SENATE—*Thursday, August 24, 1978*

(Legislative day of Wednesday, August 16, 1978)

LOBBYISTS

The compilation by the Clerk of the House and the Secretary of the Senate of all new registrations and reports for the second calendar quarter of 1978, and reports for the first calendar quarter of 1978 received too late to be previously published, that were filed by persons engaged in lobbying activities, appears in this issue of the Congressional Record.

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by Hon. DONALD W. RIEGLE, JR., a Senator from the State of Michigan.

PRAYER

The Reverend Dr. Robert B. Harriman, director, the Presbyterian Council for Chaplains and Military Personnel, Washington, D.C., offered the following prayer:

Let us pray.

Almighty and everlasting God, we pause to praise Thee for all those whose inheritance we now enjoy, passed to us enriched and enobled by the contributions of a great host of dedicated people in all walks of life. Persons both great and small are to be praised for efforts equal to their talents. And now we hold, in human hands, our precious heritage.

For these, whose decisions in this place shall affect the coming generations, we pray for a wisdom beyond their own. May they, with undiminished zeal, approach each challenge with courage and hope.

In their private lives, so limited by the demands of public service, may they pause to acknowledge Thy presence. Confessing before Thee the frailties which touch us all, may they be renewed by Thy forgiving love and directed by Thy Word into paths of righteousness and peace. To Thy protecting care we commend them and their families. And so would be our prayer for all these in Government who sacrifice so much of themselves for this Nation's future. Wilt Thou bless them and keep them faithful to Thy purpose. In Jesus' name we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., August 24, 1978.

To the Senate:

Under the provisions of rule I, section 3 of the Standing Rules of the Senate, I hereby appoint the Honorable DONALD W. RIEGLE, JR., a Senator from the State of Michigan, to perform the duties of the Chair.

JAMES O. EASTLAND,
President pro tempore.

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

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

Mr. PELL addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island.

THE JOURNAL

Mr. PELL. Mr. President, I ask unanimous consent that the Journal of the proceedings be approved to date.

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

ORDER TO DISCHARGE COMMITTEE AND PLACE HOUSE JOINT RESOLUTION 1014 ON CALENDAR

Mr. PELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of House Joint Resolution 1014, Days of Remembrance of Victims of Holocaust, and that the joint resolution be placed on the Calendar.

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

ORDER TO REFER S. 3437 TO COMMITTEE ON FINANCE

Mr. PELL. Mr. President, I ask unanimous consent that at such time as S. 3437, drug smuggling, is reported by the Committee on the Judiciary, it be referred to the Committee on Finance for 30 days.

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

DISTRICT OF COLUMBIA RETIREMENT REFORM ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order 799.

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

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2316) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits.

The Senate proceeded to consider the bill which had been reported from the Committee on Governmental Affairs with an amendment in the nature of a substitute.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

● Mr. EAGLETON. Mr. President, pension reform will give the District a system that will be fair to taxpayers and recipients alike. It will assure reasonable pensions at reasonable cost. Fundamentally, it provides for a system for police officers, firefighters and teachers that will be financially sound and can be sustained in the years to come. Additionally, it will eliminate abuses of disability retirements that have been so flagrant in the District and have skyrocketed costs. The present system is some $2 billion in the hole, and without reform would bankrupt the District. The pension system was set up years ago by the Federal Government, and it will share the cost of reform with the District. The Senate version calls for a Federal contribution of $80 million a year, the House version for $42 million. I am confident differences can be worked out in a Senate-House conference, and the bill will be signed into law in the next month or so.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–869), explaining the purposes of the measures.

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

PURPOSE

The purposes of the bill S. 2316 are (1) to establish, with Federal financial assistance, separate retirement funds for police officers and firefighters, teachers, and judges of the District of Columbia in order to liquidate the Federal share of the unfunded liability accrued by pensions granted prior to transfer to the District's Home Rule government on January 2, 1975; (2) to establish a Retirement Board to manage the funds; (3) to provide actuarially sound management to protect the benefits of participants and beneficiaries under the plans; (4) to require the Retirement Board to comply with reporting and disclosure requirements similar to those found in the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93–406, 88 Stat. 829); and (5) to provide disability retirement benefits which com-

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pare with other cities and provide the annuitant a sufficient retirement allowance while keeping pension costs at a level the District can afford.

The bill does not affect active or retired members of the U.S. Park Police, Executive Protection Service, or Secret Service.

BACKGROUND OF PENSION SYSTEMS IN THE DISTRICT OF COLUMBIA

The policemen and firemen's relief fund was established by Congress in 1916 to pay for medical and hospital expenses of police and firefighters for service-connected injury or disease and retirement for permanent disability. The fund was financed from disciplinary fines on members, gifts or rewards to the Department, employee contributions of 1½ percent of salary, proceeds from sales of unclaimed property, and donations. And deficiencies in the fund were to be made up by the District Government.

In 1924, Congress approved an amendment to the 1916 act to increase employee contributions to 2½ percent and establish a formula for sharing expenses of 60 percent from District of Columbia revenues and 40 percent from Federal revenues. This formula was in effect until 1957 when the law was amended to reimburse the District for benefit payments that exceeded the amount deducted from employee salaries. Periodic increases in the employee contribution level has brought it to the current level of 7 percent of salary.

The fund established in 1916 was never invested, and in 1935, all moneys credited to the fund were put into the general revenues of the District. That practice remains in effect today, leaving the retirement system on a pay-as-you-go basis.

By way of contrast, Congress enacted the teachers retirement legislation in 1920 (act of Jan. 15, 1920) on a funded basis. Employee contributions varied yearly to correspond to salary changes but were not to exceed 8 percent of $1,500. The fund was administered and invested by the U.S. Treasury, which, in addition, made actuarial valuations every 3d year to show the financial condition of the fund.

In 1946, Congress placed the teachers retirement system on a basis similar to the Civil Service Retirement System (Public Law 79–624). The Treasury Department estimated the District of Columbia contributions to the fund, on an actuarial level percentage basis, to cover the normal cost accrued each year and to liquidate the accrued liability over a 20-year period.

The city's appropriation was calculated on this basis until 1968 when the District's Presidentially appointed Commissioners requested and were granted permission from the House Appropriations Committee to provide funds for only the normal cost accrued each year.

In 1970, Congress passed legislation (Public Law 91–263) to substitute this modified pay-as-you-go plan for the normal cost-plus interest formula specified in the 1946 Law (Public Law 79–624). The fund was frozen at the June 20, 1969, amount of $61.8 million and mandated to be maintained at that level or an amount equal to the employees equity in the fund, whichever is greater. If the funds were not sufficient to meet all obligations, the District was to make up the difference.

Concern for the adequacy of pay-as-you-go financing for police and fire pensions was not voiced until Senate hearings in 1957. Senator Alan Bible, the chairman of the Senate Committee on the District of Columbia, when told by the Director of General Administration on the District of Columbia that the Commissioners did not consider it a serious problem that the police and firemen had no fund, requested that a more thorough study of funding be conducted.

An attempted comparative study of 18 cities indicated a prevalence of pay-as-you-go funding, and an absence of actuarial studies of cost in most cities. Even when funding did exist, the trust funds were not maintained at a level to be considered funded on an actuarial basis.

The 1972 report of the organization of the Government of the District of Columbia (Nelson Commission) (established by Public Law 91–405) was very critical of the methods of financing the police and fire, and teachers retirement systems. It criticized the Congress for allowing the teachers system to move from a funded to an unfunded one and pointed out the difficulty in recognizing and providing for costs of a pay-as-you-go retirement system that fails to consider and provide for future expenditures. (H. Doc. 92–317).

NEED FOR LEGISLATION FUNDING

The committee finds that Congress established the District of Columbia police and firefighters, teachers, and judges pension plans and granted benefits, but failed to provide for adequate funding of these plans prior to granting home rule to the District in 1975. In addition, Congress mandated that the city hire an additional 2,000 police officers during the 1960's and early 1970's for a total authorization of 5,100—a force substantially larger than that for cities of comparable size.

As a result, for 1978, the unfunded liability of the police and firefighters retirement system is estimated at $1.464 billion, for teachers at $846 million, and for judges at $9.5 million—giving a total accrued unfunded liability of over $2.3 billion (assuming continuation of current benefit levels). During 1977, the unfunded liability increased by more than $140 million.

The police and firefighters pensions are paid out of general revenues of the District of Columbia on a pay-as-you-go basis. The teachers fund (congressionally mandated to be maintained at $61.5 million in face value) is so inadequate as to be considered unfunded. The same can be said of the judges $1.3 million fund. (See appendix A.)

Since the Federal Government created and had total responsibility for these pension systems until 1975, the committee believes it is the Federal responsibility to make annual payments to the retirement funds to amortize over a 25-year period that portion of the unfunded liability which results from costs for those who retired before the grant of home rule (Jan. 2, 1975). Based on the most recent actuarial valuations available, the committee determined the unfunded accrued liability for retirees as of the effective date of home rule, incorporating the cost savings anticipated under S. 2316. These amounts, given in column (1) of table 1, were then adjusted for interest payments to October 1, 1978 (column (2)). The annual payments required to amortize these liabilities were calculated on the basis of quarterly payments over 25 years, using the same interest rate assumption as in the actuarial valuations. The committee determined that these amortization payments, shown in column (3) of table 1, would properly discharge the Federal responsibility with respect to funding.

