Brock Adams that all cars must have passive restraint systems beginning in model year 1982.

Adams offered a choice, either the air bags or a belt system like that of Volkswagen which locks automatically when the driver and front seat passenger close their doors.

The public will be suspicious of the AAA and GM claims on costs of restoring an air bag system because of their self interest. The AAA is in the auto insurance business and is vehemently against air bags. Is the club overstating its opposition? GM is similarly resistant to air bags, especially their effect on the price of cars. Is GM going a little too far in fighting them?

Now that the claims have been made about the higher insurance costs, the Department of Transportation ought to address itself to the issue. If it thinks the figure is wrong, the DOT should say so. Either way, the DOT should deal with this matter quickly to aid Congress and inform the consumer.

The $700 repair figure is even more upsetting than the original installation cost. Units sold in limited numbers by GM cost more than $500 per car and were installed at a loss by the company. Currently, the industry estimates the cost of the bag system on a mass production basis at about $200, although the Department of Transportation uses a $100 figure.

This brings us back to the other option offered by Adams—the VW belt system sold in West Germany as a $40 option. The installation cost is reasonable. There is no reinstallation cost.

But, say the car makers, the VW system would knock out the six-passenger car, since the reels for these belts must go between split front seats.

Do we really make use of the "six passenger" car? Is the use of the extra passenger space worth $100 to $200 for bags and another $700 for reinstallation if you have an accident?

The whole issue of passive restraint systems turns on cost. Already embattled by inflation, the consumer surely will resist a federal mandate which in effect threatens him with a $700 repair bill.

If that figure is wrong, Brock Adams ought to say so. And if he is silent, surely air bags are condemned.

[From the Lansing (Mich.) State Journal, July 28, 1977]

AIR BAG MOVE PREMATURE

The U.S. Department of Transportation climbed out on a limb a few years ago when it ordered a seat belt interlock system which killed the ignition if you didn't lock your seat belt.

The public outcry was so great that Congress repealed the action less than two years later.

Now Transportation Secretary Brock Adams has taken up the cause again by ordering the auto industry to install either air bags or passive restraint systems for new cars starting in 1982. Adams provided an option with the passive restraint plan—a seat belt harness that automatically covers passenger and driver when they get in the car.

No one is lobbying hard for this device which has had only limited testing. The major lobbying thrust is for air bags, the devices which inflate on front end collisions to protect driver and passengers.

The problem with the Adams decision, in spite of all the hoopla, is that air bags have not yet been proven more effective than the existing seat belts and shoulder straps.

Congressman Bud Shuster, R-Pa., is leading the opposition to air bags. He charged that Adams glossed over findings of his own transportation department showing that air bags do not provide the overall protection of seat belts and straps.

Automakers insist that air bags will cost anywhere from $200 to $300 per vehicle for the installation, and once the bag inflates, by accident or in a crash, the replacement cost will be more than the original factory installation.

In other words the program will sharply increase the cost of owning a new car with the safety factors gained still highly questionable.

Shuster also ripped claims by air bag proponents that the devices will reduce insurance premiums by as much as 30 per cent. Shuster said his studies found the average saving would be closer to one percent.

At the heart of the debate is the issue of whether people can be forced to take sensible steps to protect themselves from death and injury on the highways.

Shuster stresses that the existing seat belts and shoulder straps are more effective in saving lives. But the problem as always is that a large percentage of American motorists won't use them.

So the alternative is mandatory federal government action despite reports that car buyers have shown little interest in cars with air bags offered as an option on some models.

A proposal for a federal law making use of seat belts mandatory would be difficult to enforce although it might spur citizens to buckle up to avoid a ticket. Congress so far had shown little enthusiasm for the idea.

Adams has chosen to risk the public wrath in his order which will stand unless Congress vetoes it.

Congress should take that step now and demand that DOT provide more comprehensive evidence of the air bag usefulness before foisting this costly system on the public.

Efforts to reduce the Nation's disgraceful highway death toll are needed and must be pursued. But it is important that devices like air bags prove their worth over existing equipment like seat belts and shoulder straps before they are made mandatory equipment.

[From the Detroit Free Press, July 21, 1977]

AIRBAGS AND OTHER IMPOSITIONS

(By James J. Kilpatrick)

WASHINGTON.—President Carter endorsed no-fault automobile insurance the other day. At about the same time, Transportation Secretary Adams mandated the installation of air bags. And up on the Hill, a number of small bakers were protesting some labeling requirements. The stories are unrelated, but they have a common theme. That theme is the needless exercise of federal power.

Our masters in Washington increasingly take the view that they know what is good for us, and willy-nilly, they will impose their superior wisdom upon the states and on the people.

No-fault insurance is a case in point. The idea has been kicking around for 10 years or more. Under the no-fault approach, the element of responsibility is largely removed from the settlement of automobile accident claims. The driver surrenders his right to sue, except in the most serious instances, but he is assured of prompt compensation for his injuries. It makes no difference who was to blame. By eliminating tedious investigation and litigation, a reduction in insurance premiums can be achieved.

Massachusetts pioneered with no-fault in 1970. Subsequently, 15 other states decided to give the idea a whirl. Another eight states began experiments with no-fault offshoots. The results have not been remarkably impressive. The states are still tinkering with different versions.

Under these circumstances, common sense should dictate that Congress back off. The need for a national no-fault law has not been demonstrated. The states ought to be left free to perform their function under federalism. But the Senate and the Carter administration are bent on imposing their supposed wisdom anyhow.

Secretary Adams' air bag edict stems from the same Potomac fever. By September of 1983, unless Congress overrules his mandate, all new cars will have to be equipped with this expensive and complex device (or with passive safety belts), whether car buyers want the protection or not.

Real world experience indicates that air bags work. The successful results have been widely publicized. But whenever manufacturers have offered air bags as optional

equipment, the customers have shunned them. In the judgment of the marketplace, the risk does not justify the cost. In a voluntary society, such judgments ought to be respected, but Secretary Adams has no faith in a voluntary society.

The bakers appeared before the House Small Business Committee to complain bitterly at some new labeling requirements laid down by the Food and Drug Administration. Starting January 1, packaged foods must list the chemical names of the ingredients. The idea is to let the purchaser know what he is getting, and there is nothing wrong with that idea.

But one result is that instead of "baking powder," a label might have to indicate "sodium aluminum pyrophosphate, gluconodeltalactone." What is the sense in this? Such requirements do not clarify; they obscure. And in the case of the small bakers, the expense of frequent label changes, as ingredients are modified, could be ruinous. To these complaints, the FDA is deaf.

And so it goes. In each of these instances, the intentions are good—to simplify insurance settlements, to save lives, to disclose precisely what is in the food we eat. The trouble lies in the clumsy use of power, and in the steady erosion of the principles of a free society.

Left alone, the states will enact the no-fault laws their own people want. Left alone, prudent motorists will buy air bags as they please. Left alone, competitive bakers will attract customers by giving them clear information. Our busy masters, sad to say, simply do not work that way.

[From the Detroit News, Mar. 28, 1977]

AIR BAGS STILL OF DOUBTFUL VALUE

Transportation Secretary Brock Adams will reopen the issue of whether air bags ought to be required on U.S. cars in a new hearing April 27. In doing so, he acts in unseemly haste and appears to be prejudging the issue. He admits he is leaning heavily toward mandatory requirement of the bags.

Adams criticized the decision of his predecessor, William T. Coleman, who did not order installation but instead arranged an agreement for massive test installations at enormous cost to the auto industry.

Coleman wasn't sold on the bags, which inflate when a car is struck with an impact greater than 12-miles-per-hour. In our view, the former secretary's doubts were justified. Coleman also had reached his conclusion after a long and careful series of hearings.

The deliberate process is not for Adams. He leaps in with both feet. He says he can't understand how his predecessor failed to mandate a safety device which, Adams says, would save 9,000 lives a year.

That statement is unfair.

The Coleman report says air bags would save 12,100 lives in traffic accidents annually and also prevent tens of thousands of injuries. But Coleman didn't stop there. He said air bags are not superior to lap and shoulder belts already installed in cars.

The belts, Coleman said, would save even more lives than air bags if they were buckled up in all cars all the time.

Washington is seeking a "passive restraint" system which protects a driver without his doing anything on his own. Air bags have their appeal because, in theory, they deploy automatically in a crash and throw a cushion in front of the driver.

But the air bag system is not the only "passive" equipment available. It is the most costly—and that is its distinction.

Inflating car prices by $500 a unit is no small matter. Some people can remember when one could buy a whole car for that amount. Adding that much to the price would remove thousands of people from the car market and create serious unemployment.

[From the Mining Journal, Marquette (Mich.), July 15, 1977]

CONSUMER RIPOFF

When it comes to consumer ripoffs, the effort by Transportation Secretary Brock Adams to require mandatory automatic crash protection on all cars ranks as a new North American record.

Adams has told Congress that passive restraints—either air bags that inflate in a crash or a safety belt that automatically wraps itself around the driver and front seat passengers—must be installed on automobiles starting with the 1982 model year.

What will these safety bags cost the car buyer? Adams estimates the price at something between $100 and $300. Automobile manufacturers say it could be as much as $600. Nobody is saying how much it will cost to reinstall the bags after they have inflated.

What will the bags acomplish? They are designed to inflate in a crash of 12 miles per hour or greater, cushioning front seat riders. They are not intended to provide protection from side impact nor will they keep a person within the structure of the car in a rollover accident.

Our opposition to the Adams order requiring the automatic safety equipment is based on a number of factors. First, we do not believe the government should be in the business of protecting people from hurting themselves without regard to the cost. The next thing you know, we'll be breaking the law if we don't brush our teeth or jog in place 15 minutes every morning.

Next, we don't even know if the air bags will do what they're supposed to do. There are only about 11,000 cars equipped with the bags in operation today and there have been only about 200 crashes in which they inflated. There have been three cases in which air bags have inflated accidentally. If you project that figure to all of the autos in the country, you get some 30,000 accidental inflations each year and who knows how many accidents caused by the malfunctions.

Finally, we already have safety devices which are more efficient and foolproof than air bags. They're called seat belts, and all you have to do is hook them up. Experts agree that 19,000 lives could be saved each year if all motorists wore seat belts.

Sen. Robert Griffin, R-Michigan, calls Adams' order a "$20 billion consumer ripoff." We agree.

[From the Memphis (Tenn.) Press-Scimitar, July 13, 1977]

VOTE NO ON AIR BAGS

If it has any respect for public sentiment, Congress will veto a government requirement that all new cars be equipped with air bag safety systems by the fall of 1983.

As near as we can tell, there is little popular demand for a costly balloon-like cushion of air that automatically pops out of the dashboard to protect front-seat passengers during head-on collisions.

The Ford administration had the right idea back in December when it asked the auto companies to voluntarily install up to 500,000 air bags in new cars on a trial basis, beginning in 1979.

But now the new secretary of transportation, Brock Adams, has gone from optional to mandatory by insisting that new standard-size cars be equipped with air bags in the fall of 1981, new intermediates and compacts in the fall of 1982 and new smaller cars in the fall of 1983.

The order will go into effect unless both houses of Congress veto it within 60 working days—which is why citizens who have doubts about the air bag should be urging their congressmen to vote against it.

The air bag will add several hundred dollars to the already inflated cost of a new car. But beyond the cost factor, there is not much evidence that air bags would save 9,000 lives a year, as Adams contends.

What evidence there is seems to show that air bags would be considerably less effective than seat belts at preventing serious injuries in auto accidents.

Let's give the air bag a fair trial as an optional piece of equipment. But let's not force new car buyers to accept (and pay for) a debatable safety device that most of them might prefer to do without.

[From the Boston (Mass.) Herald American, July 11, 1977]

THE AIR BAG DECREE

By the Big Brother proclamation of Transportation Secretary Brock Adams, all 1984-model automobiles put on sale in the United States will have to be equipped either with those highly-controversial air bags—which cost buyers up to $300 each—or the alternative nuisance of lap and shoulder restraints which wrap around occupants automatically when car doors are shut.

The bureaucratic fiat, which will take effect unless vetoed by Congress in the next 60 session days, was a long-sought goal of consumer activist Ralph Nader and others convinced that the public needs more protection from its own lack of responsibility. Making the safety devices mandatory, they claim, will save up to 10,000 lives a year.

Maybe so—and maybe not. The effectiveness of the expensive and cumbersome automatic restraints has not been proven in practice. What has been proven in fact is that the public, in general, is at the very least unenthusiastic about them. Indeed, it has been shown in no uncertain fashion that a likely majority of motorists is indignantly opposed.

Seat belts, for example, have been tolerated and increasingly used because their use is voluntary. When they were made mandatory in the safety belt interlock system, the ensuing public outcry caused Congress to scuttle the system in 1974. Lap and shoulder harnesses that automatically clutch car riders at the closing of a door are not likely to be any more acceptable than the buzzing interlocks were.

Similarly, the mere idea of air bags under a dashboard which are triggered to inflate instantly in your face by an impact bump has been enough to spook many front-seat riders even more than the fear of collisions. Only about 10,000 such units were sold when General Motors, in a test of public demand, offered them as optional equipment several years ago.

Former Transportation Secretary William Coleman, in weighing all aspects of the car rider interior safety problem, concluded that the sensible and responsible position for the government to take was to encourage voluntary acceptance of automatic restraints—not to try forcing them on the public for its own good.

If Congress fails to recognize the wisdom of the Coleman solution in the next several months and does not veto the arbitrary decree of his successor, it is virtually certain that an uncooperative and resentful public will compel such recognition later.

The 1984 envisioned by novelist George Orwell as the time for total Big Brother dictatorship by government bureaucracies everywhere is still far from being realized in this country. Up to now, that is.

[From the Wall Street Journal, July 20, 1977]

THE HALF-SAFE CAR

We've been wondering why Brock Adams, in his "air bag decision," seeks to force the nation's motorists to accept an auto safety device that is both expensive and relatively ineffective.

The most charitable answer is that the Transportation Secretary felt compelled by the rigidities of the Motor Vehicle Safety Act to go with available technology, however flawed. If so, he should read the act again.

Less charitably, but more plausibly, we could guess he fell victim to the air bag lobby—such voices as Allstate Insurance, Ralph Nader and Joan Claybrook, a Nader protege who has risen to become Mr. Adams' highway safety chieftess. These early advocates of the air bag trouble their minds little with recent data demonstratiing its inadequacies.

Least charitably of all, we might think the Secretary himself has come down with that virulent Washington disease, paternalism. Whatever the reason, it was a bad decision.

We should note at the outset that the Secretary did not commit himself unequivocally to the air bag. His order merely requires that beginning in 1981 and by 1984 all new cars be equipped with "automatic crash protection—air bags or passive seat belts."

But no one is lobbying very hard for the passive seat belt. Reliable crash data still are sketchy on the one such device in general use, on the Volkswagen Rabbit, which pulls a strap across the passenger when he closes the car door and utilizes "knee bolsters" to prevent his sliding under the strap in a crash. Given the DOT's biases, it is not misleading to call the Secretary's action, at this stage at least, an "air bag" decision.

But the DOT's own research shows lap and shoulder harnesses, with which cars sold in the U.S. already are equipped, far more effective than air bags in protecting passengers. In tow-away accidents involving the approximately 11,000 cars equipped with air bags from 1973 through 1976, there have been four fatalities (five if you count one delayed death) and 23 serious injuries. That rate is far higher than for shoulder harness equipped cars, even averaging in accidents in which the shoulder harness was not in use.

Dr. Howard Goldmuntz, who has been conducting auto safety research under federal contracts for six years and who favors laws requiring motorists to use their shoulder harnesses, notes that harnesses were in use 44.2% of the time in 1975 car involved in tow-away accidents. "Even at the 1975 voluntary usage rates, 80% more lives would be saved with harnesses than by mandating the air bag," he contends. "For those of us who use the harness, requiring that we use the less safe air bag is a cruel and unwarranted imposition."

Indeed it would seem so. In order to argue that the air bag would save lives it was necessary for DOT to hold, on the basis of observations in shopping center parking lots, that motorists buckle their harnesses only 20% of the time. Even at 20% harness usage, Dr. Goldmuntz doubts that the air bag would be superior.

It doesn't help the Secretary's case when costs are thrown into the balance. His argument that air bags "could" cost an added $100 to $200 is so optimistic as to border on the fraudulent. The lowest estimate by a major auto maker is GM's $193. Ford puts the cost at $235. Chrysler estimates it at $250 or more.

That doesn't include consideration of the air bag's 40 to 50 pounds extra weight, which calls for costly additional engine power. It doesn't include maintenance costs; the air bag can be dangerous if its deceleration sensor is mishandled by a mechanic. And it doesn't take account of replacing the bag and repairing the damage to the passenger compartment if the air bag bangs out through malfunction or a minor accident. The bill here runs $500 to $600. Congressman Bud Shuster of Pennsylvania predicts 30,000 accidental deployments a year if all cars are air bag equipped and puts the bag's cost to the average motorist during his driving life at $2,000. Claims that the air bag would lower insurance costs look implausible in the face of these numbers.

It should be obvious by now that there is something other than logic propelling the drive for "passive restraint." There is. Passive restraint is a part of the theology of those who distrust individual choice and judgment. The Secretary's brief for the air bag holds that "the automobile's characteristics must reflect broadly defined societal goals as well as those advanced by the individual car owner." In case you haven't heard, "societal goals" are set in Washington.

Secretary Adams decided to mandate air bags after discovering that "public acceptance or rejection of passive restraints is not one of the statutory criteria which the department is charged by law to apply in establishing standards." Maybe not, but Congress might want to give some thought to public reaction in deciding over the next two months whether to let the Secretary's decision stand. It has only been three years since Congress was forced by public outrage to scrap the interlock, which made it impossible to start a car without first buckling the seat belt. Public preferences may not look very important to Secretary Adams but we have the feeling they still count for something in the American political process.

[From the Los Angeles Times, July 4, 1977]

COSTLIER BUT INFERIOR—NOT BETTER

Few Americans are likely to disagree with the desire of Transportation Secretary Brock Adams to avoid 9,000 traffic fatalities a year through improved protection for automobile occupants. But the way he has chosen to aim at that goal is the most expensive means available, and far from the most effective.

Adams has ruled, subject to congressional veto, that air bags or automatically self-fastening safety belts must be put in the front seats of new cars starting on a phased schedule in the 1982, 1983 and 1984 model years. The air bags will inflate automatically when the front bumper feels an impact of a certain strength. The seat belts will be anchored on one end to the doors; they will envelop and protect occupants without any human action.

The basic problem is plain enough, and frightful enough. Highway carnage snuffs out almost 50,000 lives a year in the United States. Some 70% of people riding in cars today decline to fasten their belts. People who die because they neglected to use belts impose not only grief on their families but great costs on others.

Yet the bags and the automatic belts won't do the same job that today's ordinary belt systems do. The bags are good in front-end collisions, almost useless when a car is bashed on the side. To avoid pinning people inside a wreck, they must deflate almost as quickly as they expand. That means that occupants are unprotected against the subsequent ricochets that are common in the worst accidents.

The door-mounted belts are dangerous, too. They can lock an occupant inside the car if the door is damaged.

These flawed systems will add at least $1 billion a year to America's expenditure on automobiles. The cost is extravagant, considering that regular lap-and-shoulder belt systems when well designed—and when used—are both cheaper and better.

Canada's province of Ontario has shown a dramatic drop in fatalities and injuries recently by requiring people to buckle their belts. Adams should be exploring ways of paralleling that success. And Congress in the meantime should scuttle the transportation secretary's plans to make mandatory the costlier and less-effective alternatives.

[From the Detroit News, July 21, 1977]

AIR BAG TEST JUST A GIMMICK?

(By John E. Peterson)

Some of Detroit's best automotive engineers are seething over the national exposure given photos that allegedly showed an air bag about to cushion a small girl during a demonstration on Capitol Hill of the controversial safety device.

The photos were sent out by Associated Press and United Press International, who both covered the July 5th press conference.

The conference was called by a pro-air bag coalition, and the deployment demonstration was designed to show doubting congressmen and newsmen that air bags will effectively protect small children in auto crashes.

You probably remember the picture. Three-year-old Shelby Sutcliffe, the daughter of coalition attorney S. Lynn Sutcliffe, was perched in the driver's seat of an auto compartment mockup with Ralph Nader looking on.

Suddenly the air bag shot out of the steering wheel, planted a soft "lovepat" on Shelby's blond locks and forehead and collapsed.

Strobe lights flashed and cameras whirred. The episode made the nightly television news and the photo was splashed on the front page of dozens of newspapers across the country.

The remarkably successful publicity gimmick probably would have gone unquestioned, if several automotive engineers with years of air bag testing experience hadn't been in the watching chowd.

They noted that the air bag didn't go bang with the explosive force it is supposed to, it seemed to deploy a bit more slowly and the little girl was not in a position to be protected if she were in a real life crash.

Armed with growing doubts, the automotive engineers videotaped the air bag demonstration off that night's network news. Then they time it. Not once, but numerous times.

They discovered some interesting facts. The demonstration air bag took 300 milliseconds to reach Shelby Sutcliffe's head. In a real crash situation, air bags must balloon out to front-seat occupants in only 30 milliseconds to provide effective protection.

The demonstration air bag barely touched Shelby Sutcliffe. In a real crash situation, it all but enshrouds the occupant, then collapses instantly to prevent suffocation.

The engineers called Allstate, which owns the demonstration model, and asked for an explanation. They said Allstate disputed that the bag had deployed at only a tenth of its real speed, but conceded that deployment was one/half to one/third slower.

Allstate, they said, contended that the demonstrator only simulates air bag deployments, so people can see how the air bag works.

"They didn't bother to explain that to the press or any of the lawmakers who attended the demonstration," said one of the automotive engineers who witnessed the test.

"They let all of those people walk out of there believing they had seen an actual air bag deployment," he said. "If the auto makers had pulled a stunt like that they would have been crucified by the press."

The Detroit News placed two phone calls to Allstate's public relations office in Northbrook, Ill., yesterday seeking a fuller explanation of the incident. They were not returned.

The company is careful to term the air bag demonstrations as "simulated," however.

Photo editors at both AP and UPI said they pointed out that the demonstration was a simulation in captions accompanying the picture.

Nevertheless, many newspapers apparently deleted the word "simulate" from the captions they ran with the photos—leaving their readers with the impression that the demon-

stration was the equivalent of an actual air bag explosion.

THE COMMON SENSE OF THE PUBLIC SPEAKS OUT—KEEP OUR TIES WITH THE REPUBLIC OF CHINA

Mr. GOLDWATER. Mr. President, on several occasions during the Presidential campaign last year, then candidate and now President Jimmy Carter repeatedly stated his desire to tap the good commonsense of the American public on foreign policy issues. In pursuit of that expressed goal and willingness, Betty Field, an American temporary resident in Taipei, Republic of China, has written an open letter to President Carter presenting the deep feelings of most Americans who know there is something badly wrong with a Government policy which would ignore our friends on Taiwan and cater to the totalitarian rulers of mainland China.

Contrary to the remarks of some apologists for looting which occurred in New York City during its most recent blackout, Betty Field points out that this social phenomenon does not occur universally throughout the world. She writes that Americans can take a lesson from the Chinese on Taiwan who suffered the great devastation caused by typhoon Vera.

In Taipei, and other cities on the island, where there were blackouts lasting for a 24-hour period from the storm, there was no looting, no disruption and no need for police control. Instead, local citizens joined together voluntarily in relief efforts serving the welfare of the many.

Mr. President, this episode spotlights the decency of our friends on Taiwan and emphasizes the value of keeping our friendship with them.

Mr. President, so that this eloquent letter may be read in full by my colleagues, I ask unanimous consent that the letter to President Carter from Betty Field be printed in the RECORD.

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

[From the China Post, Aug. 26, 1977]

LETTER TO PRESIDENT CARTER

President JIMMY CARTER
The White House
Washington, D.C.

DEAR MR. PRESIDENT: "Open Door Policy" if in word only, means little or nothing. I do not profess to be a politician, the fact is, I abhor "double talk" which is what this letter is all about. This is my second attempt to contact you. The first time back in 1976, after a one month delay, I was informed the matter would be handled by the State Department and that I would hear from them—the only problem is, they forgot to mention which decade.

Our State Department is staffed with fine, well educated men and women. Unfortunately, like in the horse and buggy days, they seem for the most part to have blinds on their eyes so that they can see in only one direction. This remark will offend their sensibilities true but it is time that they took their heads out of the sand and looked at their surroundings. Our foreign policy has always left a lot to be desired. A few great men build an image which the rest manage to tear down through sheer stupidity.

Take for instance U.S. Secretary of State Cyrus Vance's comments on the Republic of China versus Communist China. Do you see anyone fleeing from the Republic of China? Have you as an individual seen Taiwan for yourself? Do you realize that there are over 16 million free people in the Republic of China working hard to become a developed nation and doing so by leaps and bounds. The U.S. has a lot to learn from this beautiful but struggling island. For example, the recent blackout in New York City due to a power failure and the havoc that followed. There was a blackout in large sections of heavily populated Taipei where not only electricity but water as well was affected for a 24-hour period due to typhoon Vera. No, there was no looting, no disruption and no need for police control. This alone should tell you something.

Your intention to "normalize" relations with Communist China is the biggest mistake of your career. Knowing the lion is hungry, would you deliberately put your hand into his mouth? I think not! Yet, with apparent closed eye policy, you are willing to damage U.S. prestige all over the world by showing that our words of friendship are just that "words". Do business if you will with the Communist Chinese but not at the expense of a friendship of long standing. You expound on human rights and yet you close your eyes to reality. Empty words do serious harm.

I am not just talking about one country, two or three but the whole world. Our actions speak much louder than words. The State Department is adept at using an excellent range of vocabulary but when it boils down to the simple vernacular, they have lost the game.

Americans are warm people ready to help those in less fortunate circumstances. They take out of their own pockets although now they are more heavily taxed than ever, to help others. This becomes apparent in any crisis. The most recent was when they opened their hearts and their homes to the Indo china refugees. Yet these same Americans are being duped by their own government. Few Americans have access or really are knowledgeable to read for instance the "Foreign Policy" monthly or quarterly booklet. Yet, this small publication is a jewel of information. Don't you think the American Public would be shocked to learn that the food we sent to Bangledish was used as a political tool knowingly and that the millions of destitute never received its benefits? The powers that be in Washington, D.C. are well aware of this situation and I imagine many similar, but this is what we call "political strategy". Filthy as it might be, it works to our advantage so why worry about a few million illiterate souls . . . let them die . . . life is cheap. If the shoe were on the other foot, you would find the pinch unbearable!

No one can tell you how to run the country. It is a rather thankless job but a big political plum. You speak of making changes—many are needed at home and abroad.

Our Senators and Congressmen who go abroad, barely see the country they are in but "know it all", make rash judgments and need badly to be reeducated. How wonderful to travel at the taxpayers' expense and then expound strongly on subjects they have little knowledge of. They see only a narrow picture of any country they visit. There is the language barrier which I admit can be formidable. This restricts their movement, their contacts, etc. but the good Lord has given them their senses. They can move about a country and see for themselves. It is not necessary to rely on a prepared stereo type response as being the gospel truth.

Yes, Mr. President, we are in need of radical changes. Get the U.S.A. off welfare, effect a "PA system" if necessary. Pay for a performance done. Change our foul foreign policy outlook. The world is watching closely. If we ourselves are to remain a free country, then we must work at it. Right now, we are taxing the middle class who are the very backbone of the country, out of existence. You can push people just so far and then the clever doctrine of the Communists will gain a foothold. Years ago Khrushchev stated that Communism would take over without a shot fired. Do we have to close our eyes to what is happening?