TABLE 1.—DETERMINATION OF FEDERAL AND DISTRICT FUNDING SHARES

[Dollar amounts in millions]

	Accrued liability (retirees)		Amortization payments for Federal share annual payment	District share accrued liability on Oct. 1, 1978 for all active and retired after Jan. 2, 1975
	On Jan. 2, 1975	Jan. 2, 1975, adjusted to Oct. 1, 1978		
	(1)	(2)	(3)	
Police and fire	$594.8	$740.0	$56.49	$521.3
Teachers	244.5	304.2	23.22	509.0
Judges	3.62	4.50	.34	7.3
Total	842.9	1,048.7	80.05	1,037.6

Note: See text for definitions. Interest rate assumption: 6 percent. Amortization payments in col. (3) assume 100 quarterly payments with the 1st payment on Oct. 1, 1978, and the last payment on July 1, 2003.

Source: Staff calculations based on Wyatt Co. and Treasury Department estimates.

Because the District is truly a national city, the Federal Government also has a responsibility to place the District on a viable financial basis so that it can assume the costs of future pension payments.

Pension costs for police and firefighters will be 55 percent of payroll in 1978, and under current law would exceed payroll by 1999. To pay more in retirement benefits than in active-duty salaries would be untenable for any city and impossible for the District because of its limited tax base. Nonetheless, as the Nation's Capital, the District must maintain large uniformed services and assure high professional standards through quality recruitment and stable and prudent compensation and retirement benefits. Essential to these objectives is the need for a reform of present systems to eliminate costly abuses and establish sound funding that will permit the District to sustain trained and skilled public services. The city must protect the 1.5 million persons who commute to the District daily, the numerous heads of state and visiting dignitaries, the millions of tourists who visit the Capital annually, and the delegations who come to Washington to petition their Government officials.

Also, the city's population has declined from 802,000 in 1950 to less than 700,000 today, resulting in a steadily decreasing tax base. Thirty percent of District revenues are budgeted for debt service, welfare payments, and federally mandated programs, and these budget items are rising at the rate of 4 percent a year.

To insure that adequate funds are available to pay the costs of those retiring after

1975, the District will pay net normal cost plus interest on its share of the unfunded liability; a transition period is mandated to prevent massive budget dislocations in the early years of the funding program. (Estimates of the District and Federal payments to the funds are given in table 2.) This will put the District on an actuarially sound financing schedule from the first year and assure adequate reserves by advance funding to meet future costs. A full discussion of funding issues will be found in appendix A.

The Federal payments authorized in S. 2316, the reforms in benefits and administration, and the funding program for the District leave the city on a sound financial basis—capable of meeting the personnel costs of the Nation's Capital well into the 21st century.

TABLE 2.—ESTIMATED FEDERAL AND DISTRICT OF COLUMBIA PAYMENTS INTO THE RETIREMENT FUNDS, 1979-2004

[Dollar amounts in millions]

Fiscal year	District of Columbia payments				Federal payments				District of Columbia plus Federal total
	Police and fire	Teachers' fund	Judges' fund	District of Columbia total	Police and fire	Teachers' fund	Judges' fund	Federal total	
1979	$50.9	$29.2	$0.9	$81.0	$56.5	$23.2	$0.3	$80	$161.0
1980	53.3	31.0	1.0	85.3	56.5	23.2	.3	80	165.3
1981	55.8	32.7	1.2	89.7	56.5	23.2	.3	80	169.7
1982	58.5	34.4	1.3	94.2	56.4	23.2	.3	80	174.2
1983	61.3	36.3	1.4	99.0	56.5	23.2	.3	80	179.0
1984	64.3	38.2	1.5	104.0	56.5	23.2	.3	80	184.0
1985	67.6	40.2	1.7	109.5	56.5	23.2	.3	80	189.5
1986	71.0	42.4	1.8	115.2	56.5	23.2	.3	80	195.2
1987	74.7	44.7	1.9	121.3	56.5	23.2	.3	80	201.3
1988	78.7	47.1	2.0	127.8	56.5	23.2	.3	80	207.8
1989	83.0	49.5	2.1	134.6	56.5	23.2	.3	80	214.6
1990	87.7	52.2	2.3	142.2	56.5	23.2	.3	80	222.2
1991	92.6	55.1	2.4	150.1	56.5	23.2	.3	80	230.1
1992	97.8	58.1	2.5	158.4	56.5	23.2	.3	80	238.4
1993	103.1	61.5	2.7	167.3	56.5	23.2	.3	80	247.3
1994	107.4	65.2	3.0	175.6	56.5	23.2	.3	80	255.6
1995	108.7	69.3	3.4	181.4	56.5	23.2	.3	80	261.4
1996	110.2	73.8	3.6	187.6	56.5	23.2	.3	80	267.6
1997	111.9	78.8	4.0	194.7	56.5	23.2	.3	80	274.7
1998	113.7	84.4	4.5	202.6	56.5	23.2	.3	80	282.6
1999	115.7	90.7	5.0	211.4	56.5	23.2	.3	80	291.4
2000	117.9	97.5	5.4	220.8	56.5	23.2	.3	80	300.8
2001	120.2	104.5	6.0	230.7	56.5	23.2	.3	80	310.7
2002	122.7	111.8	6.7	241.2	56.5	23.2	.3	80	231.2
2003	125.3	119.2	5.9	250.4	56.5	23.2	.3	80	330.4
2004	128.1	121.0	5.2	254.3	0	0	0	0	254.3

Note: Estimates based on S. 2316 as introduced. Committee amendment reduces District contribution to police and fire fund in later years. All District contributions are net of employee contributions. Committee staff estimates based on Wyatt Co. calculations.

DISABILITY RETIREMENTS

The legislation establishes strict standards for disability retirements, eliminating costly abuses that have added substantially to the rising cost of the pension system. Of the total number of retirees in 1969, 99 percent of firefighters and 98 percent of police were retired on disability. Between 1971 and 1975, disability retirements in other cities ranged between 15 and 46 percent. Disability retirements in the District for 1977 were 52 percent for police and 63 percent for firefighters.

Current law provides a line-of-duty disability retirement at 66⅔ to 70 percent of pay, regardless of the degree of injury or disease. The bill bases all disability retirements on a percentage of impairment, determined by medical experts, but guarantees a minimum annuity regardless of the extent of the injury. This reduces the incentive to apply for a 70 percent tax-free retirement for any injury or disease.

AGGRAVATION

Particularly vulnerable to abuse in current law is the aggravation clause, which allows a person who incurs an injury on duty or off duty, that is aggrevated by continued duty, to retire on full disability pay.

An analysis of disability requirements shows that in 1969, 85 percent of firefighters and 69 percent of police retired on "aggravation" of previous injuries. In calendar year 1977, 20 percent of the disability retirements were for aggravation during duty of a preexisting injury which alone was not sufficient for disability retirement.

The bill eliminates the aggravation clause except for aggravation of a previous on-duty injury if the member has submitted a report and documentation to the Board of Police and Fire Surgeons within 7 days of the injury.

Current law allows an annuitant to earn up to 80 percent of the current salary of his last-held position in each of two consecutive years before putting his disability pension into jeopardy. No pensioner has ever lost a penny of his annuity under this law, despite evidence of annuitants engaging in occupations requiring substantially similar physical conditioning. The bill changes this to 80 percent in any 1 year for those currently retired on disability. It also provides for administrative monitoring of disability annuitants and a reduction in annuity based on outside earnings beyond a certain level for those who retire on disability in the future. This creates a substantial cost savings by reducing the incentive to seek disability retirement if optional retirement is available.

COST-OF-LIVING INCREASES

Adjustments for police and firefighters annuities are currently tied to pay increases for the active forces. Retirees receive the same percentage increase as active members. City administrators are resistant to modernizing the grade steps and pay levels because the windfalls this would give to retirees would increase pension costs. To move from entry level to the highest advance requires an average of 16 years in the District of Columbia police system, considerably higher than comparable cities. Previous increases have generally reflected the actual rise in the Consumer Price Index (CPI) but in recent years, increases have begun to lag behind the cost-of-living. The bill removes this "equalization" clause and allows cost-of-living increases based on the Consumer Price Index.

Police and firefighter survivors annuities, and teachers and judges pensions are currently adjusted by a method formerly used by the Civil Service Commission, that this, based on a 3-percent increase in CPI for 3 consecutive months, plus a 1 percent add-on to compensate for the time lag. Since this "kicker" was compounded with each increase, the Library of Congress (issue brief no. IB76038) estimated that annuities adjusted by this method rose approximately one-third more than the actual cost-of-living.

The bill allows cost-of-living increases based on the Consumer Price Index for police and fire survivors annuities, and teachers and judges pensions.