The Communists harbor contempt, hatred and hostility towards the U.S. yet we choose to welcome them with open arms. We see that "human rights" do not exist in these countries and that the very word is a sham for there are no human rights.

Are the Russians free people? Can they discuss politics freely or for that matter, move about freely? The Chinese Communists have made great strides at progress but do the people have freedom? Recently a Chinese pilot, Fan Yuan-yen fled to Taiwan seeking freedom. Yet what were the comments in the U.S.A. . . . he only brought a MIG–19 with him. No so called secrets but the biggest secret of all was exposed! He sought freedom at a huge price. He was forced to leave his family behind hoping one day to be reunited with his loved ones. People flee a country because oppression gets to be too much. Must we continually close our eyes to the basic truth?

My letter has covered a wide range of cancerous ills. It is not meant to win any Pulitzer Prize. I am known for my directness. It's just that like many Americans, I see the filth and underhandedness within our own government. The corruptness which is allowed to exist. You are aware of it yourself but will you be able to dent the surface in attempting to correct that which is wrong?

With the sincere wish that this letter passes eventually to your hands, I remain,

Very respectfully yours,

BETTY FIELD,
Taipei.

ADMISSION OF COMMUNIST VIETNAM TO THE U.N.

Mr. THURMOND. Mr. President, on September 20, the 1977 session of the United Nations General Assembly began. The occasion was marked by the customary pious oratory about working for peace and the expansion of human rights. This year, however, this oratory rang a little more hollow than usual, for this year a new nation was added to the membership rolls—Communist Vietnam.

It would be hard to imagine a government that has done less to achieve the goals of the United Nations over the last decade than that of Vietnam. The hands of the Vietnamese leaders are still red with the blood of the countrymen that were slain in their brutal invasion of South Vietnam in the spring of 1975. Their U.N. representatives leave at home an ongoing program to stamp out every vestige of the civil and political rights once enjoyed in the southern part of their country. Yet here, at the U.N., the speeches of welcome resound with praise and congratulation.

This hypocritical spectacle comes as no surprise, but I cannot refrain from recording my outrage. It pains me to think that the United States has not only helped to write the script for this ludicrous play, but is also furnishing the stage on which it is being enacted. Others, too, are disgusted. A thought-

provoking editorial on the subject recently appeared in the State newspaper of Columbia, S.C., and in order that my colleagues may have the benefit of hearing more on this subject, I ask unanimous consent that it be printed in the RECORD.

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

PEACE-LOVING VIETNAM JOINS UNITED NATIONS

The opening of this year's session of the United Nations General Assembly clearly reveals the world organization as a pious perversion of what ostensibly is a world family of "peace-loving states."

We deliberately put "peace-loving" in quotation marks, not only because the term is lifted directly from the U.N. Charter but because its application is more artificial than real when applied to nations such as Vietnam. The point is pertinent because that forcibly reunited Asian nation was admitted to the United Nations Tuesday as its 149th member.

At this juncture, it would be well to remember that another premise upon which the United Nations stands is that of self-determination of peoples. Who on the scene is naive enough to believe that the non-Communist people of South Vietnam have exercised self-determination in becoming subjects of their Communist masters of the North? But the argument for self-determination currently seems reserved for the castigation of such anti-Communist nations as Rhodesia and South Africa. Let us return, however, to Southeast Asia.

Vietnam's entry into the U.N. fold was made possible by the withdrawal of former objections (within the Security Council) by the United States. It was two months ago that the United States backed away from its opposition, succumbing to pressures of dozens of other countries which apparently see no inconsistency in accepting belligerent nations into an organization dedicated (as least on paper) to the "maintenance of international peace."

As an element of that professed dedication to peace, the United Nations gives lip service to "the suppression of acts of aggression."

But by any definition of the word, whether taken from a dictionary or the 1975 U.N. resolution specifically defining aggression, North Vietnam's invasion and subjection of South Vietnam must rank as the rankest sort of aggression.

Yet, here we are today ("we" being the United States) consenting if not conniving in the admission of this blood-stained aggressor to the United Nations.

Perhaps there is a lesson here which illustrates mankind's ability to rationalize practical actions which run counter to the very principles which supposedly govern men's affairs. We are reminded of the profound observation uttered more than three centuries ago by Sir John Harrington:

> Treason doth never prosper,
> what's the reason?
> For if it prosper, none dare
> call it treason.

So it seems with aggression. If it succeeds, who dares call it aggression? Certainly not those members of the United Nations whose own national standing stems from the forceful elimination of obstacles, organizations, and individuals standing in their way.

Finally, there is the business of human rights, another listed concern of the United Nations charter. But that high-flown phrase took a beating back in 1971 when the U.N. General Assembly ousted the National Chinese republic on Taiwan in favor of Communist (mainland) China.

The line forms to the right (perhaps "left" would be more appropriate) for those who believe the United Nations as constituted today has any real interest in self-determination, human rights, or the suppression of aggression if such interest would offend its Communist clientele.

UNITED STATES/UNITED KINGDOM TAX TREATY

Mr. GRAVEL. Mr. President, there is pending before the Senate a tax treaty which the U.S. Treasury negotiated with the United Kingdom. One provision of this treaty, article 9, section 4, is unprecedented and is of grave concern to the States. In this provision, the Treasury has bargained away the ability of the States to effectively enforce their tax laws against multinational corporations based in Great Britain. If the Senate approves article 9, section 4, it will become a precedent for our dealings with other countries, and the loss to the States in potential revenues will be hundreds of millions of dollars. My own State of Alaska stands to lose up to $50 million per year from the United Kingdom Treaty alone.

Not only do such revenue losses shift more of the tax burden to small taxpayers, they also give the large multinationals a still greater competitive advantage over small in-State businesses, which do not have foreign subsidiaries in which to hide their income from State tax collectors.

In defending this indefensible provision, the Treasury has cast unqualified aspersions upon the particular technique for auditing multinationals that the United Kingdom Treaty would ban. This technique, called the "unitary" or "whole business" method, takes the corporation's worldwide income and divides it up among the respective States and countries according to the percentage of the corporation's worldwide business that is done in each. This approach prevents the multinationals from juggling their income into subsidiaries in other parts of the world.

There has come to my attention, a study by Treasury's International Economist, George Carlson, of methods used by the States to determine the taxable income of multinational corporations. This study takes a much more balanced view of the "unitary" or "whole business" method than Treasury has presented to the Senate. In fact, the study cites several advantages which the unitary method has over the alternatives.

Since some of my colleagues may have based their position on article 9, section 4, upon Treasury's statements to the Foreign Relations Committee, I ask unanimous consent that the relevant portions of this indepth study be printed in the RECORD for my colleagues to review.

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

STATE TAXATION OF CORPORATE INCOME FROM FOREIGN SOURCES

(By George Carlson)

III. ANALYSIS

State taxation of foreign source income, as defined by Federal law, creates the possibility of double or extraterritorial taxation; it can reduce the Federal tax base; and in some circumstances it may raise significant administrative problems. These aspects are examined as they arise under the specific allocation method, formula apportionment, and the unitary system. To the extent states exclude foreign source income from taxation, the problems do not arise.

1. Specific allocation method. The 46 states with corporate income taxes allocate certain items of nonbusiness income to a specific geographic source, usually on the basis of the situs of the property, the extent of its use, or the taxpayer's commercial domicile, and divide business income between jurisdictions on the basis of apportionment formulas (see Table 2). The states differ, of course, in how they define nonbusiness and business income. Income that might be allocated by one state could be apportioned by another. Delaware, Florida, New Hampshire, Georgia, and Ohio exempt some items of foreign source income, and are the only states to provide special rules for the tax treatment of foreign source income.

In the remaining 41 states, any taxation of foreign source income results from the application of the general rules for taxing a multistate corporation. Based on these rules, the following items of foreign source nonbusiness income are included in the tax base of a significant number of states: dividends; interest; capital gains from intangible personal property; and rents and royalties from personal property.

(a) Double taxation. Double taxation, defined in its broadest terms, occurs when the same income is taxed by two or more jurisdictions. In this sense, double taxation regularly occurs between the states and the Federal government, although the Federal deduction for state taxes ameliorates the extent of double taxation. It also occurs between states when their methods of dividing the income of a multistate corporation do not mesh. Double taxation between the Federal and foreign governments is addressed by the foreign tax credit provisions of Federal law.

For present purposes, double taxation is defined more narrowly to occur whenever two or more jurisdictions tax the same income in such a manner that the taxpayer has a total tax burden that exceeds the higher of the tax burden levied by all jurisdictions within the geographic source of his income or the tax burden levied by all jurisdictions within the taxpayer's own place of residence.

Thus, if the combined taxes of states, the Federal government, and foreign governments on foreign source income exceed on the one hand the tax burden imposed by states and the Federal government on domestic source income, and on the other hand the tax burden imposed by foreign government alone on foreign source income, double taxation may be said to occur. This narrow type of double taxation is illustrated in Case IA of Table 4. Similarly, this narrow type of double taxation also exists between the states if the combined taxes levied by the Federal government and the states exceed the combined Federal and state taxes that would be levied if the corporation opperated in only one state.

In the context of state taxation of foreign income, the operation of specific allocation rules creates the possibility of two similar kinds of double taxation. In the first place when the domiciliary state provides no credit for foreign taxes, foreign source income may be taxed at a higher rate than in either the source or residence jurisdictions. In the second place, the income might be taxed both in the domiciliary state under specific allocation rules and in some other state under formula apportionment or a unitary system.

For example, since Illinois allocates foreign source nonsubsidiary dividends, port-

folio interest, and some capital gains to Illinois when received by a corporation whose commercial domicile is in Illinois, double taxation may arise if this income also is taxed at its foreign source. Foreign source income also may be taxed by two or more states. For example, Illinois apportions foreign source subsidiary dividends as business income, but Indiana allocates them entirely to that state if the recipient corporation has its commercial domicile in Indiana. Therefore, a corporation domiciled in Indiana, but also doing business in Illinois, would find that any subsidiary dividends it received from foreign sources would be taxable in full in Indiana and a portion of the dividends would again be subject to tax in Illinois.

These examples are not unique. Double taxation regularly occurs because the states do not provide a credit for foreign taxes paid in excess of the amount creditable under Federal law.[1] Double taxation also occurs because states do not have a uniform system for allocating and apportioning income among them, and, with the exception of Alabama, do not provide a credit for taxes paid other states. Thus, a multistate corporation will be subject to double taxation whether or not it has foreign operations.

Fifteen states allow the dividend received deduction provided by Federal law. This deduction applies mainly to dividends from domestic corporations; dividends from foreign corporations are eligible only if received from a corporation with significant gross income effectively connected to a U.S. trade or business. Several more states exempt intercorporate dividends from corporations taxable in the state where the payee is domiciled. Thus, in these states, intercorporate dividends from foreign sources will be included in the state's tax base to a greater extent than if the dividends were received from corporations operating mainly within the United States.

(b) Reduction of the Federal tax base. Whenever foreign income is taxed by a state, a deduction is created which may be claimed in computing Federal taxable income. Again, in this respect, there is no difference between state taxation of domestic income and state taxation of foreign income. Any state or local tax reduces the Federal tax base.

The new issue raised by state taxation of foreign income is whether this tax base should be reserved to the Federal Government. It might be argued that to the extent foreign source income is taxed at all, it should be taxed for the benefit of a particular state. The income is earned abroad, and does not depend upon, or benefit from, state protection or expenditures.

On the other hand, the United States taxes its residents on their worldwide income. By analogy, it can be argued that the individual states should be permitted to tax their residents on worldwide income. Under this view, it makes no difference whether states tax foreign income deliberately through a specific allocation procedure or inadvertently through a malfunctioning formula apportionment. In both cases, states should be permitted to tax foreign income.

(c) Administrative problems. The specific allocation method does not create substantial administrative problems for the corporate taxpayer. The income is either entirely allocated to the state, or entirely allocated to another jurisdiction. However, with any specific allocation method, state tax administrators must be concerned about erosion of the tax base, and consequent loss of revenue, through artificial transfer pricing.

2. Formula apportionment. In taxing a multistate corporation or a multinational corporation, each state faces the problem of assigning a "reasonable" proportion of the corporation's total taxable income to the state. A "reasonable" proportion generally means that the state will seek to tax only that part of a corporation's income that is generated within its borders. The United States faces a similar problem in taxing multinational corporations. Thus, the Internal Revenue Code sets forth detailed source rules and arm's length pricing procedures. Such an approach would strain the administrative capability of many states. A frequently used device at the state level, therefore, is to apportion business income in relation to the corporation's activities in the particular state. The question raised by formula apportionment is whether in addition to serving as a convenient measuring device, it has the side effect of enabling the states to tax foreign source income, as defined by Federal law.

(a) Double taxation. As shown in Table 2, each of the 46 states which levies a corporate income tax subjects at least some of the following items of business income to formula apportionment: dividends, interest, capital gains, rents, and royalties. With few exceptions, this treatment applies uniformly to income from foreign and domestic sources.

While state apportionment formulas are not uniform, it is fairly typical to use a 3-factor formula involving payroll, property, and sales, with each factor having a weight of one-third. Assume that the ABC corporation, which is taxable in New Jersey, has New Jersey payroll, property, and sales of $100,000, $200,000 and $500,000, respectively, and total payroll, property, and sales of $300,000, $600,000 and $1,500,000, respectively. Thus the apportionment factor would be:

$$\frac{\frac{\text{New Jersey payroll}}{\text{Total payroll}} + \frac{\text{New Jersey property}}{\text{Total property}} + \frac{\text{New Jersey sales}}{\text{Total sales}}}{3}$$

$$\frac{\frac{100,000}{300,0000} + \frac{200,000}{600,000} + \frac{500,000}{1,500,000}}{3}$$

$=\frac{1}{3}$=apportionment factor

If the corporation received $100,000 in royalties from either a domestic or foreign subsidiary, one third of that, or $33,333 would be apportioned to and taxable in New Jersey. Thus royalty income from a foreign subsidiary would be taxed both in New Jersey and abroad, but royalties from a domestic subsidiary might also be taxed both in a sister state, and in New Jersey. This form of double taxation occurs regularly because the state apportionment formulas, except in the case of branch income and except under a unitary system, do not give recognition to the subsidiary payroll, property, and sales that generate business income in the form of capital gains, dividends, interest, rents, and royalties.