SERVICE RETIREMENTS

Current law allows police officers and firefighters to retire after serving 20 years. Comparative data for other cities show that the District's age/service requirement for retirement is among the most generous in the country. According to the Wyatt Co. this costs the city 14 percent of payroll more than a requirement of 25 years of service at age 55. The bill increases the requirement to 25 years and age 55, with corresponding changes in the benefit formula, for new hires. A retiree would receive 2.5 percent for each year served up to 25 years of service, and then 3 percent for each additional year as an incentive so the District can retain experienced officers. The current maximum annuity of 80 percent of base salary is retained.

At present a retired police officer's or firefighter's annuity is based on an average of his highest 12 consecutive months pay. Comparisons with other cities show that most jurisdictions use the average highest 36 consecutive months salary as a base for pensions. The bill provides for using this "high 3 years" as a base period.

At present, a police officer or firefighter must serve a full 20 years in order to be eligible for any service retirement benefits. Those with less than 20 years who change jobs lose all rights to a pension based on employer contributions for those working years with little hope of accumulating additional creditable years in the new job which would provide a sufficient retirement income. The bill allows a deferred annuity (vesting) based on years of service at age 55, or actuarially reduced at age 50, for those with at least 5 years of service.

MAJOR PROVISIONS OF THE BILL

I. FUNDING

1. Establishes separate retirement funds for police officers and firefighters, teachers, and judges, but allows moneys to be commingled for investment purposes.

2. Establishes an 11-member Retirement Board to manage the funds, five appointed

by the city and six elected by active and retired employees.

3. Requires that these funds be maintained on an actuarially sound basis to provide proper financing of benefits as they come due.

4. Gives the Retirement Board fiduciary responsibility over the funds..

5. Requires the Retirement Board to comply with reporting and disclosure requirements similar to those imposed by the Employee Retirement Income Security Act of 1974 (ERISA).

6. Provides for Federal payments into each fund to help finance liabilities for retirement benefits accrued prior to home rule, the period during which Congress enacted and administered the retirement programs.

II. BENEFIT CHANGES FOR DISTRICT OF COLUMBIA METROPOLITAN POLICE OFFICERS AND FIREFIGHTERS

1. For current retirees, current employees, and new hires:

(a) Provides cost-of-living adjustments on March 1 and September 1, based on the Consumer Price Index, as in the civil service retirement system. (Currently, increases occur at the same times as and at the same percentage as active members.)

(b) Conforms the timing of cost-of-living adjustments to those of Federal retirees, and prorates prior adjustments for members retiring between the biannual increases.

(c) Requires annual medical and earnings statements of disability annuitants.

2. For current employees and new hires:

(a) Provides vesting in 5 years with the right to a deferred annuity at age 55.

(b) Increases survivor annuities to conform with civil service and social security practices.

(c) Disability retirements:

(i) Eliminates the aggravation clause for off-duty injuries and requires more strict accounting for aggravation claims for on-duty injuries.

(ii) Board of Surgeons will determine the percentage of impairment.

(iii) Retirement Board will determine the percentage of disability, taking into account the percentage of impairment, position held prior to injury, nature of injury, age of member, and other factors which may affect the member's capacity to earn in the disabled condition.

(iv) An annuitant will have his annuity reduced for certain outside income exceeding limits specified in the legislation, limits based on the member's salary at the time of retirement and the overall level of salaries of active members.

(v) A yearly medical statement by the Board of Surgeons or a doctor designated by them is mandatory. If a retiree fails to provide this information, his annuity will be suspended until he fulfills this requirement.

(vi) No annuitant injured on duty will receive less than 40 percent of final pay, and no annuitant injured off-duty will receive less than 30 percent of final pay.

3. For new hires:

(a) Bases pensions on 3 years average pay rather than last year's average pay.

(b) Changes eligibility for normal retirement to age 50 with 25 years service, rather than 20 years service with no age limit.

III. BENEFIT CHANGES FOR TEACHERS AND JUDGES

1. Repeals the 1-percent "kicker" on annuity adjustments and provides cost-of-living adjustments on March 1 and September 1 as in the civil service retirement system.

2. Restores a retired teacher's full annuity (if teacher has elected to receive a reduced amount in order to increase survivor's annuity) if the beneficiary dies before the teacher. (Conforms to recent civil service retirement changes.)

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 954, H.R. 6536.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 6536) to establish an actuarially sound basis for financing retirement benefits for policemen, firemen, teachers, and judges of the District of Columbia and to make certain changes in such benefits.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all after the enacting clause be stricken and that the language of Senate bill S. 2316, as amended, be inserted in lieu thereof, that the bill be advanced to third reading, passed, and the motion to reconsider laid on the table.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. STEVENS. There is no objection.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I yield such portion of my time as the Senator from Wisconsin (Mr. PROXMIRE) may desire.

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

Mr. PROXMIRE. I thank the majority leader.

THE HOLOCAUST: A "LIVING HISTORY" PROJECT

Mr. PROXMIRE. Mr. President, earlier this year the television program "Holocaust" caused a great stir in this country. For millions of Americans, "Holocaust" made the Nazi destruction of 6 million Jews a tangible, horrible reality, not just a sterile fact from some textbook.

But what purpose did "Holocaust" serve? Why should Americans be so forcibly reminded of this grim period in human history?

The answer, Mr. President, is a simple one—education. And by that I mean education in the most basic sense—gaining knowledge accumulated from the past to inform present actions and to weigh future decisions. Programs such as "Holocaust" are valuable because they educate us, help us to act intelligently and to make wise decisions.

Today I want to call the attention of the Senate to another commendable effort to educate Americans about the holocaust. Ms. Janice Steiber Rous, director of education at the Jewish Museum in New York, has created an education program for public high school students. The program accompanies an exhibition now at the museum called "Spiritual Resistance: Art from Concentration Camps, 1940–45." Ms. Rous and two others, all of them children of concentration camp survivors, spend 2 hours with groups of 30 to 50 students, most of them minority students from inner city schools. They show a film, accompany the students as they tour the exhibition, and, most importantly, give them a chance to talk with someone personally affected by the Nazi holocaust.

Well over a thousand students have participated, and close to 4 thousand more will see the exhibition before it leaves in November. Up to now their reactions have been very encouraging, even surprising. Students come to understand that all prejudice is wrong. They feel deep empathy for the Jews because of the wrongs inflicted on them out of prejudice.

Mr. President, Nazism has all but disappeared from the world, but prejudice and hatred remain. A generation has grown up only dimly aware of the potential of these two to explode into horrendous atrocity. Efforts such as those of the Jewish museum educate us to this potential atrocity. We learn that we must take whatever action we can to prevent abominations like the Nazi holocaust from occurring again.

But, some might say, what can we do? How can we prevent prejudice from leading to injustice, even to barbarism?

Mr. President, there is at least one step we can take. Right now. We can ratify the Genocide Convention. We can add our signature to those of 83 other countries that have declared genocide a punishable crime.

We owe great thanks to Janice Steiber Rous and to the many other Americans who have labored to make us aware of the dangerous potential of prejudice and hatred. We owe it to them, and to the world, to guard against this ominous threat by ratifying the Genocide Convention.

Mr. President, I ask that a copy of Ms. Rous' article in the September, 1978 issue of the Anti-Defamation League bulletin appear in the RECORD.

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

HOLOCAUST EDUCATION THROUGH CONCENTRATION CAMP ART

(By Janice Stieber Rous)

I am 28 years old, and the director of education at the Jewish Museum in New York. My father is a survivor of Dachau and Buchenwald. As I was growing up, I heard stories of his escape, his rebirth in America and his tremendous motivation and appreciа-

tion of being alive to enjoy his friends. With this background, one might think I would have no problem designing a Holocaust program for public school groups. Such was not the case.

In January, 1977, Joy Ungerleider-Mayerson, the Museum's director, asked me to design an education program for public high school students for the upcoming exhibition "Spiritual Resistance: Art from Concentration Camps, 1940–45." In truth, I was terrified by her request and backed away from it under the guise of being too busy.

"What if the kids don't care, what if they're apathetic? What if they're not sensitive to me and the pain my father went through? What if they don't understand or care that Hitler was determined to wipe the Jews off the face of the Earth? What if they tell us how angry they are at the Jews, that they hate Jewish landlords, and that all Jews are stingy?" And somewhere inside I was haunted by the question "How could it happen, and could it happen again?"

I forced myself to think about the educational issues of the Holocaust. Are there special questions to be asked or lessons to be learned?

On May 3, I met Miriam Novitch, the curator of the museum at Lohamei Hageta'ot (The Freedom Fighters Kibbutz) and the woman responsible for collecting the work in the exhibit. Her intensity and strong personal mission spoke to me in a way that touched my deepest feelings. She tells a story of her relationship with Yitzak Katzelnelson, a poet who buried his poems in milk bottles and who charged her with the mission to recount the heroism of the people in the camps. She tells of her desperation and desire to throw herself on the railroad tracks to end her misery, but how she remembered the message of Yitzak Katzelnelson, and determined to endure. At least I understood the meaning of Spiritual Resistance: to stay alive was to resist. I wondered, could I have endured such pain? During that one hour I knew why I had to teach the Holocaust and what I had to say.