Some states do include selected items of business income in the denominator of the apportionment formula. This has the effect of reducing the size of the apportionment factor. Such an approach mitigates, but does not eliminate double taxation. Moreover, it is difficult to find a logical reason for this particular adjustment. An apportionment formula seeks to divide income, usually, on the basis of a corporation's payroll, property, and sales inside and outside the taxing jurisdiction. It thus seems inappropriate to include an income item in the denominator of the formula.

Formula apportionment does not always create double taxation. It may reduce a state's tax base. This is particularly true of branch income. Virtually all states applying formula apportionment include the income and relevant apportionment factors of both foreign and domestic branches in the apportionment calculation for the parent.[2]

Continue the example of the ABC corporation which had an apportionment factor of one-third. If the corporation had taxable income of $300,000, then $100,000 of that would be apportioned to New Jersey. Now assume that the ABC corporation opens a new branch, either foreign or domestic, but outside New Jersey, that earns $60,000 in taxable income and has payroll, property, and sales of $100,000, $200,000, and $500,000, respectively. The ABC corporation's apportionment formula would then be:

$$\frac{\frac{100,000}{300,000+100,000} + \frac{200,000}{600,000+200,000} + \frac{500,000}{1,500,000+500,000}}{3}$$

$=\frac{1}{4}$=apportionment factor with new branch

The ABC corporation now has $360,000 of taxable income that is subject to apportionment, the original $300,000 plus the $60,000 from the branch. It also has a smaller apportionment factor, ¼, rather than ⅓, since the formula recognizes the activities of the new branch. The taxable income which the ABC corporation actually apportions to New Jersey is:

$$\$360,000 \times \tfrac{1}{4} = \$90,000.$$

In this example, the branch earnings, whether foreign or domestic, serve to reduce the New Jersey tax base. This result is produced by a special assumption; namely, that the new branch's ratio of its taxable income to its payroll, property, and sales is less than the ratio of the rest of the ABC corporation's taxable income to its payroll, property, and sales. Of course, if branch operations are more profitable than the corporation's other operations, the ratio of branch income to its payroll, property, and sales would be greater than the corresponding ratio for the rest of the corporation and some branch income would be apportioned to and taxable in New Jersey. The ultimate result depends on how profitable branch operations are relative to the rest of the corporation. Formula apportionment applied to branch operations may thus increase or decrease a state's tax base.

Formula apportionment can also lead to double taxation between states (or a reduction of the states' tax base) because of the failure of state apportionment formulas to mesh properly. Foreign or domestic source income will then be victim to the lack of uniformity in apportionment formulae. Assume that a corporation has foreign subsidiary dividend income of $100,000; that the corporation is engaged in business both in state A and state B; and that the income is apportioned by each of the states. Assume further, to keep the example simple, that the two states use only a property factor in the apportionment formula. State A values property at cost, while state B at cost less depreciation. The property values for the corporation are:

[In millions]

	State A	State B	Total
Cost	$10	$15	$25
Cost less depreciation	$5	$15	$20

The property in state B has just been put into service and has therefore incurred no depreciation.

The $100,000 in foreign subsidiary dividend income is apportioned as follows:

STATE A

(Property valued at cost)

$10/25 \times \$100,000 = \$40,000$

STATE B

(Property valued at cost less depreciation)

$15/20 \times \$100,000 = \$75,000$

Total apportioned:

Foreign dividend income: $115,000.

Because of differing apportionment formulas, the two states apportion more than

Footnotes at end of article.

the $100,000 in foreign subsidiary dividend income. Clearly, the two states are subjecting some of the foreign subsidiary dividend income to double taxation, in the sense that it bears a higher tax burden than if it had been allocated to one of the two states rather than apportioned between them. This type of double taxation results from differences in the state apportionment formulas. It can and does occur with respect to many items of income from both foreign and domestic sources.

(b) Reduction of the Federal tax base. The apportionment of domestic and foreign investment income (dividends, capital gains, interest, rents, royalties) usually leads to additional taxation at the state level. This happens because the apportionment factor reflects only the activities of the receiving corporation and does not reflect the activities of the paying corporation.[3] Since state taxes are a deductible expense, the Federal tax base is correspondingly reduced.

The apportionment of domestic and foreign branch income may either increase or reduce taxation at the state level. An increase in state taxation would diminish the Federal tax base; a decrease in state taxation would enlarge the Federal tax base. *On average, it seems likely that foreign branches are as profitable as domestic investments. Thus, apportionment of foreign branch income probably does not lead to a substantial net increase or decrease in the Federal tax base.*

(c) Administrative problems. Formula apportionment was initially devised to bypass the difficulties of a source rule approach. It resolves many transfer pricing questions which would otherwise concern state tax administrators. But by comparison with a specific allocation method, formula apportionment may be more complicated for taxpayers.

3. Unitary system. Under a unitary system, the total domestic and foreign business income of the controlled corporate group is apportioned for tax purposes. Unlike other methods, the unitary system apportions the undistributed income of a foreign subsidiary corporation, the income of a foreign parent corporation and the income of foreign brother-sister corporations.

The unitary system evolved from the application of formula apportionment to the activities of a single, multistate corporation. Formula apportionment was upheld by the United States Supreme Court in *Underwood Typewriter Co.* v. *Chamberlain*, 254 U.S. 113 (1920). In discussing the taxpayer's appeal the Supreme Court said:

> The profits of the corporation were largely earned by a series of transactions beginning with manufacture in Connecticut and ending with sales in other states. In this it was typical of a large part of the manufacturing business conducted in the state. The legislature, in attempting to put upon this business its fair share of the burden of taxation, was faced with the impossibility of allocating specifically the profits earned by the processes conducted within its borders. It, therefore, adopted a method of apportionment which, for all that appears in this record, reached, and was meant to reach only the profits earned within the state."[4] (Emphasis added.)

In sustaining formula apportionment, the Court was clearly aware of the difficulty of separately accounting for the profit earned in the various stages of an integrated manufacturing and distributing operation.

The Franchise Tax Board of the state of California contends that, since it may be similarly impossible to separately identify the profits earned by individual corporations in a unitary group, the unitary method is justified:

> "The use of a combined report (unitary method) for determining income is not based upon the concept that members of a unitary group have not acted at arm's length. It is used because separate accounting, regardless of its mathematical accuracy, does not properly reflect the income of a unitary business. For example, assume one corporation manufactures an item which is sold by another wholly owned corporation and that the combined net income is $1 million. In such cases, should it matter if separate accounting records reflect that one corporation earned $3 million and that the other corporation lost $2 million?[5]

Similarly, the California Supreme Court, in unanimously approving the combined report procedures, stressed the interdependence of a unitary business and questioned the relevance of separate accounting:

> "[W]hen the business is not separate, and is an integral part of a larger and unitary system, the separate accounting is inadequate and unsatisfactory in ascertaining the true result of the activities and values attributable to that business."[6]

Other commentators, such as Frank M. Keesling, former Counsel for the California Franchise Tax Commissioner, have argued that the combined report is necessary to confront the loss of tax revenue resulting from unrealistic transfer pricing.[7]

(a) *Double taxation.* The unitary system may either increase or decrease a state's tax base compared to separate accounting between corporations and formula apportionment applied to the activities of a single corporation. It may result in either higher or lower taxation of a corporation compared to what the corporation's taxable income would be if it was not a member of a combined group.

Consider the earlier example where U.S. parent corporation A and wholly owned subsidaries B and C are engaged in the business of manufacturing and selling lathes (Section II(3)(g) above). Corporation A would have a taxable income of $72 under the unitary method, but $50 under separate accounting. In this instance, the inclusion of corporation B (a domestic subsidiary) and corporation C (a foreign subsidiary) in corporation A's combined report serves to increase corporation A's California tax liability.[8]

It could be argued that, since California is taxing more than corporation A's total income, it is necessarily taxing income earned outside its borders and that double taxation may consequently arise. Alternatively, it could be argued that there is no realistic way to separate corporation A's taxable income from that of its wholly owned subsidiaries, corporations B and C, which also manufacture and sell lathes, and that the combined report provides a reasonable method of assigning an appropriate percentage of the corporate group's total earnings to California. The crux of the debate over the unitary system is whether it systematically increases the state's tax base in the face of more reasonable alternatives.

In *Edison California Stores* v. *McColgan*, 183 P.2d 16 (1947), the California Supreme Court was faced with the question of whether formula apportionment could be applied to an entire corporate group. The parent corporation, which was incorporated in Delaware with headquarters in St. Louis, Missouri, provided centralized purchasing, distribution, advertising, and management for its 15 wholly owned subsidiary retail stores operating in various states. The only activities in California were carried on by the taxpayer corporation, a wholly owned subsidiary which operated retail stores within the state. In approving the application of formula apportionment to the corporate group as a reasonable means of determining the instate income of the California subsidiary, the court found the same operational interdependence which it found earlier in *Butler Brothers* vs. *McColgan* 111 P.2d 334 at 336 (1941):

> "It is only if its business within this state is truly separate and distinct from its business without this state, so that the segregation of income may be made clearly and accurately, that the separate accounting method may properly be used. Where, however, interstate operations are carried on and that portion of the corporation's business done within the state cannot be clearly segregated from that done outside the state, the unit rule of assessment is employed as a device for allocating to the state for taxation its fair share of the taxable values of the taxpayer."[9]

Thus, when the parts of a multicorporate group are interrelated, the court found it reasonable to assume all parts are equally profitable and to apply formula apportionment to the entire group.

Some commentators, however, contend that in recent years the California courts have broadened the definition of unitary operations.[10] For example, in Chase Brass and Copper Company v. Franchise Tax Board 95 Cal. Rptr. 805 (1970) the California Court of Appeals approved the state's attempt to combine Kennecott Copper Corporation with its wholly owned subsidiary Chase Brass. Kennecott mined copper in Utah, Nevada, Arizona, and New Mexico, but did no manufacturing in California and had no contacts of its own in the state. The court relied on such factors as: Chase Brass purchased about 20 percent of Kennecott's copper output at an arm's length price for use in its manufacturing operations; Kennecott made a large loan to Chase, at the prime rate, to rebuild its plant; and Chase executives reported to the President of Kennecott on major policy matters. The application of unintary reporting increased Chase Brass' California taxable income by thirteen times.

Leo Brockett, in analyzing the court's decision in *Chase Brass*, contends that, although the court based its findings on a unity of ownership, operation, and use, the factors leading to a unitary determination in the case would be present in almost any parent-subsidiary relation. Similarly, John Nolan has observed that "while unity of use and operation, or dependency of contribution between in-state and out-state business is thoretically required, California in fact seems to require little more than the normal attributes of common ownership".[11]

(b) Reduction of the Federal tax base. To the extent that the unitary system results in higher state taxation of foreign or domestic source income, the Federal tax base will be diminished. On the other hand, to the extent that the unitary system results in lower taxation by the state of foreign or domestic income, the Federal tax base will be enlarged.

(c) Administrative problems. A frequently voiced criticism of the unitary system is the administrative burden which it imposes on taxpayers, particularly when it is applied to a corporation organized in a foreign country. This criticism is sharpest when the activities of a foreign controlled group are brought within the unitary system because it has a subsidiary in a unitary state, such as California, but the activities of the subsidiaries are a relatively small portion of the foreign group's total activities.

A combined report necessitates the computation of a taxable income figure, as defined by state law, for each corporation in the group. Each corporation must provide data on its payroll, property, and sales, with intercompany sales eliminated. Critics contend that, because of differences in accounting period and practices, this information requires a completely new set of calculations and imposes a substantial administrative burden on foreign corporations. Indeed, it is argued that a corporation operating within the United States, but outside a unitary state such as California, may also have administrative problems because of differences in how the states define net income. Finally, some observers have questioned the wisdom of applying the 3-factor

Footnotes at end of article.

formula to a foreign corporation since differences that exist between states with respect to the ratio of income to the three factors are likely to be magnified when a foreign country is included in the apportionment.

The essence of the administrative burden argument is that, while formula apportionment may be a useful tool with respect to one corporation, it is not useful with respect to a corporate group. When applied to a single multistate corporation, formula apportionment avoids the need to construct separate sets of accounts for the corporation's activities in each state. But, with two or more corporations the separate accounts already exist; therefore, continues the argument, the rationale for formula apportionment no longer exists. If the corporate accounts do not accurately reflect income, the solution, it is urged, is through reallocating income and expenses, as provided by Section 482 of the Internal Revenue Code, rather than through formula apportionment.

Proponents of the unitary system disagree strongly. They feel it is difficult to enforce a transfer pricing statute, particularly at the state level, because of an inability to obtain the information needed to assess the transactions of a corporate group with operations in many states and countries. Moreover, they question the underlying meaning of separate accounts within a corporate group, preferring instead to assume that each member of the corporate group earns, or should earn, the same rate of return. Thus, the advocates of the unitary system feel it is sound both administratively and conceptually.

(d) Treaty implications. A basic tax treaty position of the United States and other developed countries is that an enterprise should be taxable in a country on its business profits only if it carries on business in that country through a branch or similar permanent establishment. This principle is enunciated in Article 7 of the Model Income Tax Treaty of the Organization for Economic Cooperation and Development as well as the income tax treaties of the United States.

The worldwide application of the unitary system may be inconsistent with this principle. This is particularly true when it is applied to the multinational activities of a foreign parent having a subsidiary in a unitary state, such as California. Combining the parent and its other subsidiaries with the California subsidiary can be viewed as taxing enterprises that have no permanent establishment in the United States.