On May 10, the program began. We greeted our first class, predominantly minority students from a public high school. We opened the program with a discussion of the television program "Holocaust," the first exposure to the Holocaust for some of the students. Many had been moved by the presentation. One student said: "After I saw 'Roots' I hated white people, but then I saw 'Holocaust' and I saw that the Jews had it even worse than us. They wouldn't even let you live." "They tried to eat your minds," said another. One student said "Didn't Hitler have a soft spot anywhere in his heart?"

Following the comments, everyone was asked to draw something. Although the students were at first hesitant and reserved, they drew some very poignant self-portraits. We were then able to make overt the relationship between inner feelings and how they are translated onto paper.

We went into the gallery together to view the drawings and paintings of the concentration camp victims.

Some of the students' remarks reflected their deep personal appreciation: "This was better than the TV program because it was real. The paintings and drawings were done by *real* people. You told us true stories." One black student said: "I never thought I could come to the Jewish Museum. I thought I'd feel left out, but now I could take anyone here and give them the same personal experience I had." One ninth-grader said: "I didn't want to come to the Museum today. I thought it would be a drag, but it was one of the best days of my life." Her friend responded with "You know, I feel sorry for those people (the Germans)—they had to hate. I hope the Jews don't hate. I hope they learned from them."

Mr. PROXMIRE. I thank the majority leader again, and I yield the floor, Mr. President.

ORDER TO INDEFINITELY POSTPONE, CALENDAR ORDER NO. 799—S. 2316

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Calendar Order 799 be indefinitely postponed.

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

RECOGNITION OF LEADERSHIP

The ACTING PRESIDENT pro tempore. Under the previous order, the minority leader is recognized.

Mr. STEVENS. Mr. President, I yielded my time to the Senator from Idaho (Mr. McCLURE), but I understand that the Senator from Georgia is ready to proceed, and I would prefer that he do so.

Mr. TALMADGE. I thank the distinguished minority leader.

THE NUMBERS GAME

Mr. TALMADGE. Mr. President, HEW has been circulating a widely quoted summary of alleged "savings" in hospital costs under the Kennedy and Nelson amendments to H.R. 5285, the committee-approved medicare and medicaid reimbursement reform provisions of the bill.

The thrust of the HEW effort is to show that savings under the committee bill, H.R. 5285, are miniscule compared with the two administration-backed amendments.

The committee provision is based upon a section in S. 1470 which I introduced, joined by 19 other Members of the Senate.

This numbers game appears to be a deliberate effort to compare apples with oranges.

This effort distorts, deceives, misleads, and appears to attack the credibility and integrity of the Committee on Finance.

Apparently—and this is hard to believe—HEW does not understand the difference between attempting to get a handle on how the Federal and State governments pay hospitals under medicare and medicaid and approaches designed to place price controls on all hospital revenues.

That is precisely the difference between the committee bill and the Kennedy and Nelson amendments.

The Finance Committee was not trying to save the world with this bill—only the taxpayers who pay for medicare and medicaid.

Under the committee bill, medicare and medicaid expenditures for hospital care would be significantly moderated.

Just for routine hospital costs alone, the bill would reduce projected Federal and State expenditures by more than $1 billion of accrued reductions during the first 5 years.

And the savings increase over the years.

Of the $1 billion, some $450 million of accrued savings occur during the fifth year of the program.

But these are savings on routine costs only.

We anticipate that by the second or third year we will be in a position to apply the new system of payment to ancillary costs as well.

Ancillary costs are those such as X-ray, laboratory, pharmacy, operating room, et cetera.

When those costs are incorporated, the Congressional Budget Office estimates annual medicare and medicaid savings should, after the first few years, reach billions of dollars annually.

And, none of these estimates of savings under the committee approach assume any change in hospital behavior.

We can reasonably expect such changes.

The reason is that high-cost hospitals will act to bring down their costs to levels which are fully reimbursed.

Other hospitals will act to moderate their costs so as to gain incentive payments or to avoid moving into the range where a portion of their costs are not reimbursable.

The effect of all of this will be to moderate the average costs of hospitals as they are recalculated each year.

This would occur as the high-cost institutions—those hospitals close to or above the penalty levels—moderated their costs thereby favorably affecting the average cost which is, after all, determined by calculating in both the higher and lower cost hospitals.

The proponents of the Kennedy and Nelson amendments seek to control all hospital revenues from whatever source.

Those proposals are not limited to medicare and medicaid reimbursement methods.

The difference between the committee and the other proposals can be readily made by illustration.

The committee provision is similar to the Federal Government as a purchaser of automobiles.

In that role, as a prudent buyer, the Government seeks to get the best price it can.

The other proposals, in contrast, do not talk about the Government getting the best deal possible in purchasing cars—but, instead, would apply price controls to the entire automobile industry.

That is the basic difference between the two approaches.

Thus, under the committee bill we seek to pay for hospital care, under medicare and medicaid, as a prudent buyer.

At the same time, we seek to use the purchasing power of medicare and medicaid to move the industry away from a reimbursement system that en-

courages spending to a system that encourages and rewards efficiency.

But, make no mistake about it, both the Kennedy and Nelson amendments impose price controls on hospitals.

Hospitals will be told how much revenue they can receive per admission.

If a hospital receives more than this amount, it would have to pay the Federal Government not only the excess, but half again as a penalty.

Proponents of the Kennedy and Nelson amendments speak of "savings" of $30 to $60 billion in a 5-year period.

Those are not savings—those are reductions in hospital income without regard to hospital efficiency or inefficiency or cuts in vitally-needed services.

In fact, the so-called savings could be lots more.

They might want to simply not allow any increases—or even just drop medicare and medicaid.

That might save them $200 billion.

The point is, Mr. President, what is the price of the "savings"?

PRIVILEGE OF THE FLOOR

Mr. STEVENS. Mr. President, I ask unanimous consent that Dave Martinez, of Senator TOWER's staff, have the privilege of the floor during the consideration of S. 1753.

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

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a brief period for the transaction of routine morning business, not to last more than 10 minutes.

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

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

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

The 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. STEVENS. Mr. President, I yield back the time of the minority leader.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

EDUCATION AMENDEMENTS OF 1978

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the pending business, S. 1753, which will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1753) to extend the Elementary and Secondary Education Act of 1965, and for other purposes.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from North Carolina (Mr. MORGAN) is recognized to call up an amendment.

AMENDMENT NO. 3537

(Purpose: To reduce the possibility of Federal control over local school systems by striking the new Basic Skills and Educational Proficiency Act)

Mr. MORGAN. Mr. President, I call up my amendment which is at the desk.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. MORGAN) on behalf of himself and Mr. HELMS proposes an amendment numbered 3537:

Beginning with page 116, line 9, strike all through page 132, line 11.

Mr. STEVENS. Mr. President, will the Senator yield for an inquiry?

Mr. MORGAN. I am happy to yield.

Mr. STEVENS. Is there a time agreement on this amendment?

The ACTING PRESIDENT pro tempore. There is not a time agreement on this amendment.

Mr. STEVENS. I thank the Senator.

Mr. PELL. I wonder whether the Senator might be agreeable to a time agreement.

Mr. MORGAN. The Senator would not.

Mr. STEVENS. Mr. President, will the Senator yield for a unanimous-consent agreement?

Mr. MORGAN. I yield.

TIME LIMITATION AGREEMENT ON TOWER AMENDMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that when the amendment to this bill is called up by Senator TOWER, there be a time limit of 1 hour, equally divided.

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

Mr. STEVENS. I thank the Senator from North Carolina.

The ACTING PRESIDENT pro tempore. The Senator from North Carolina is recognized.

Mr. MORGAN. Mr. President, the amendment I have called up this morning strikes out all of section 102 of this bill.

As the distinguished Senator from Maine (Mr. MUSKIE), chairman of the Budget Committee, pointed out yesterday, most of the educational programs that are now in existence were commenced in the 1960's as a part of the so-called war on poverty under the belief that education would prevent one from being poor. Of course, these programs have grown from very modest programs in the 1960's to such an extent today that they take a substantial amount of our budget, and involve every educational agency throughout our Nation. Every local or educational board has been inundated with regulations, more regulations, and more regulations, and with lawsuits determining whether or not the programs were being administered in accordance with regulations of HEW.

I feel that the people in my State, and think I have traveled around the Nation enough to get the feeling of a lot of people around this country, that participation on the national level in education has grown enough, that it has taken away too much initiative from the local school boards, and that too much of the Federal dollars appropriated are wasted in administrative costs, in high salaries, and that not enough is actually helping the child.

Mr. President, I am concerned about the tremendous deficit that this Nation has been operating under since I have been in Congress and before I came to Congress.

I know that there are those who are not concerned about the deficit, who follow the economic philosophies and theories of those who say spend, spend, and spend; that that will fuel the economy and increase commerce and that everything will work out in the end.

I am no economist, but I have been around long enough to know that as long as our Government continues to spend far in excess of what it receives in taxes and is required to go out on the open market to borrow money in competition with local people, we are going to continue to have inflation.