"Taxation by a state based on income of a foreign nonresident parent company from outside the U.S. which is owned and controlled by non-U.S. shareholders living outside the U.S. is beyond accepted bounds of jurisdiction." [12]

State taxation of foreign source income under the unitary system would be restricted by an income tax treaty between the United States and the United Kingdom which was signed December 31, 1975, and amended May 3, 1976. Article 9, Paragraph 4 of the treaty, which must still be approved by the United States Senate and the United Kingdom House of Commons, provides that a state which is assessing the income of an enterprise doing business in that state may not take into account any income or expenses of a related company which is a resident of the United Kingdom or any other foreign members of the same corporate group.

However, this restrictive rule will apply only if certain restrictive conditions are met.

First, the enterprise doing business in, for example, California must be either a resident of the United Kingdom (i.e., a branch of a United Kingdom company operating in California) or be controlled, directly or indirectly by a United Kingdom resident (i.e., a United States corporation which is a subsidiary of a United Kingdom corporation).

Second, where the United Kingdom resident is a corporation, such corporation must be neither controlled by a United States corporation nor by a corporation which is a resident of a third state.

Third, no United Kingdom or third country enterprise which is related to a United States subsidiary doing business in California would be excluded from California unitary apportionment calculations under the treaty if that enterprise is controlled by the United States subsidiary.

A few examples may clarify how the rule would operate.

If a subsidiary of a United Kingdom corporation is doing business in California, and that United Kingdom parent corporation has subsidiaries in France and Germany, California would be prohibited from including in its unitary apportionment base the income or expenses of the United Kingdom parent or its subsidiary corporations in France or Germany.

However, if the United Kingdom corporation is itself controlled by, say, a New York corporation, or by a Dutch corporation, California may take into account the income and expenses of the entire group—the United Kingdom corporation, the French and German subsidiaries and the Dutch or New York parent.

44. Revenue estimates. Table 3 presents rough estimates of the 1972 revenue impact of state taxation of foreign source income. Based on present law in the 46 states with a corporate income tax, an attempt was made to estimate the amount of various types of foreign source income presently included in state taxable income. It was assumed that, on average, the unitary systems do not result in the inclusion of foreign income in the state tax base. The net inclusion or exclusion will, however, differ from company to company.[13] It was also assumed that the apportionment of foreign branch income does not, on average, affect the state tax base.

According to the estimates in Table 3, approximately $3,450 million of foreign income was included in the 1972 tax base of all states. State taxes derived from this income were approximately $190 million. The deduction claimed for state taxes would have reduced Federal tax revenue by about $90 million. A rough extrapolation to 1976 suggests that state revenues on foreign income were approximately $410 million, and that the consequent reduction in Federal revenue was about $200 million.

TABLE 3.—REVENUE IMPACT OF STATE TAXATION OF FOREIGN INCOME [1]

[In millions of dollars]

Types of foreign income	Total	Included in tax base of States [2]
1972 estimates:		
Subsidiary dividends	$4,400	$2,200
Portfolio dividends	680	520
Interest	360	350
Rents and royalties	830	380
Total	6,270	3,450
Impact on State tax revenue [3]		190
Impact on U.S. tax revenue [4]		−90
1976 estimates:		
Impact on State tax revenue [3]		410
Impact on U.S. tax revenue [4]		200

[1] With the exception of subsidiary dividends, these figures are gross of foreign and Federal taxes because States typically do not allow a deduction for these taxes. Three-fourths of the gross-up for the underlying corporate tax on foreign subsidiary dividends is eliminated because approximately ¾ the States allow it as a deduction.

[2] The amount actually included in the taxable income of corporations domiciled in a given State depended on the State's tax law.

[3] Based on State corporate income tax rates for 1975.

[4] Based on the U.S. statutory rate of 48 percent.

Sources: Joint Committee on Internal Revenue Taxation, Taxation of Foreign Source Income: Statistical Data Sept. 30, 1975, table C-2. Advisory Commission on Intergovernmental Relations, Federal-State-Local Finances: Significant Features of Fiscal Federalism, November 1975, table 23; Statistical Abstract of the United States, U.S. Department of Commerce, Bureau of the Census, p. 267.

FOOTNOTES

[1] A state credit for excess foreign taxes would, of course, be limited by the combined rate of state and Federal taxes on foreign source income. While no such credit is provided, as shown in Table 1, most states do allow a deduction for at least some foreign income taxes.

[2] The exception is Florida which apparently exempts foreign branch income.

[3] Except under a unitary system.

[4] 254 U.S. at 120–121.

[5] "Staff Observations Regarding Income Tax Provisions of Legislative Proposals," California State Franchise Tax Board, State Taxation of Interstate Commerce, Hearings before the Subcommittee on State Taxation of Interstate Commerce of the Committee on Finance, United States Senate, 1973, p. 299.

[6] Edison California Stores v. McColgan, 183 P. 2d 16 at 21 (1947).

[7] Frank M. Keesling, "A Current Look at the Combined Report and Uniformity in Allocation Practices", Journal of Taxation, February, 1975, pp. 106–110.

[8] Corporation B's taxable income in California is decreased by the combined report requirement; it would be 25 under separate accounting; 24 under the combined report.

[9] 183 P. 2d at 20.

[10] See, for example, Leo Brockett, "Chase Brass and Copper Co. v. Franchise Tax Board Intercorporate Unity and State Income Taxation", California Western Law Review, Spring 1971, pp. 508–521 and John S. Nolan, "Extension of the California Unitary Business Concept", in State Taxation of Interstate Commerce, 1973, pp. 433–437.

[11] Nolan, Op. cit., p. 434.

[12] Nolan, Op. cit., p. 435.

[13] According to California tax authorities, the worldwide application of the unitary system produces about $125 million in state tax revenue. The basis of this estimate is unknown, and the estimate itself appears to conflict with the California claim that the purpose of the unitary system is to measure California income, and not to tax foreign source income as defined for Federal tax purposes.

Mr. GRAVEL. Mr. President, this study strongly suggests that the "unitary" method is at least as valid as the other methods available to the States, and that it may offer several advantages. Certainly there is no persuasive case that the Federal Government should intervene in this area of State law—especially through the treaty process, which circumvents the normal legislative process and deprives the States of a timely and adequate opportunity to present their arguments.

Of the points presented by Mr. Carlson, two stand out: First. Despite Treasury's allegations in Senate testimony that the unitary method often results in double taxation, the Carlson study observes that, in fact, the use of this method can reduce as well as increase the amount of income that is taxable in a particular State. This observation is consistent with the trust of the matter, that the unitary method is not a device for taxing foreign income, as Treasury alleges, but rather a method of determining what income is in fact foreign, and how much is legitimately taxable by the States.

Second. Despite Treasury's allegations that the unitary method is complicated and administratively burdensome, Carlson's study points out that the alternatives, and in particular the "arms length"

method which Treasury would have the States use, are also complicated. Carlson observes that the "arms length" method would strain the administrative capability of many States. In this connection, I should point out that the Joint Committee on Taxation staff testified before the Foreign Relations Committee that the "arms length" method had proven inadequate in 40 percent of the IRS cases in which transfers between subsidiaries were at issue. And yet, this is the method which Treasury would force upon the States by treaty.

And so, I would encourage my colleagues to consider the provisions of this Treaty carefully, especially article 9, section 4. Treasury is using the treaty process to affect State tax laws which have not been fairly tested by the congressional process. State taxing powers have been negotiated away by Treasury with no prior input from those States. Treasury has attacked the fairness of the unitary method before the Foreign Relations Committee, but can offer the States nothing better. I hope that my colleagues will join me requiring that Treasury face up to the issue of whether or not the unitary method is a legitimate method of taxation. The Carlson study, done by Treasury itself, suggests that it is not a bad method. The study demonstrates that we must take cautiously Treasury's arguments on this treaty.

I hope that my fellow Senators will join me in acting to reserve this provision of the United States/United Kingdom Tax Treaty.

WELFARE REFORM IS A HIGH NATIONAL AND REGIONAL PRIORITY

Mr. PELL. Mr. President, very few legislative issues draw such widespread and deserved support as do efforts at welfare reform. Our National and State welfare systems are chronically unwell. They do not work as we intend them to, they do not really help many people in the long run, and they are expensive. At present, our Nation's programs constitute a chronic example of Government by patchwork, chewing gum, and bailing wire. Examples of bureaucratic duplication exist side by side with gaping holes in important programs. Clearly, if ever there was a subject which calls for debate, cooperation, and reform, a change in our welfare programs and welfare services is that subject.

President Carter called for comprehensive welfare reform during his campaign last year and promised that his administration would work to improve the current situation, both nationally and on the State level. On March 9 I wrote to Secretary of Health, Education, and Welfare Califano spelling out what I believe should be four general principles of welfare reform at this time and urging their adoption.

Later, on March 29, these four themes were presented at a Welfare Reform Forum conducted by the Department of Health, Education, and Welfare at the Bishop McVinney Memorial Auditorium in Providence at a meeting conducted especially to get the views of community social welfare specialists and welfare recipients on this complex subject.

Basically, I believe that welfare reform legislation ought to encompass four major principles in order to assure its success and its fairness to the beneficiary and taxpayer alike.

First, Federal welfare benefit levels should be designed in conjunction with a revised and improved cost-of-living index which takes into full account the difference that a cold climate makes in determining the cost of living in some regions of the country.

A recent study conducted by the Library of Congress shows that because of higher energy, clothing, transportation, and food costs, the minimal cost for a minimum standard of living for an average four-person family in so-called cold weather cities was about $2200 more per year than in warm-weather cities. Certainly, in order for welfare benefits to be equitable, we must insure that benefits can allow recipients to purchase equal services, housing, and food, despite regional differences in cost.

Second, the welfare system should be uniform and Federal in its character so that a consistency in program intent and coverage is achieved. At the same time, we should encourage a full level of State participation in planning and administration with Federal assistance to the States to relieve some of the cost burden from State bureaucracies.

Third, the new welfare system should be consolidated in nature and should embrace the strongest possible and practicable work-incentive and an employment acceptance requirement. I think that the best possible consolidation would embrace at least our present food stamps, aid to families with dependent children, supplemental security income, unemployment compensation for some individuals who have suffered from extended unemployment, workers compensation for some workers, and social security title II disability programs.

Finally, the new system should combine administrative simplicity with full and fair due process for beneficiaries' claims so that beneficiaries are treated as individuals, not as numbers or computer cards.

I outlined these four principles in a letter to Secretary Califano in early March. I ask unanimous consent that that letter be printed in the RECORD at this point.

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

MARCH 9, 1977.

Hon. JOSEPH CALIFANO,
Office of the Secretary, Department of Health, Education, and Welfare, Independence Avenue SW., Washington, D.C.

DEAR MR. SECRETARY: Thank you for your letter seeking my thoughts on the subject of welfare reform. I am delighted to participate in this important effort, and I commend you and President Carter for undertaking such a difficult task.

Today, there is no substantial agreement in our nation on exactly what "welfare" means and consequently "welfare reform" has been a vague and elusive phrase. Some observers would define it narrowly, applying primarily to programs for unemployable persons, while others would consider it more broadly, to embrace all income maintenance or income supplement programs, including "in-kind" non-cash subsidies.

My personal thought is that it would be most valuable to consider "welfare reform" as a comprehensive reorganization of federal income maintenance and social service related programs, as well as a fresh and unfettered assessment of our goals, as a nation, with respect to supporting the family structure to the greatest possible extent as a vital central element of American life.

It is in this context that I am responding to your letter, and offering my suggestions. I believe that our primary goal should be to provide a decent living standard for each American, utilizing and encouraging to the greatest extent possible private sector employment, and family life.

At the same time, we must be mindful of the cost of the program we construct, and direct our funds in such a way as to maximize their impact, avoid wasteful duplication, excessive and costly administration, and eliminate fraud on the part of both service providers and beneficiaries.

First, we must redefine the poverty level, by acknowledging that differences in climate play a substantial role in determining the cost of living in different parts of our country. The Department of Health, Education and Welfare has recently published a study, *The Measure of Poverty*, as a result of language I included in Section 823 of the Education Act Amendments of 1974. Unfortunately, although the language in Section 823 explicitly mentioned "climate" as a variable to be studied, the resultant study, more than 1800 pages long, contains only a dozen scant references to climate as a factor in cost of living measurements, and contains no proposals for including climate related expenses in an index to poverty. However, as we in New England know from hard experience, energy costs, fuel costs, and the equally expensive necessities of winter clothing, high calorie food, and insulation make living in a cold climate considerably more expensive than living in a temperate climate. This study failed to answer a primary question it was supposed to address, and cannot be considered useable in its present form.

Second, we should design a system which is federal in character, with the uniformity of basic programs and inherent administrative efficiency this would bring, but which retains a level of state participation in planning, financing, evaluation, and experimentation. For example, I believe that Medicaid and SSI should be phased out and replaced by national health insurance and a national relief floor. However, states should be required to pay into this program, with contributions scaled according to a formula which takes into account a states ability to pay state rates of unemployment, population, and the current state level of support for income-replacement services.

Third, we should consolidate 6 of our income replacement and income maintenance programs into a national relief floor, with an employment-acceptance requirement for those who are able to work (except single heads of households containing children, or where the other household member is disabled or over age 62). This would replace the present programs for Food Stamps, Aid to Families with Dependent Children, Supplemental Security Income, Unemployment Compensation, Workers Compensation, and Title II Disability Insurance.

In relation to this floor, most other social service programs, such as health services, Title XX Social Services, and most importantly education and job training services, should not be considered as income or assets, for purposes of computing monthly benefits. Subsidized housing, however, should be considered as an asset.

One major improvement under this unified benefit program would be that the Disability Insurance program would cover gradations of disability.

Fourth, we must insure that the administrative functions within this system are per-

formed promptly and fairly, and that the individuals who apply for and who receive benefits under a reorganized income maintenance program, are treated as individuals, and not as numbers or computer cards. The principles I have drafted into the Social Security Recipients Fairness Act should be extended to all recipients of income maintenance benefits; these principles are full due process in the application for benefits, full administrative and judicial appeal of adverse administrative decisions, prompt service in the event of a delay in the delivery of due benefits, and individual consideration of a beneficiaries repayment schedule should an accidental overpayment occur.

I hope that these suggestions are helpful to you, and I look forward to continuing to work together on this subject.

Warm regards.

Sincerely,

CLAIBORNE PELL.

Mr. PELL. Mr. President, on August 6, President Carter made public his proposal for welfare reform, and I am pleased to note that it matched a number of my proposals and suggestions for comprehensive change.

Unfortunately, there is not as yet any provision for the welfare benefits to reflect the increased cost of living associated with cold climate regions. It still seems to me that this is a necessary component of a workable system. I would strongly support such a measure and plan to offer some legislation to that effect myself if it is not forthcoming from the administration.

I am very happy to note the strong work-related tone of the current proposal. This must be coupled with as complete as possible a program to find jobs in the private sector for willing individuals and with a public jobs program to fill in the difference between private jobs and job-seekers.

We in Congress have the opportunity now to make a historic change in the course of welfare programs. The key to the matter is practicality—to make the programs work, to insure a decent and fair level of income and supportive social services for every recipient—and accountability—to assure the taxpayer that the public funds are well spent. I certainly look forward to working with the administration and the appropriate committees in the Senate to construct and support an excellent bill.

DIRECT POPULAR ELECTION OF THE PRESIDENT

Mr. THURMOND. Mr. President, recently the Judiciary Committee gave its approval, by a margin of one vote and over my strong objection, to a constitutional amendment that would provide for direct popular election of the President. This unwise proposal would cancel, at least as far as the Presidency is concerned, the historic compromise among the States that brought the Federal Government into being. It would allow big States to dictate the choice of the Nation's Chief Executive, and so would assure that the interests of the little States would be neglected. It would crudely disrupt the delicate system of checks and balances that our forefathers labored so painstakingly to create.

Fortunately, this amendment, if approved by majorities of two-thirds in both Houses of Congress, must then be approved by three-fourths of the States. Sentiment in the States is very different from that in the Judiciary Committee. There recently appeared in the State newspaper of Columbia, S.C., an editorial on the proposed amendment expressing adamant opposition. This editorial is concise and cogent, and I believe that it reflects the feelings of the overwhelming majority of the citizens of my State. In order that my colleagues may have access to it, I ask unanimous consent that it be printed in the RECORD.

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

[From the Columbia (S.C.) State, Sept. 24, 1977]

SMALL STATES' VOTES THREATENED ONCE MORE

Popular election of the President of the United States, that hardy perennial of anti-federal zealots in and out of Congress, has reared its head again in Congress.

As usual, it takes the form of a proposal by Indiana's liberal Sen. Birch Bayh to scrap the electoral college procedure for Presidential elections which is imbedded in the Constitution. In its stead, Senator Bayh and his colleagues would substitute direct election in which the total popular vote nationwide would determine the outcome.

Proponents of the plan argue, including President Carter that it simply reflects the American tradition of majority rule. What they don't acknowledge is that its adoption would gut another valued political tradition historically linked with the United States—federalism.

At present, each of the states of the union has a number of Presidential electors corresponding with its members of Congress. That means that every state has two electors (for its two U.S. senators) and as many additional electors as its population entitles it to have representatives in the House. This pattern reflects the great compromise embodied in the composition of the Congress itself, that is, variable numerical representation reflecting population plus fixed representation which reflects the status of states as states.

Thus, the present system tends to give weight to the smaller and lesser populated states of the union beyond that which they would have in a direct election hinging on numbers alone. Not only does this system incorporate the essence of federalism, it has the political benefit of insuring that Presidential candidates concern themselves with the voters in all states, not just those in the teeming population centers.

That point was raised recently when the Senate Judiciary Committee gave the Bayh bill a 9 to 8 favorable vote, thereby setting it up for debate in the 1978 session. Sen. Malcolm Wallop, speaking for the lightly populated western state of Wyoming, told his colleagues that the "vast majority" of Americans would never see a Presidential candidate, since they would limit their campaigning to big cities and industrial concentrations.

There are, to be sure, shortcomings in the electoral college system as now constituted. For one thing, the "winner-take-all" feature means that the candidate who carries a state by as little as 51 per cent of the popular vote is awarded 100 per cent of the electoral vote. For another, there is an awkwardness in the business of actually naming persons as Presidential electors without assurance, in some instances, that they will vote as their constituents wished.

These weaknesses can be readily corrected by adoption of one of several plans by which a state's electoral vote (not electors) is apportioned among the Presidential candidates according to the candidates' relative showing in that state's popular balloting. Senator Thurmond has sponsored such a move.

The proportional approach would give weight to voting strength in all states, but it also would preserve the federal feature which gives weight to the states themselves. And it would preserve a system of representation which the U.S. Supreme Court has described as being "ingrained in our Constitution, as part of the law of the land. It is one conceived out of compromise and concession indispensable to the establishment of our federal republic."

SUPPORT OF THE PASSIVE RESTRAINT RULE

Mr. KENNEDY. Mr. President, the carnage on our Nation's highways is staggering. Each year, automobile accidents claim more lives than were lost in the entire Vietnam war. Approximately 27,000 of these are occupants of motor vehicles. While steps have been taken to improve the safety of automobiles, like safety glass, collapsible steering columns, rollover protection, and turn signals, the tremendous loss of life continues.

The strain resulting from highway accidents on our medical facilities is enormous, not to mention the tremendous cost in terms of human suffering and anguish. For example, one-sixth of the persons admitted to hospital emergency rooms are victims of automobile accidents. Persons who are killed or incapacitated in auto accidents leave societal costs that affect all of us. Welfare and social security costs must support many of the families of deceased or incapacitated auto crash victims. Public investment in education of auto crash victims is frequently lost. Retraining costs for seriously injured automotive accident victims are large, as is the depletion of the tax base due to the loss of earning power.

On January 30, Secretary of Transportation Brock Adams promulgated a rule which could have profound effects on the health and safety of the driving public in this country. The rule would require that automatic crash protection devices be installed in all new automobiles under a phased schedule beginning in model year 1982.

The decision of the Secretary of Transportation to require that automobiles have the latest in occupant crash protection should reduce substantially the number of deaths and injuries occuring on the Nation's highways. The Department of Transportation has estimated that 9,000 lives could be saved and 100,000 severe injuries prevented if all vehicles were equipped with these kinds of automatic crash protection.

There are few things that the Federal Government may do that would have this kind of life-saving potential. In fact, I am confident that there would be little or no hesitency on the part of the Congress to impose rigorous strictures on the chemical or drug industry or any other facet of business if the effect would be to save 9,000 lives and 100,000 severe injuries.

The consumer will be the winner if Secretary Adams' decision goes into ef-

fect. Not only will lives be saved and injuries avoided, but insurance costs will go down if passive restraints are included in every automobile. In fact, if air cushions are installed, consumers will be repaid through insurance savings in approximately 5 years—about one-half the useful life of an automobile.

The alternative to mandatory passive restraint equipment is vastly increased use of existing belt systems in automobiles. While effectiveness equal to that of passive restraints is possible by the 70 to 80 percent of seatbelts, it is clear that there is no way to achieve that kind of usage short of mandatory requirements for belt use, punishable by fines or even jail terms. An intensive media campaign in Grand Rapids, Mich., financed by the auto industry has resulted in virtually no increase in seatbelt usage. Moreover, a national survey completed by the National Highway Traffic Safety Administration of the Department of Transportation indicates that seatbelt use is gradually going downhill in recent years. Currently, less than 20 percent of automobile occupants nationwide use seatbelts.

There is widespread support for the Secretary's decision. A coalition formed for the express purpose of insuring that the Secretary's decision is upheld, the National Committee for Automobile Crash Protection, contains the American Academy of Pediatrics; the American Congress of Rehabilitation Medicine; the American Nurse Association, Division of Medical Surgical Practice; the Epilepsy Foundation of America; the Physician's National Housestaff Association; and the Mid-Atlantic Emergency Services, Inc. Other groups, including the American Automobile Association, the International Association of Chiefs of Police, the United Auto Workers, and the American Public Health Association, likewise support the decision. I ask unanimous consent that a "Dear Colleague" letter listing groups in support of the decision sent to Members of the Senate by the distinguished senior Senator from Washington, chairman of the Committee on Commerce, Science, and Transportation, be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KENNEDY. Mr. President, I applaud the efforts of the Secretary of Transportation to insure that American consumers are offered inherently safe automobiles. To delay that objective now can only postpone what should have been done long ago. I urge my colleagues to support the Secretary's decision.

EXHIBIT NO. 1

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C., September 9, 1977.

DEAR COLLEAGUE: As you know, Secretary of Transportation Brock Adams recently promulgated a rule requiring that new automobiles be equipped with automatic crash protection devices, the so-called "passive restraints." Passive restraints would be required in all new automobiles under a phased schedule beginning in model year 1982 and completed in model year 1984.

Under the terms of the National Traffic and Motor Vehicle Safety Act, Congress has an opportunity, for 60 calendar days, excluding recesses of greater than 3 days, to overturn the decision. Assuming no further recesses of greater than 3 days, the 60-day period will expire on October 9. Secretary Adams' decision has broad support. In fact, an organization has been formed, the National Committee for Automobile Crash Protection, for the sole purpose of supporting the Secretary's decision. The membership of the organization is broad, including not only individuals, but such diverse organizations as the bulk of the insurance industry, medical groups, organized labor, and many others.

So that members of the Senate may be aware of those groups which are supporting Secretary Adams' decision, the following list contains members of the National Committee for Automobile Crash Protection, plus additional individuals and organizations who have supported the Secretary's decision.

NATIONAL COMMITTEE FOR AUTOMOBILE CRASH PROTECTION

United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW).
American Academy of Pediatrics.
Aetna Life and Casualty Insurance Company.
Alliance of American Insurers.
Allstate Insurance Companies.
American Congress of Rehabilitation Medicine.
American Insurance Association.
American Nurse Association, Division on Medical-Surgical Practice.
Automobile Club of Missouri.
Automobile Owners Action Council.
Susan P. Baker, Associate Professor, Johns Hopkins School of Hygiene and Public Health.
Center for Auto Safety
Center for Concerned Engineering.
Consumer Action Now.
Epilepsy Foundation of America.
Farmers Insurance Exchange.
Dr. Hal Fenner, Jr.
Oscar P. Hampton, Jr., M.D., F.A.C.S.
Independent Insurance Agents of America.
Mid-Atlantic Emergency Medical Services, Inc.
Ralph Nader, Attorney.
National Association of Independent Insurers.
National Association of Mutual Insurance Companies.
Nationwide Insurance Companies.
Physicians' National Housestaff Association.
Prudential Insurance Company of America.
Prudential Property and Casualty Insurance Company.
Safeco Insurance Company of America.
State Farm Insurance Companies.
Travelers Insurance Companies.

OTHER GROUPS AND INDIVIDUALS SUPPORTING THE SECRETARY'S DECISION

American Automobile Association (AAA),
International Association of Chiefs of Police.
American Public Health Association.
Citizens for Highway Safety.
Consumer Federation of America.
Consumers Union.
Council on Wage and Price Stability.
John Delorean, President, John Z. Delorean Corporation.
Eaton Corporation.
Insurance Institute for Highway Safety.
Kemper Insurance Companies.
Hartford Life and Accident Insurance Companies.
Maryland Association of Women Highway Safety Leaders.
Maryland Department of Transportation.
Maryland Transportation Commission.
Mid-Atlantic Emergency Medical Services Council.
Mississippi Safety Council.
National Conference of Governors' Highway Safety Representatives.
National Motor Vehicle Safety Advisory Council.
National Transportation Safety Board.
New York Consumer Assembly.
Physicians for Auto Safety.
State of Maine Department of Transportation.
Talley Industries, Inc.
Thiokol Corporation.
Transportation and Traffic Safety Committee of the Maryland Medical and Chirurgical Faculty.
West Virginia Safety Council.

With best wishes.

Sincerely yours,

WARREN G. MAGNUSON,
Chairman, Committee on Commerce, Science and Transportation.

S. 2104

Mr. PEARSON. Mr. President, the substitute amendment to S. 2104, the natural gas pricing bill, offered by Senator JACKSON is not a compromise. I urge the Senate to reject the Jackson substitute in favor of the Pearson-Bentsen amendment to S. 2104.

Mr. President, the debate of this last week illustrates the obvious disagreement in the Senate over how this country should price its natural gas resources. On several points, however, I think it is possible for both proponents and opponents of continued regulation to agree.

We can all agree that it would be to our advantage to produce more natural gas domestically at a fair price to the consumer. The Jackson substitute will not encourage production. In fact, it would work a virtual shut down of exploratory drilling nationwide. The definition of new gas under the Jackson substitute is so rigidly drawn as to exclude 94 percent of gas produced from new exploratory wells. Since only about 4½ percent of our total current production comes from exploratory wells, approximately three-tenths of 1 percent of the gas produced in this country would be eligible for new gas prices under the formula proposed by Senator JACKSON. This is hardly a compromise.

We can all agree that substantial curtailments of natural gas are likely this winter, and we should do everything possible to ameliorate the expected shortages. The Federal Power Commission has projected curtailments for this winter to reach more than 1.6 trillion cubic feet. Senator JACKSON's substitute would exacerbate these curtailments in this and coming winters. It will actually roll back prices in the intrastate market, the sole source of additional gas that has kept this country running during recent winters. Since under the Jackson substitute only a small percentage of exploratory wells would qualify, most new gas would not receive the $2.03 price advertised, but rather the old regulated price of $1.46 per Mcf.

We can agree that it would be to our national advantage to decrease our dependence on foreign imports. This year our bill for foreign energy will be in ex-

cess of $45 billion. Senator JACKSON's substitute amendment continues the discredited policy or regulation. It will do little to stimulate domestic production or lessen our demand for foreign energy.