If one will look at our record of inflation and record of deficit spending in this country in recent years, one will find that they run a parallel course, and nothing disturbs the people of this country more at the present time than the double-digit inflation that we now have. We are not going to do anything about it until we learn to live within our income.

Some of the programs that we enact we enact on the basis that this is only going to cost so many millions of dollars this year. It has become necessary that we look down the road beyond this year, as I have tried to do so in the amendment I am offering. According to the Congressional Budget Office, the program I am trying to strike will lead to, during the next 5 years, nearly $1 billion in new budget authority; $754 million is estimated to be the anticipated budget authority required to carry out the provisions of this program. They estimate that actual outlays will be $683 million, and this does not take into consideration what will happen over and beyond the 5-year period.

Mr. President, one of the difficulties that Congress has had in trying to bring spending under control is that we find that we have so little to work with, that so much of our national budget today is what we call uncontrollable. We know, of course, that part of that consists of social security benefits that have been provided in years past and which we have to pay; military and civilian re-

tirement; and programs similar to this one that have been enacted in the past that commit Congresses in the future to the expenditure of large sums of money.

So I feel very strongly about this program for this reason, but also for others.

One other word on inflation and this program: Another cause I think of inflation is that we have caused it to be a self-fulfilling prophecy. Time and time again in this Congress we will enact legislation calling for expenditures of certain sums of money and then provide in that legislation for escalation of costs because of anticipated inflation, and as we do this, it becomes a self-fulfilling prophecy. While that specific provision is not in this bill I read the clear implications in it.

Mr. President, I shall talk about my amendment. As the Members of the Senate are aware, section 102 would create a completely new title in the Elementary and Secondary Education Act which is to be cited as the Basic Skills and Educational Proficiency Act.

As I pointed out, this is a completely new section, new title, and a new program. I am afraid that so many of my colleagues feel that this bill is simply a reauthorization of existing programs, but it is not. It is important to know that.

Before I proceed further, I wonder if the distinguished floor manager of the bill will respond to a question.

The question is: What is the total authorization carried in the bill, as submitted by the educational committee?

Mr. PELL. Is the Senator talking about authorizations for this title?

Mr. MORGAN. No. For the whole bill.

Mr. PELL. My recollection is $55 billion for 5 years and $11 billion for the coming year.

Mr. MORGAN. The Senator is talking about $55 billion.

Mr. PELL. Billion not million.

Mr. MORGAN. Fifty-five billion dollars for this title?

Mr. PELL. No. The Senator asked me for the whole bill.

Mr. MORGAN. For the whole bill. What is the authorization?

Mr. PELL. The total authorization is $55 billion for 5 years, which as Senator JAVITS pointed out last night is about 7 percent of the cost of education of our school children.

Mr. MORGAN. About $55 billion for 5 years. Let me ask the distinguished Senator one question: Are there provisions in this bill that are mandatory, that would tend to usurp the responsibility of the Appropriations Committee?

Mr. PELL. No. But there are entitlements, if my recollection is correct, so that when people meet certain standards, they are entitled to the funds, provided those funds are available.

Mr. MORGAN. Would an entitlement take priority in the appropriations schedule?

Mr. PELL. To my regret, I am informed that there is nothing in this bill that cannot be reduced by the Appropriations Committee.

Mr. MORGAN. Then I am clear on my thinking now that there are no provisions in this bill which would mandate appropriations from Congress?

Mr. PELL. That is correct.

Mr. MORGAN. I thank my distinguished colleague.

So then, Mr. President, the bill itself carries an appropriation of about $11 billion next year, and over $55 billion over the next 5 years.

I think this amendment, the amendment that I offer, which strikes this new program, ought to be approved for three basic reasons: The Basic Skills and Educational Proficiency Act is expensive. It is not justified and, most importantly, it would inevitably increase Federal control over all aspects of our local public school system.

Let me elaborate. The new title II has been justified the Human Resources Committee in the following way, and I am quoting now from the committee report:

> The committee has adopted this new title because of its concern over the widespread belief that American students are no longer proficient in educational basics.

Supporting this contention, the committee reports on S. 1753 quotes Secretary Califano, and again I am quoting:

> Given the public concern about basic skills achievement, it is essential that the Federal Government have a broadly based authority to help States and localities develop improved ways of raising achievement not only in reading, but also in mathematics, and written and oral communication.

The objective of the committee and the Secretary of Health, Education, and Welfare in all of this is quite clear. Let me quote Mr. Califano again. As he told the Subcommittee on Elementary, Secondary and Vocational Education of the House Education and Labor Committee in the House on February 28, 1978:

> We seek to forge a new Federal-State partnership that encourages States and localities to carry out Federal priorities.

In effect, what he is saying is that—

> We seek to entice with the almighty dollar the local and State educational authorities to carry out what we conceive to be Federal priorities.

During the debates on the District of Columbia representation, it was noted time and time again that this is a federal government not a national government, although someone pointed out that we tend more and more every year toward a national government, that is, a national takeover of the prerogatives of the States.

I think that is exactly what the Secretary meant when he said:

> We want to encourage the States and the local authorities to carry out the priorities that we here in the Federal Government establish.

Not State and local priorities, not even the people's priorities, but the priorities of the Federal Government.

If we approve this title II, we would be establishing, in my opinion, a very dangerous precedent, one which I feel is totally intolerable and alien to the system of government that we have.

The committee, in defending this new title, also cites the fact that average scholastic aptitude test scores, both verbal and math, have been dropping over the last 15 years. Significantly, there is no attempt by the committee to prove that SAT scores have been declining because student achievement is lower nor do they attempt to demonstrate that the presumed lower student achievement is a result of the failure of local school districts to use adequate teaching methods.

So, based on an unproven assertion and some public concern, we are going to provide the Federal Government with a new broadly based authority to interfere in all aspects of what are still primarily locally controlled school systems.

I might add that nobody has asserted that the public is concerned with the failure of the Federal Government to act, as opposed to the failure of State and local school districts to take the necessary steps.

Title II as proposed by the committee comes in several parts. It would, according to estimates—estimates provided by the Congressional Budget Office—provide for $754 million in new budget authority over the next 5 years, and $683 million in new outlays.

Admittedly the present bill does not use these figures. It uses figures something like $47 million for this year.

Well, I had to look and turn to some place to try to find out how much we could anticipate involving the Federal Government in terms of dollars and cents over a period of time because I think we need to know that to vote intelligently on this piece of legislation. All too often we will vote on a new program carrying a reasonably small appropriation for the first year, without thinking of what it is going to do down the road. So I knew of no better place to turn to than the Congressional Budget Office. These are the figures they supplied to me. It might be a lot more, for four of the five authorizations in this title authorized "such sums as may be necessary." What does this amendment do? It establishes a series of discretionary grant programs whereby the Commissioner of Education will be able to hand out Federal money for programs relating to basic skills to whatever school districts he chooses or decides meet his criteria or standards.

Section 201 of this new title is just a statement of purpose, much of which sounds innocuous, except clause (2) and clause (3). They state that the purpose of this bill is "to encourage States to develop comprehensive and systematic plans for improving achievement in the basic skills," and "to provide financial assistance to State and local educational agencies for the development of programs in the basic skills."

Taken on its face it not only sounds innocuous, but also desirable. But we

all know the Federal Government never provides money for schools or programs such as this without strings attached. So it is a stated purpose of this bill to get Federal control over whatever Mr. Califano himself has called "the foundation of our public school systems."

Section 202 starts out with:

> The Secretary may make a grant or award a contract under this title only upon the submission of an application by an eligible entity at the time and in the form prescribed by the Secretary. Each such application shall provide assurances that—

And now I skip down to clauses (2) and (3)—

> procedures have been developed to evaluate the effectiveness of the proposed activity in achieving the purposes of this title, and that procedures have been developed for incorporating successful practices developed with assistance under this title into the regular instructional program.

We are supposed to be assured that Federal control will not be extended into local school systems.

(At this point Mr. HATHAWAY obtained the floor and called up an unprinted amendment (No. 1761). By unanimous consent the proceedings in connection therewith are printed at the conclusion of Mr. MORGAN's remarks.)

Mr. MORGAN. Mr. President, I was speaking concerning the effect this amendment would have on the control of local school units, and I was saying that under the provisions of the bill we are supposed to be assured that Federal control will not be extended into local school systems unless the local school system so desires, since a local or State educational agency would have to initiate the application.

Well, this sounds pretty good, but the assumption is wrong, I think, for two reasons.

First, as we all know from experience, Federal money is addictive to local and State governments, and they inevitably apply for all grants as fast as they can prepare the applications. Time and time again local officials in my State will ask for assistance for certain programs of the Federal Government, saying at the time:

> We really don't think these funds are being spent in the best interests of the people of this country, but if we don't spend them in our district some other district will.

So, as I say, Federal funds, we know, have become addictive to local and State governments.

Another reason why I think the assumption is wrong is that whether or not the local educational authority desires to let the Federal Government obtain some control over teaching of basic skills is irrelevant. It is the parents of the children who should be deciding whether or not the Federal Government becomes involved in this area, because, while the parents have considerable control over what their schools do, they have virtually no control over the actions of the Federal bureaucrats in Washington who administer the programs.

Then we come to section 205, entitled "Instruction in Basic Skills." Under this section, assistance shall be provided to public or nonprofit agencies or institutions for the purposes of "establishing learning goals and objectives for each school," for "the development of comprehensive programs to address the needs," and so forth.

So, the Federal Government will be providing money to schools to establish federally approved learning goals and objectives.

Section 206 orders HEW to "provide financial and technical assistance to State educational agencies that desire to develop and implement comprehensive statewide plans for improving the skills" of students in the basic skills. The same objections apply here that I have mentioned with regard to the earlier provisions. Apparently, however, the Federal Government will not be content with exerting control directly over only local educational authorities, but also over State agencies.

I will pass over section 207, which tells the schools to encourage parental involvement, but I do feel it will be ineffective in the face of the vastly increased Federal authority.

Section 208 intends to encourage schools to use technology in basic skills instruction. Here, we have an example of the Federal Government encouraging the use of a specific instructional technique which may be both expensive and unproven. It is exactly this type of provision which concerns me, and that is why I am offering this amendment. The use of technology will not reduce the number of teachers; it will simply add new educational costs at a time when we are trying to control our school budgets. And if, in some cases, it can lead to a reduction in costs by reducing the number of teachers, this may not altogether be desirable, for I find it difficult to believe that machines are the best substitute for personal attention required in elementary teaching.

Sections 209 through 212 deal with the collection and dissemination of information, order the National Institute of Education to conduct a survey of teachers, and require better program coordination. I do not object to these, Mr. President. Section 213 authorizes "such sums as may be necessary" to carry out the first 12 sections.

Section 214 is another problem. It authorizes the Secretary to enter into a contract with private nonprofit or public organizations or agencies to produce, acquire, and/or distribute books that meet standards set by the Federal Government. In other words, we will have federally approved textbooks. Total authorization for this section is $54 million for the 5 years.

Section 215 simply does not make any sense to me. It says that "the Commission is authorized to make grants to, and to enter into contracts with," various groups "for the conduct, in cooperation with one or more local educational agencies, of special programs for the teaching of standard mathematics to children eligible for services under this act through instruction in advanced mathematics by qualified instructors * * *."

What does "teaching standard mathematics through instruction in advanced mathematics" mean?

Mr. President, as to all of these provisions, I can just see the consultant firms waiting to be formed to carry out all these provisions, to get the Federal money to be appropriated under this section. It authorizes various nonprofit groups to carry out these programs. I can see retired educators now who are forming consultant groups, becoming specialists in the basic techniques, and so much of our money, rather than going to actually help the basic foundation portion of our present school system, being eaten up again in consultant fees and high salaries.

Then we come to part B of this new title. Section 221 authorizes the Commissioner to make grants to State or local educational agencies to implement educational proficiency standards as approved by the Commissioner. To quote:

> The educational proficiency plan shall contain a description of the educational proficiency standards established by the applicant for reading, writing, mathematics, and any other subject for which the Commissioner may require such standards.

Here we come to the heart of the matter. The Commissioner may require standards for any subject he chooses in which the school system is involved before providing a grant under this program. This is simply an intolerable intervention in local affairs.

Section 222 authorizes assistance to design and to administer achievement tests. This is a waste of money. Many school systems and States are now implementing achievement tests on their own; in fact I know of few that are not. And since they are already doing so, why should the Federal Government take control, at tremendous expense to the Federal taxpayer? In any case, the propriety of statewide achievement tests is a highly controversial subject, and each State, and local school agencies within States, should be free to decide whether or not to proceed with this, without the carrot of Federal money hanging over their heads.

I am also concerned with the implicit assumption underlying this title II that more Federal money and new programs will cure any problem, if it exists.

For far too long, we in Congress have felt we could solve any problem in this Nation by throwing money at it. I do not think we can solve this problem by throwing more and more money at it, any more than we have solved many of the others that we attempted to solve by throwing money at them.

Title II seems to assume that basic skills achievement is declining because we are not using new and different teaching methods, and because teachers cannot teach without Federal assistance.

I might respectfully suggest that maybe if we return to some of the tried and true teaching methods, the basic skills of some of the students in this country might improve.

It has gone down in recent years notwithstanding the tremendous amount of Federal dollars which have been poured into it.

If classroom achievement is declining, I would suggest that it is not for these reasons, but rather because of a serious and noticeable decline in classroom discipline. It used to be that when a student disrupted classroom procedures, he or she was thrown out of class, usually temporarily, but if he persisted he was not allowed to destroy the educational opportunities of all the other students. Admittedly, this step should be a last resort, but it does occasionally have to be taken. It did when I was in the public schools. It needs to be now, in my opinion, when my children are in public school. All too often a few are allowed to destroy the learning opportunity of the many. After all, students who are interested in learning have a right to be taught without disruption by other students.

Another reason relates to the policy of social promotions, which is one of the reasons, I believe, we are finding a decline in some of our achievement scores. It used to be that when a student did not perform adequately, say in fifth grade, he was not sent to the sixth grade. In the last decade, however, many educators, and even parents, have assumed that it was better for their children if they did not fail and, increasingly, students have been passed on to higher grades without adequate preparation.

One of the driving or motivating forces when I was a student was to make sure that I was promoted at the end of the year. We worked hard to achieve grades which would enable us to do that. It was demeaning to be held back. That was one of the things that motivated us to work harder, to do our work.

Therefore, we have increasingly found students in classes where they could not understand the material being taught. This does the student no good, for further learning will be inhibited, and it does the other students no good, for it tends to increase classroom disruption, and slow down the general learning process.

I am no expert on educational policy or child psychology, though I am a father, and was associated with my home school board for 25 years, which must give me some qualifications. I am perfectly willing to concede that other reasons have led to such delines in achievements as have occurred. If there are other reasons, they should be established before embarking on a $700 million program which will lead to increased Federal control over our school systems. We should not embark on such a program when we have no basis for believing that the proposal will help matters.

I can only reiterate my concerns. This program should be deleted from this bill for a number of reasons.

I am not sure just how many hearings were held on this matter, but those that we have been able to find certainly fail to offer the kind of justification that I think should be required before we embark on a two-thirds of a billion dollar program which shows no indication of ending in 5 years.

It lacks adequate justification, including no evidence that the program will deal with the presumed problem. It is expensive, estimated to cost at least $683 million over the next 5 years.

As Senator Dirksen used to say, a billion dollars here and a billion dollars there, and the first thing you know we have a $500 billion budget with a $60 billion deficit.

But, worst of all, it will lead, by design, to comprehensive Federal control over what is the foundation of our local school sytems. Public schools throughout this country provide a great diversity in education, and I think this diversity is good. Diversity encourages innovation and imagination in trying to meet the needs of the young people as those needs appear on the local scene. What might be necesary or desirable for the youngsters in the city of New York may not be desirable at all in a rural area of North Carolina or some other State.

Education in this country has been predominantly a local responsibility; parents were involved and generally served on local school boards or advisory committees. I think that is what has made our educational system as great as it is today. With all its faults, it is still a great system and one that stands out in the eyes of the world. But remove this system from local control, as we have already partially done, and as we seem to intend to do more and more in every Congress, where the local parents have no input, or feel they have no input and that it is futile or fruitless to involve themselves, and I think we will see a deterioration of the school system which we have not seen before.

I do not believe a single Senator wants to end this diversity, and that belief demands a vote in favor of this amendment.

Mr. President, I cannot speak for the Appropriations Committee because I am not on that committee. I cannot speak for the Budget Committee because I am not on that committee. I cannot speak for the Budget Committee which has been doing such a fine job to try to bring our spending in line with our revenue so that we may some day in the future end deficit spending and bring runaway inflation under control. But I rather suspect that these two committees would take a dim view of legislation creating an entirely new program at a time when we are trying to bring spending under control.

I would urge my colleagues to vote for this amendment to delete this section. If there is strong feeling on the committee that it is desirable, then let us set up hearings for next year and bring educators and parents from all across the Nation, after due notice has been given, as well as local and State officials, to testify about it, before we start this new program by simply stating that there has been a lot of concern about the decline in basic skills over the country, and that it seems desirable to do something about it.

I believe the exact words were that, "The committee has adopted this new title because of its concern over the widespread belief that achievement in basic skills are declining."

I say finally that the educational basics is the area in which I think our State and local officials have had, and do have, expertise, far more expertise than we can find in the halls of the HEW buildings here in Washington.

Again, Mr. President, I urge my colleagues to vote to delete this section. If, by chance, the amendment should be rejected, I hope that the Appropriations Committee and the Budget Committee will take note of what we had to say here this morning, and what others may have to say, and look further into it before embarking on this costly and expensive approach.

I yield the floor, Mr. President.

Mr. PELL. Mr. President, I have listened with interest to the arguments of the Senator from North Carolina. I recognize his sense of frustration at the growing Federal budget and the expansion of programs, but I think we ought to examine exactly what the amendment would do. It strikes out title II—Basic Skills. Part A of this amendment was proposed by the administration to meet one of the major problems facing American education today—the inability of our Nation's students to read, write, and compute.