Mr. President, the Pearson-Bentsen amendment, which effectively deregulates the price of new natural gas, will increase production in a time of shortage; and it will decrease our dependence on imported energy. Contrary to the claims of its opponents, the Pearson-Bentsen amendment will not lead to a precipitous price increase to the residential consumer since we are proposing the deregulation of only new gas and because the wellhead price is a minor, perhaps 25 percent factor, in the average homeowner's gas bill.

In order to further insulate the small consumer from the increased cost of new gas, today we have agreed to a number of changes in the Pearson-Bentsen proposal.

First, we have agreed to residential price protection through the incremental pricing of new, deregulated gas. Industrial users will bear the full cost of new gas while residential, small commercial, human needs, and agricultural users continue to receive old gas prices for as long as old gas remains available.

Second, we also have agreed to a 24-month fail-safe cap on deregulated sales of natural gas. While incremental pricing and the laws of supply and demand should prevent new gas prices from exceeding those of equivalent fuels, we shall accept a "failsafe cap" to provide added protection to the consumer. The cap will prevent market aberrations during the period immediately following deregulation while at the same time providing the American producer a fair price for new natural gas. This cap may not exceed the price allowed for new natural gas imported from Mexico.

Third, there are certain instances in which gas may rightfully be withheld from production, such as when discoveries are made in remote areas not served by existing pipelines and the cost of building a pipeline to the gas cannot be justified, or a new discovery may not be economical because the cost of producing a marginal gas reserve can exceed prevailing prices. However, to guard against the possibility of withholding gas in anticipation of expedited price increases, we will add a provision that empowers the Federal Energy Regulatory Commission to deny deregulated prices to any gas found to have been wrongfully withheld.

Fourth, we will accept an amendment already proposed by Senators STONE and CHILES to allow interstate pipelines to compete freely for gas in the intrastate market.

Mr. President, the total Pearson-Bentsen proposal, the changes that I have just outlined together with the basic provisions of Pearson-Bentsen—which deregulate only new gas and provide an agricultural priority for all gas—represents a truly comprehensive natural gas policy which will provide for increased supplies of natural gas for the American people at a fair price.

DEREGULATION

Mr. STONE. Mr. President, most economists agree that Federal price controls of natural gas have discouraged domestic exploration and production of this important energy source. It is absolutely certain that unless our energy policy provides greater incentives for domestic natural gas production, America will have little choice but to import increasing amounts of oil and natural gas.

The Pearson-Bentsen bill, of which I am a cosponsor, provides the necessary incentives for greater domestic natural gas production. An editorial in the Orlando Sentinel Star underlines this point. I ask unanimous consent to print this editorial in the RECORD.

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

POLITICS AND FAILURE TO DEREGULATE

In 1954 U.S. Supreme Court Justice William O. Douglas prophesied "years of confusion" if the Federal Power Commission attempted to regulate thousands of natural gas producers, all with different costs bases and methods.

Two years later President Eisenhower warned that the continued regulation of natural gas "will discourage individual initiative and incentive to explore for and develop new reserves of gas."

Despite the accuracy of these and later warnings, the FPC has retained its regulatory authority over interstate gas pricing and transmission. Last week the House extended that control to sale of in-state gas which previously was unregulated.

House action was pegged to internal politics staged by Speaker Thomas P. O'Neill of Massachusetts and Majority Leader James Wright of Texas. True, they threw a bone to the industry by raising the price of newly discovered natural gas from $1.45 per 1,000 cubic feet to $1.75, but the defeat of deregulation, however narrow, was a clear victory for President Carter and fulfillment of another of his campaign pledges.

Consumers of natural gas haven't long to wait—January at the latest—to balance wintry weather against limited supplies of gas and ponder the ways of their representative government.

The shortage of natural gas is the direct result of artificially imposed price ceilings. The alternative to doing without is to switch to fuel oil which is more expensive. The price of old crude, still regulated, is about $5.25 a barrel. New domestic and foreign crude is almost $12 a barrel. An equivalent amount of natural gas today sells for $3.

And yet, there are more known reserves of natural gas on and offshore continental United States than there are of oil. The barrier to drilling is the inflated cost of exploration and government's continued intervention.

Ironically, we are increasing our consumption of foreign oil that costs up to four times what we are willing to offer a domestic industry and asking that it also invest in speculative exploration.

NOTICE OF INTENTION TO SUSPEND THE RULES

Mr. ROBERT C. BYRD. Mr. President, I submit the following notice in writing: "In accordance with rule XL of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 1 of rule XXI for the purpose of moving to waive the reading of proposed amendments to S. 2104, without debate."

NOTICE OF INTENTION TO SUSPEND THE RULES

Mr. ROBERT C. BYRD. Mr. President, I submit the following notice in writing: "In accordance with rule XL of the Standing Rules of the Senate, I hereby give notice in writing that it is my intention to move to suspend paragraph 1 of rule XXII, to wit the phrase, "To amend," to permit a motion to call up amendments to S. 2104 en bloc."

COMPREHENSIVE NATURAL GAS POLICY

The Senate continued with the consideration of S. 2104.

AMENDMENT NO. 994

Mr. ABOUREZK. I call up amendment 994. I ask the clerk to report it.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from South Dakota (Mr. ABOUREZK) proposes amendment No. 994.

The second legislative clerk proceeded to read the amendment.

Mr. DURKIN. Mr. President——

Mr. HANSEN. Mr. President——

Mr. ABOUREZK. Regular order, Mr. President.

Mr. METZENBAUM. Regular order, Mr. President.

The PRESIDING OFFICER. The clerk will finish reading the amendment.

The second assistant legislative clerk continued to read the amendment.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. ABOUREZK. I object.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. The clerk will continue to read the amendment.

The second assistant legislative clerk continued to read the amendment.

Mr. ABOUREZK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. HANSEN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The second assistant legislative clerk resumed the reading of the amendment.

Mr. HANSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

The second assistant legislative clerk resumed and concluded the reading of the amendment.

The amendment is as follows:

On the first page between lines 2 and 3 insert the following:

"TITLE I—NATURAL GAS".

At the end of the bill, add the following new title:

"TITLE II—PETROLEUM INDUSTRY COMPETITION

"SEC. 201. This Act may be cited as the 'Petroleum Industry Competition Act of 1977'.

"FINDINGS AND PURPOSE

"SEC. 202. (a) FINDINGS.—The Congress finds and declares that—

"(1) this Nation is committed to a private enterprise system and a free market economy, in the belief that competition spurs innovation, promotes productivity, prevents undue concentration of economic, social, and political power, and helps preserve a democratic society;

"(2) vigorous and effective enforcement of the antitrust laws and reduction of monopoly and oligopoly power in the economy can contribute significantly to reducing prices, unemployment, and inflation;

"(3) existing antitrust laws have been inadequate to maintain and restore effective competition in the petroleum industry; and

"(4) the extraordinary dimensions of the remedy required by this Act necessitate expenditure judicial supervision of the divestitures and attendant actions required by this Act.

"(b) PURPOSE.—It is the purpose of the Congress in this Act to facilitate the creation and maintenance of competition in the petroleum industry, and to require the most expeditious and equitable separation and divestment of assets and interests of vertically integrated major petroleum companies.

"DEFINITIONS

"SEC. 203. As used in this title—

"(a) 'person' means an individual person or a corporation, partnership, joint stock company, trust, trustee in bankruptcy, receiver in reorganization, association, or any organized group whether or not incorporated, and whether or not domiciled or incorporated within the United States. It does not include any authority of the United States or of the several States;

"(b) 'control' means a direct or indirect legal or beneficial interest in or legal power or influence over another person, directly or indirectly, arising through direct, indirect, or interlocking ownership of capital stock, interlocking directorates of officers, or contractual relations which substantially impair the independent business behavior of another person;

"(c) 'affiliate' means a person controlled by, controlling, or under or subject to common control with respect to any other person;

"(d) 'asset' means any property (tangible or intangible, real, personal, or mixed) and includes stock in any corporation;

"(e) 'commerce' means commerce among the several States, with the Indian tribes, or with foreign nations; or commerce in any State which affects commerce among or between a State and a foreign nation;

"(f) 'energy resource' means crude oil, natural gas liquids and condensate;

"(g) 'refine' means to change by any operation the physical or chemical characteristics of petroleum or petroleum products in order to create a derivative product for resale, exclusive of the operations of passing petroleum through a separator to remove gas, placing petroleum in settling tanks to remove basic sediment and water, dehydrating petroleum and generally cleaning and purifying petroleum;

"(h) 'refined product' means any product, whether liquid or gas, which is produced by a refinery asset;

"(i) 'marketing asset' means any asset used in the sale and distribution of gasoline or fuel oil, including diesel and distillate, to ultimate consumers at a retail motor fuel outlet, other than the initial sale with transfer of ownership to customers at the refinery;

"(j) 'operate' means engaging in the business of selling gasoline and diesel, directly or indirectly, or through any agent who receives any commission, compensation, or payment because of the sale of such product;

"(k) 'production asset' means—

"(A) natural deposits of crude oil, or condensate and natural gas liquids;

"(B) any asset used primarily in the exploration for, development of, or production of an energy resource including, but not limited to, an interest in real property, whether or not such real property is developed or undeveloped; and

"(C) geological and geophysical information;

"(l) 'refinery asset' means any asset used in the refining of an energy resource;

"(m) 'transportation asset' means any asset used in the transportation within the United States by pipeline or gathering line of crude oil or refined product;

"(n) 'major marketer' means any person which, during the calendar year 1974 or in any subsequent year, alone or with affiliates, marketed or distributed one hundred and ten million barrels of refined product within the United States;

"(o) 'major producer' means any person which, during the calendar year 1974 or in any subsequent calendar year, alone or with affiliates, produced within the United States either a total of thirty-six million five hundred thousand barrels of crude oil, condensate, and natural gas liquid production during the calendar year 1974 or in any subsequent calendar year totaled thirty-six million five hundred thousand barrels;

"(p) 'major refiner' means any person which, during the calendar year 1974 or in any subsequent calendar year, alone or with affiliates, refined within the United States one hundred and ten million barrels of refined product, including that refined by another refiner under a processing agreement;

"(q) 'petroleum transporter' means any person which transports an energy resource or refined product by pipeline in commerce within the United States;

"(r) 'Outer Continental Shelf' means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (67 Stat. 29) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

"(s) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands and the Outer Continental Shelf;

"(t) 'Commission' means the Federal Trade Commission; and

"(u) 'prohibited asset' means any marketing asset, production asset, refining asset, or transportation asset, the retention of which is prohibited by section 102 of this Act.

"UNLAWFUL RETENTION

"SEC. 204. Notwithstanding any other provision of law, five years after the date of enactment of this Act, it shall be unlawful—

"(a)(1) for any major producer to own, or control, any interest in any refinery asset, transportation asset, or marketing asset;

"(2) for any petroleum transporter to own or control any interest in any production asset, refinery asset, or marketing asset;

"(3) for any major refiner or major marketer to own or control any interest in any production asset or transportation asset;

"(b) for any person who owns any refining asset, production asset, or marketing asset to transport any energy resource or refined product in which he has any interest, by means of any transportation asset in which he has any interest.

"UNLAWFUL OPERATION

"SEC. 205. Upon enactment of this Act, it shall be unlawful for any major refiner to operate, either directly or indirectly, any marketing asset which it did not operate prior to January 1, 1977.

"EXEMPTIONS

"SEC. 206. (a) The Commission may, upon application by any person required to divest interests in assets under section 102 or prohibited from using assets by section 102 (b), exempt any major producer, petroleum transporter, major refiner, major marketer, or any other person from the operation of section 102 with respect to any transportation asset upon a finding—

"(1) that such transportation assets are so integral a part of other assets, the retention or use of which is not prohibited under section 102, that no public purpose would be served by the divestment of or prohibition of the use of any such transportation asset; and

"(2) that the retention or use of any such transportation asset will not tend to injure competition or otherwise subvert the purposes of this Act.

"(b) In order to facilitate the purposes of this section, the Commission is authorized to exempt any corporation formed or reorganized as a result of compliance with this section from the prohibitions contained in section 8 of the Act of October 5, 1914 (38 Stat. 732; 15 U.S.C. 19) for a period not to exceed one year.

"REPORTS

"SEC. 207. Each person subject to section 102 or 103 shall, within thirty days from the date of enactment of this Act, file with the Commission a report listing their prohibited assets. The Commission may order subsequent reports from persons subject to section 102 or 103 and may order reports from such other persons as it requires. Appeals from an order of the Commission issued under this section must be filed with the court within five days after the order has been served and the court must grant or deny the appeal, or modify the order as it deems proper within ten days.

"PROHIBITION ON SOLICITATION

"SEC. 208. It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a corportation subject to the requirements of sections 102 or 103 or a subsidiary corporation thereof in contravention of such rules.

"ENFORCEMENT

"SEC. 209. (a) The Commission, in accordance with such rules, regulations, or orders as it deems appropriate to carry out the purposes of this Act, shall require each person subject to the provisions of sections 102 or 103 to submit to the Commission within 18 months of the date of enactment of this Act, a plan or plans for the divestment of the prohibited assets. Such plan must—

"(1) be fair and equitable to all affected persons; and

"(2) substantially accomplish the required divestiture within 5 years of the date of enactment of this Act.

The Commission, within one hundred and twenty days after the submission of the plan or plans by the persons subject to sections 102 and 103, shall file its plans with the court; except that no plan shall be filed which will not substantially accomplish divestment of prohibited assets on or before five years the date of enactment of this Act. Failure of any person or persons to file a plan or plans shall not relieve the Commission of its duty to file its plan or plans for the divestiture of the prohibited assets of that person or persons.

"(b) The plan required under subsection (a) of this section shall be devised by each

person subject to the provisions of this Act with respect to their own interests only, in consultation with the officers and employees of the Commission, and the Securities and Exchange Commission under guidelines which the Commission, with the advice and counsel of the Securities and Exchange Commission, shall promulgate.