When we think back to a few months ago, this was the No. 1 topic in our Nation. There was publicity in newspapers and magazines. The polls showed that our youngsters could finish high school and still not be able to handle the basic three "R's." I resolved about a year ago that this should be a priority item in our subcommittee and we treated it as a priority item, because no nation can be any stronger than the sum total of the education and the character of its people.

When one finds what those scores showed, a gradual slippage, we know we are going the wrong way and something has to be done to reverse that trend. I recognize the fact that one reason for the slippage is that more and more students who, in past decades, normally would not have been in school at all were counted in. Those students, coming from disadvantaged backgrounds, did not have the benefits at home that their peers had. By continuing in the school system, they may have brought the level down. Nevertheless, the average is, without question, declining; and something had to be done about it. This is our approach.

Part A of the title authorizes the Secretary of HEW to make grants and contracts with States and schools for pro-

grams to improve students' basic skills. While this is a new program, it replaces another program, the Reading Improvement Act, which was enacted in 1974. GAO analysis has shown that this program has not been effective in improving reading performance. For this reason, the committee bill does not extend this program. Rather, since the administration proposed a new approach to improving basic skills, the committee agreed to try this new approach.

Part B of the title authorizes aid to States seeking to establish educational proficiency standards in their schools. While I personally favor an approach where a nongovernmental commission established by the Federal Government establishes standards against which States could measure their students' progress, there was little sympathy in committee for this approach. Therefore, the committee bill authorizes grants to States and school districts to assist them in developing their own tests. I stress that participation in this program would be totally voluntary on the part of States and local educational agencies. The Secretary would have no authority to impose any tests or standards on States or schools.

While the Congressional Budget Office estimated that $69 million would be required for this title for 1979, unfortunately their estimate appears too high. The Department of Health, Education, and Welfare this morning provided me with a plan to spend $47 million in the first year of the program. I ask unanimous consent that this document be entered in the RECORD at this point.

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

[Attachment A]

EDUCATIONAL QUALITY AND DEMONSTRATION ACT BASIC SKILLS ACHIEVEMENT

PROPOSAL

This title would amend Title II of the Elementary and Secondary Education Act to establish a new discretionary grant program aimed at improving the achievement of individuals in reading, mathematics and written and oral communication. Under this program, the Secretary would be authorized to make grants to, and enter into contracts with, State and local educational agencies and other public and private agencies, organizations and institutions to carry out planning, research, development, demonstrations (including training of leadership personnel), evaluation, and dissemination. The Secretary would also provide, either directly or by means of grants or contracts, technical assistance related to the purposes of this title. Activities under this program would include:

Assistance for efforts designed to demonstrate improved instructional services in basic skills including diagnostic testing, comprehensive basic skills programs, projects for out-of-school youths, and short-term training programs;

Assistance in improving local efforts to test basic skills achievement, including disseminating information, training personnel to admnister tests, and developing improved tests;

Assistance to State educational agencies to develop and implement comprehensive Statewide plans for improving achievement in basic skills;

Support of demonstration activities designed to—

Help parents work with schools to improve the achievement of their youngsters;

Explore ways of involving the private sector in the delivery of instructional services and materials to school-age children, as in Reading is Fundamental;

Expand the variety and improve the quality of efforts by television, radio and other media to supply instructional programs for the school and the home.

BUDGET

The new Basic Skills authority will provide funding for planning, development, demonstration (including training), evaluation and dissemination activities. With a budget of $47 million, these activities would be funded in the following way:

Instruction in Basic Skills, $21 million.—This will include funding a limited number of demonstration programs at the school site level that attempted to combine resources from several Federal and non-Federal sources into coordinated efforts; technical assistance and information at all levels regarding promising and exemplary practices for instructing and managing basic skills programs, for diagnosing and testing students, for developing and implementing demonstrating comprehensive basic skills programs. This will also include funding of RIF which provides books at minimal costs to youngsters around the country.

Statewide Literacy Plans, $1 million.—Funds and technical assistance to States desiring to develop and implement Statewide plans for improving reading or basic skills in general.

Testing, $5 million.—Developing improved tests, providing information on useful tests, publicizing successful testing programs, organizing local and regional workshops.

Grants for Parental Participation, $6 million.—For material development, drop-in centers, development of programs for parental training.

Grants for Technology Development, $8 million.—To develop better programming, more supplementary material and for demonstration programs related to technology utilization.

Funds to the private sector to stimulate practices to improve reading or basic skills within and outside of the schools, $6 million.

COMPARISON WITH EXISTING PROGRAMS

The new Basic Skills authority will be an expanded Right to Read program which will include an authority for programs related to mathematics and will merge existing programs under Right to Read into a single part dealing with local demonstrations aimed at coordinating literacy efforts, and will establish a new part to provide information and technical assistance to States and to other programs dealing with basic skills.

The testing component of the new authority will constitute a new effort concentrating on providing information to the public on the use and value of certain tests, publicizing successful testing programs, organizing local and regional workshops and conferences and providing technical assistance to States and localities in solving particular problems they encounter in implementing testing efforts.

The parent involvement component of the authority is a new program that would provide grants to selected LEAS for parent involvement efforts to help their children learn basic skills and would support the development of educational materials, including workbooks, for the home.

The program linking education and technology is a new authority that would allow the Commissioner to make contracts and award grants, through a competitive process to private non-profit organizations and to LEAS.

RATIONALE

This title will extend the mandate of the National Reading Improvement Act to encompass mathematical and writing skills, though the primary emphasis would remain on reading. The purpose of this title will be to ensure that all individuals are able to comprehend written text, apply mathematical reasoning to the solution of problems, and to communicate ideas in writing clearly and effectively. Activities in this title will thus be geared at development of the most basic skills in the elementary grades, and on sustaining and building upon those skills in junior and senior high schools.

Specifically, the Title will be based on four parts:

1. Modified Right to Read Program.—Right to Read is a national effort for developing and improving the reading skills of all citizens. The Reading Improvement Act (under which Right to Read is authorized) will be modified to make it a more comprehensive program, a catalyst for coordinated literacy efforts, and a source of much needed technical assistance.

2. A New Effort in Testing and Basic Skills.—There is a general perception that recent declines in student test scores reflect an insufficient mastery of basic skills. Some of this perception is based on consumers' lack of information or misunderstanding of tests themselves—their appropriate purposes and uses, their limitations and shortcomings, their relationship to what is learned, cultural bias. Two basic purposes could be served by a targeted effort on testing: providing information to the public on the accountability of the school system, and disseminating information gained through research on widely-used tests.

3. Involving Parents in their Children's Learning.—Research findings increasingly reveal that parental tutoring of their own children contributes toward short- and long-term gains in students' scholastic achievement. In order to improve students' basic skills, legislation could be initiated that would promote voluntary parental involvement in their children's learning. The following types of activities would receive funding under such an authority:

Development and dissemination of materials that parents and children could use at home.

Meetings between teachers and individual parents in which the child's program is discussed.

Drop-in centers where parents and children can meet with educators to talk about learning activities for the home.

More formal programs of parent training focused around ways in which parents can complement the work of the school.

4. Linking Education and Technology.—Present trends show that, both in the home and in school, communications technologies are becoming an ever greater component of people's lives. The typical American television set is on eight hours a day and it is estimated that by the time the average child graduates from high school, 15,000 hours will have been spent watching television compared to 11,000 hours spent in school. Data from a recent study of television utilization in elementary and secondary schools throughout the nation show that over two-

thirds of the teachers have instructional television available in the classroom and that in these schools 85 percent of the teachers have indeed used instructional television. A recent study by the Corporation of Public Broadcasting and the National Center for Educational Statistics associates achievement in basic skills with amount of exposure to, and type of programing available over, educational television.

Since the most omnipotent educator increasingly becomes the media, it is necessary to produce valuable programming and to establish effective utilization. In order to stimulate high quality content of programs received by students in school, home and other locations, and in order to stimulate effective utilization of the media, contracts would be made, and grants awarded, through a competitive process:

To public and private non-profit organizations with expertise in education to:

Develop programs that will respond to national and local needs or that will present educational material in an innovative way or in a manner that will help students to learn the subject matter presented;

Develop, test and distribute print materials to supplement broadcast and non-broadcast electronic programs, in order to improve their educational utility in school and non-school environments;

Develop material for national distribution which previews television programs and provides teachers with materials ahead of TV showings to enable teachers to assign potentially valuable shows as homework or to plan pre- and post-viewing activities

To LEAs to make contracts:

For training teachers in how to relate broadcast material to classroom curricula and teachers, public and school librarians and parents to use non-broadcast technologies (particularly video discs) effectively;

For assisting teacher experimentation with new technological approaches to instruction.

IMPACT

The Basic Skills title would essentially constitute an expansion of the current Reading Improvement Act to allow for:

An authority for programs related to mathematics,

Support of local demonstration projects,

Support and technical assistance to States desiring to develop and implement Statewide programs for improving reading or basic skills in general,

Research and dissemination regarding tests and test use,

Outreach to the private sector to stimulate practices to improve reading or basic skills within and outside schools.