"(c) The Commission shall institute suits or actions only in the court established under title II of this Act for such relief as is appropriate to assure compliance by any person with this Act, including, but not limited to, orders of divestiture, declaratory judgments, mandatory or prohibitive injunctive relief, interim equitable relief, the appointment of temporary or permanent receivers or trustees, civil penalties, and punitive damages for willful failure to comply with lawful orders of the court.

"(d)(1) In the administration of the provisions of this section, the Commission shall have primary oversight jurisdiction and responsibility for the preparation and final approval of the required divestiture plans.

"(2) The Securities and Exchange Commission shall advise the Commission as to the conformity of each such plan with general standards of fairness and equity with respect to the interests of the holders of debt and equity interests in corporations affected by the operation of section 102 or 103.

"(e) In carrying out the provisions of this Act, the Commission and the Securities and Exchange Commission are each authorized to utilize all powers conferred upon them separately, and all sanctions associated therewith, by any other provision of law.

"(f) The Commission and the Securities and Exchange Commission shall serve as advisers to the court in any reorganization proceeding related to the operation or enforcement of the provisions of section 102 or 103 of this Act.

"FAIR AND EQUITABLE

"SEC. 210. Simultaneously with the filing of the Commission's plan with the court, the Securities and Exchange Commission shall file separately and independently an analysis of the conformity of such plan with general standard of fairness and equity with respect to the holders of debt and equity interests of any corporation affected by the provisions of section 102 or 103.

"STATEMENT OF DIFFERENCES

"SEC. 211. Any person subject to the provisions of section 102 or 103, not later than sixty days after the date on which the Securities and Exchange Commission and the Commission have filed the reports pursuant to the requirements of section 107, shall be entitled, as a matter of right, to file with the court a statement of differences with the proposed plans.

"JUDICIAL DISPOSITION

"SEC. 212. After the filing of the plans by the Commission, the court shall—

"(a) give notice to all persons affected by the plans;

"(b) permit the intervention by all persons having legally cognizable rights affected by the final disposition of the plans;

"(c) resolve in hearings on the record such disputes of law and fact as may arise between and among the affected persons, the Commission, and the Securities and Exchange Commission regarding the disposition of the plans for divestiture of the prohibited assets;

"(d) prior to entering a final order regarding the implementation of the plans, give an opportunity to all interested persons to file written comments on the plans; and

"(e) no later than two years from the filing by the Commission of its plans, issue orders causing the implementation of the plans in such a manner as will accomplish the purposes of the Act within five years of its enactment and be fair and equitable to all persons affected.

"The court shall have the power to modify the plans as it deems necessary.

"Notwithstanding any other provisions of law, the Attorney General of the United States may intervene in any matter before the court as a matter of right. The court may seek the advice of the Attorney General concerning any matter before it.

"ADMINISTRATIVE SUPPORT

"SEC. 213. Notwithstanding any other provision of law, the Commission and the Securities and Exchange Commission may contract for the services of such persons including lawyers, economists, accountants, appraisers, securities analysts, neutral experts, and such other personnel as may be necessary to expeditiously carry out the responsibilities vested in each of them respectively by the provisions of this Act.

"SANCTIONS

"SEC. 214. (a) Any person or any officer, director, or partners thereof, who violates any provision of this Act shall forfeit and pay to the United States a civil penalty of not more than $100,000 in the case of an individual, or not more than $1,000,000 in the case of a corporation. Such penalties shall accrue to the United States and may be recovered in a civil action brought by the Commission. Failure to obey any order of a court pursuant to this Act shall be punishable by such court as a contempt of court.

"(b) Any person or any officer, director or partner thereof, who violates a lawful order of the Commission issued pursuant to this Act shall forfeit and pay to the United States, for each violation, a civil penalty of not more than $100,000 which shall accrue to the United States and may be recovered in a civil action brought by the Commission. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey an order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense.

"SALE OF SECURITIES

"SEC. 215. (a) The Commission shall promulgate such rules, regulations, and orders as it deems necessary to require that any plan or plans for divestment of the prohibited assets shall provide for the maintenance of competitive conditions in capital markets for the sale of notes, securities, or assets pursuant to such plan or plans.

"(b) To this end, the Commission shall require that the size, timing, and other conditions of sale for such notes, securities, or assets shall be such as to encourage broad participation by underwriters and potential purchasers.

"(c) The Commission shall promulgate such rules, regulations, and orders as it deems necessary to assure that competitive conditions are maintained in capital markets when loans, leases, and other financings are entered into by persons required to submit a plan or plans required pursuant to this section during the pendency or in conjunction with such plan or plans.

"ESTABLISHMENT

"SEC. 216. There is hereby created a court of the United States to be known as the Temporary Petroleum Industry Divestiture Court (hereinafter referred to in this title as the "court") which shall consist of three or more judges to be designated by the Chief Justice of the United States from judges of the United States district courts and circuit courts of appeals. The court shall be dissolved by order of the Chief Justice of the Supreme Court upon a determination that its purposes have been accomplished and at such time its power, jurisdiction, and any unfinished business shall be transferred to the United States District Court for the District of Columbia.

"JUDGES

"SEC. 217. The Chief Justice of the United States shall designate one of such judges as chief judge of the court and may, from time to time, designate additional judges for such court and revoke previous designations. The chief judge may, from time to time, divide the court into divisions of three or more members and any such division may render judgment as the judgment of the court.

"REFERENCE JURISDICTION

"SEC. 218. The court shall have the powers of a district court with respect to the jurisdiction conferred on it by this Act. The court or a panel thereof may, at any stage of a proceeding under this Act, refer the proceeding or any part thereof or any issue therein to a referee in bankruptcy to hear and determine any and all matters not reserved to the court or panel by this Act, or to referee as a special master, to hear and report generally or upon specified matters, or to a special master for such action with respect thereto as the court or a part thereof may direct.

"TRANSFER JURISDICTION

"SEC. 219. (a) A single judge or panel of the court may exercise all functions of the Judicial Panel on Multidistrict Litigation as provided under section 1407 of title 28, United States Code, with respect to any matter before the court.

"(b) The Judicial Panel on Multidistrict Litigation shall exercise no function with respect to any matter before the court.

"GENERAL JURISDICTION

"SEC. 220. The court shall have exclusive jurisdiction, without appeal, except as otherwise provided in this Act, of all plans, actions, and suits brought under this Act or which relate to any matter affected by the operation of this Act and the resolution of which is necessary to the expeditious implementation of any provision of this Act or of any divestiture required by this Act. The jurisdiction of the court shall not include any action brought by the Department of Justice or the Commission under the antitrust laws or the Federal Trade Commission Act.

"COMPULSORY PROCESS

"SEC. 221. Notwithstanding any other provision of law in the execution of its responsibilities and powers under this title the court may issue its process to any person and service thereof may be had in any district where such person resides, transacts business, or many otherwise be found. The court, in aid of the execution of this provision, may issue such writs as may be provided under section 1651 of title 28, United States Code.

"RULES

"SEC. 222. The court shall exercise its powers and prescribe rules governing its procedure in such manner as to expedite the determination of cases of which it has jurisdiction under this Act.

"APPEAL

"SEC. 223. The court may fix and establish a table of costs and fees to be approved by the Supreme Court of the United States, but the costs and fees so fixed shall not exceed with respect to any item the costs and fees charged in the Supreme Court of the United States. Within thirty days after entry of a judgment or order, interlocutory or final, by the court a petition of a writ of certiorari

may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals of the United States. No interlocutory appeal may be filed without certification of the court. The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section. The court and the Supreme Court upon review of judgments and orders of the court shall have exclusive jurisdiction. Except as provided in this section, no court, Federal, State, or territorial, shall have jurisdiction or power to consider any appeal involving any action or suit brought under this Act or any matter affected by the operation of this Act and the resolution of which is necessary to the expeditious implementation of any provision of this Act or any divestiture required by this Act.

"CLERK AND EMPLOYEES

"SEC. 224. (a) The court may appoint a clerk who shall be subject to removal by the court. The court may appoint or authorize the appointment of such other officers and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

"(b) The officers and employees of the court shall be subject to the removal by the court or, if the court so determines, by the clerk or other officer who appointed them, with the approval of the court.

"(c) Referees and special masters appointed under section 203 shall be compensated as provided under section 40 of the Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States', approved July 1, 1898 (30 Stat. 544, 556), as amended (11 U.S.C. 68).

"(d) The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him and make returns thereof to the Director of the Administrative Office of the United States Courts.

"LAW CLERKS AND SECRETARIES

"SEC. 225. The judges of the court may appoint such law clerks and secretaries as may be necessary.

"LIBRARIAN, MARSHAL, AND BAILIFFS

"SEC. 226. (a) The court may appoint a librarian and necessary library assistants who shall be subject to removal by the court.

"(b) The court may appoint a marshal, who shall attend the court at its sessions, be custodian of its courthouse or chambers and offices, have supervision over its custodial employees, take charge of all property of the United States used by the court or its employees, and perform such other duties as the court may direct. The marshal shall be subject to removal by the court. The marshal, with the approval of the court, may employ necessary bailiffs. Such bailiffs shall attend the court, preserve order, and perform such other necessary duties as the court or marshal may direct. The bailiffs shall receive the same compensation as bailiffs employed for the district courts of the United States.

"SEAT

"SEC. 227. The principal seat of the court shall be in the District of Columbia. The court may sit at such times and places within the United States as the court may designate.

"SEAL

"SEC. 228. The court shall have a seal which shall be judicially noticed.

"SESSIONS

"SEC. 229. The time and place of the sessions of the court shall be prescribed by the chief judge pursuant to rule of the court.

"CONFLICTS

"SEC. 230. No judge of the court, receiver in bankruptcy, or special master shall hear or determine any matter in which he has a conflict of interest.

"APPROPRIATIONS

"SEC. 231. There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this Act.".

Mr. HANSEN. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. HANSEN. This amendment, in the first place, should be ruled out of order because it is nongermane. It deals with divestiture which is not before the Senate at this time. Second, it would seek to amend the bill in two different places.

I appeal to the Chair to rule it out of order.

The PRESIDING OFFICER. The Chair sustains the point of order on both counts.

Mr. METZENBAUM. Mr. President, I appeal the decision of the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m. tomorrow.

Mr. ABOUREZK. I object.

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate now stand in recess until the hour of 9 a.m. tomorrow.

Mr. ABOUREZK. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays have been ordered.

The question is on agreeing to the motion of the Senator from West Virginia. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from Montana (Mr. METCALF), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from New Jersey (Mr. CASE), the Senator from Michigan (Mr. GRIFFIN), the Senator from Illinois (Mr. PERCY), the Senator from Virginia (Mr. SCOTT), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Vermont (Mr. STAFFORD) is absent on official business.

The result was announced—yeas 87, nays 1, as follows:

[Rollcall Vote No. 425 Leg.]

YEAS—87

Abourezk	Byrd,	DeConcini
Allen	Harry F., Jr.	Dole
Anderson	Byrd, Robert C.	Domenici
Baker	Cannon	Durkin
Bartlett	Chafee	Eagleton
Bayh	Chiles	Eastland
Bellmon	Church	Ford
Bentsen	Clark	Garn
Biden	Cranston	Glenn
Brooke	Culver	Goldwater
Bumpers	Curtis	Gravel
Burdick	Danforth	Hansen
Hart	Mathias	Riegle
Haskell	Matsunaga	Roth
Hatch	McClure	Sarbanes
Hatfield	McGovern	Sasser
Hathaway	McIntyre	Schmitt
Hayakawa	Melcher	Schweiker
Heinz	Metzenbaum	Sparkman
Helms	Morgan	Stevens
Hollings	Moynihan	Stevenson
Inouye	Muskie	Stone
Jackson	Nelson	Talmadge
Javits	Nunn	Thurmond
Johnston	Packwood	Tower
Kennedy	Pearson	Wallop
Laxalt	Pell	Williams
Leahy	Proxmire	Zorinsky
Lugar	Randolph	
Magnuson	Ribicoff	

NAYS—1

Weicker

NOT VOTING—12

Case	Long	Scott
Griffin	McClellan	Stafford
Huddleston	Metcalf	Stennis
Humphrey	Percy	Young

RECESS UNTIL 9:00 A.M. TOMORROW

The motion was agreed to; and at 10:14 p.m., the Senate recessed until tomorrow, Tuesday, September 27, 1977, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate September 26, 1977:

DEPARTMENT OF LABOR

Julius Shiskin, of Maryland, to be Commissioner of Labor Statistics, U.S. Department of Labor, for a term of 4 years (reappointment).

IN THE AIR FORCE

The following-named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066 in grade as follows:

To be lieutenant general

Maj. Gen. John Raymond Kelly, Jr., [redacted] U.S. Air Force.

CONFIRMATIONS

Executive nominations confirmed by the Senate September 26, 1977:

MISSISSIPPI RIVER COMMISSION

Maj. Gen. Robert Creel Marshall, [redacted] U.S. Army, to be a member and president of the Mississippi River Commission, under the provisions of section 2 of an act of Congress, approved June 28, 1879 (21 Stat. 37) (33 U.S.C. 642).

Brig. Gen. William Edgar Read, [redacted] U.S. Army, to be a member of the Mississippi River Commission, under the provisions of section 2 of an act of Congress, approved June 28, 1879 (21 Stat. 37) (33 U.S.C. 642).

ENVIRONMENTAL PROTECTION AGENCY

Marvin B. Durning, of Washington, to be an Assistant Administrator of the Environmental Protection Agency.

David G. Hawkins, of the District of Columbia, to be an Assistant Administrator of the Environmental Protection Agency.

CALIFORNIA DEBRIS COMMISSION

Col. Donald Michael O'Shei, Corps of Engineers, to be a member of the California Debris Commission, under the provisions of section 1 of the act of Congress approved March 1, 1893 (27 Stat. 507) (33 U.S.C. 661).

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.