Because the Right to Read program currently funds a number of isolated activities and funding is quite limited, these widely scattered projects are unlikely to have much impact on skills around the country. Instead, it makes more sense to use Right to Read as a leverage for coordinating basic skills efforts by sponsoring the development of State plans and the creation of local programs that demonstrate the integration of funding from different sources. Furthermore, the new title will provide an opportunity to explore parental participation and technology development: support should be available for over 100 districts to undertake local demonstration projects. And, with an increased appropriation for Right to Read, technical assistance necessary to enhance instruction in basic skills and funds for literacy plans would be provided to every state.

Mr. PELL. Mr. President, when one considers that this replaces an existing program with an existing appropriations level of $27 million, what we are talking about here is, at least in the first year, an increase of $20 million to substitute a program which we hope will work for one that is an acknowledged failure.

As I said earlier, I think this is a rather meager approach to the problem of going back to basics, upon which our whole education is based. If we cannot do something to make sure that youngsters can read, write, and compute, we shall be not too effective in building a structure above that. I believe that the original estimates in the Congressional Budget Office report to the Human Resources Committee should be fulfilled. Apparently, the administration does not plan to do that; it plans to have a more meager approach. In any case, whatever we do in this direction, in my mind, is very important and very much to the good. I urge my colleagues to support the committee bill.

Mr. STAFFORD. Mr. President, I also, with reluctance, find myself in opposition to the amendment proposed by the distinguished Senator from North Carolina, and I do so with trepidation, because I know that taking on any former attorney general is a difficult and dangerous task. But I join the chairman of the subcommittee and the manager of the bill in opposition to the amendment and I shall try to be very brief in stating my reasons for doing so.

The point has not been made in complete detail, Mr. President, that the reason this title is in the bill this year is that, to some degree, it contains one or two elements of other parts of earlier legislation; but, basically, it is because the basic skills of learning in the country have been declining over the last 14 years. In New England, we think of them as reading, writing, and arithmetic. Aptitude tests across the country have indicated a substantial decline in oral communication, a substantial decline, I think, in reading skills, a substantial decline in mathematical proficiency. It has been to assist the States, not to try to direct them or to dictate curricular from Washington, but to assist the States in developing tests to ascertain how we can better develop the skills in reading, writing, and arithmetic in this country that the committee, in my opinion, has placed title II in the bill we are considering this morning.

I suggest, Mr. President, if the young American public are losing the ability to read, they will not have the ability to read our newspapers and national news magazines and even understand the rumors or what the news media say is going on in the country, let alone understand what actually may be occurring.

All of us understand the necessity in the household of knowing how much groceries cost. Our wives try to plan budgets for families from week to week. The checkbook should be balanced at least once a month. If we let the basic mathematical skills of the country decline too much, we shall simply find that the American public is unable to perform these very rudimentary requirements in daily family living. So it is important, Mr. President, that we see that the basic skills—reading, writing, arithmetic, and oral communication—in this country are maintained and improved.

I do not believe in government by polls, but I do note for the RECORD that a Gallup poll recently indicated that 83 percent of the public felt there should be more education in the basics in the U.S. educational systems, and 65 percent of the parents of America have been apprehensive that their children are not getting an adequate education in the basics in this country. It is to meet this feeling across the Nation, as well as the fact that aptitude tests have shown statistically a decline in the basics, that we have included this legislation in the bill which is before us this morning.

I am going to conclude, Mr. President, by pointing out that the committee wants to make it very plain that we are in no way attempting to dictate to State or local elements of government any aspect of precisely what should be in these tests or any attempt at control of curriculum across the country. In the committee report, it says specifically:

> In this vein, the Committee has proposed a new program of aid to the States to assist them in developing minimum competency standards. But the intention is clear: the Federal Government is not to specify certain minimum standards which the States must use, nor is the Federal government to require that certain tests must be used, nor is the receipt of Federal aid (except for this assistance)—

Under this specific title, and that is my interpretation, for it says in the committee report, "Except for this assistance"—

> to be conditioned on adopting minimum standards of competency. The Federal role is merely one of providing financial assistance to the States to encourage their own efforts in this area.

Mr. President, that appears in the committee report; that is the intent of the committee.

If the intent were otherwise, if this Senator believed some attempt were underway to control curricula at the State and local level, this Senator would not be able to support title II in the bill. But, as it is, I do, and I urge, with regret, the defeat of the amendment by the distinguished Senator from North Carolina.

I yield the floor.

Mr. MORGAN. Mr. President, my distinguished colleagues, both of whom I hold in high regard, have made my case for me. The distinguished Senator from Vermont, of course, as attorney general of his State, dealt with the State educational authorities and he is familiar with the local school authorities, and, I am sure he would concede that those in the State of Vermont are very competent and do a tremendous job.

The distinguished Senator from Rhode Island says that this is a new program except for the replacing of a reading improvement program, which the General Accounting Office held to be ineffective.

So they have taken a program that has already been determined to be ineffective and embellished it.

For the life of me, I cannot see any

substantial differences in it. They now say to us, "Let us expand this program."

The committee has not attempted, in my opinion, or as best I can learn, to demonstrate that this new program will deal with the problem any more effectively than did the reading improvement program.

The distinguished Senator from Rhode Island speaks of mandating Federal standards, but he says we did not do it in this case. We talked about it, I believe I understood him to say, but we decided against it.

Well, the mere talking of providing Federal standards scares me, as we are talking about matters that have historically and constitutionally been matters of local concern. But then, they almost did exactly the same thing. They said, "We are not going to mandate Federal standards but we will assist the States in prescribing and promulgating standards we approve of, and, if they do not do it, they are not going to get any money under this grant."

In words that said it again. It is the same thing, the Federal carrot dangling the money before them and then trying to create a national system with Federal Government standards.

Mr. President, the State board of education and the State superintendent of education in North Carolina, and the 100 school boards in that State, are surpassed by none in the Nation. I have complete confidence that they can develop programs, and are developing programs, to meet the need for new reading and writing and basic skills in the public schools of my State, and without Federal involvement.

Our young, dynamic Governor, recognized as a leader all over the Nation, made that a part of his campaign. That was his first program in the State legislature. I think that is where it ought to be, especially in these days when we in this Congress are not meeting our obligations to operate this country on a sound fiscal basis.

The distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) is fond of illustrating just how much $1 billion really is. He usually does it by saying, "If you had started on the day Christ was born and had spent $1,000 every day for 1,978 years, you still would not have spent $1 billion."

If I can take his illustration in the terms of this year's deficit, Mr. President, if one had started on the day that Christ was born and had spent $75,000. and had spent $75,000 every day since then, he still would not have spent as much money as this Nation went in the hole last year.

Mr. President, it is not a case of the Federal Government printing money. It is a question of the Federal Government borrowing money.

One month last year, the Federal Government had to borrow $17.5 billion. I think I recall that the interest rate on bonds, short-term bonds, was 7.2 percent, or in that range.

As soon as the Federal Government began to do that, in the little town I live in, savers who had their money deposited in the local savings and loan, savings which were being used to build homes for local residents, began to make a run on that savings and loan, drawing their money from an account where we were paying them about 5¾-percent interest and putting it in Government bonds at about 7-percent interest.

That dried up the money that was available in that community for home building. That is what we are doing when we continue to spend and spend and spend.

This program would be bad enough because of the Federal control aspects, if that were all of it. But the cost is just unacceptable.

Mr. President, I do hope my colleagues will vote to delete this section and let us go back to the drawing board again, if the committee really feels that the States are not competent to handle this job.

Mr. President, unless someone else seeks recognition, 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. PELL. 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. MORGAN. Mr. President, if the Senator will yield, maybe we ought to get the yeas and nays.

Mr. PELL. Certainly.

Mr. MORGAN. I do not know if we can get them now, or not.

Mr. PELL. Mr. President, I ask for the yeas and nays on this.

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

The yeas and nays were ordered.

PLANTING RICE, TREES AND EDUCATING PEOPLE

● Mrs. HUMPHREY. Mr. President, I wish to thank the Human Resources Committee for their support of my amendment to the Elementary and Secondary Education Act. I feel it is an important addition to that legislation. The purpose of the amendment is to establish college sponsored programs to educate and motivate economically disadvantaged students in their high school years. This legislation enables students to pursue further training and then careers in the biomedical professions.

We are all aware, and especially those of us who represent rural areas, of the critical shortage of doctors and other health professionals serving in rural communities and in poverty-stricken areas of our country's large urban centers. For instance, one report noted that in several districts in New York City, each containing approximately 20,000 residents, there were no private physicians who maintained practices in those communities. Except for the medicaid centers in those communities, the residents there have no health services directly available to them. Further, studies indicate that without health care there are higher incidents of infant mortality, malnutrition, alcohol addiction, and countless other diseases.

It is a fact that physicians cluster in the more affluent communities. However, we who are to consider the welfare of all people must address this critical problem and develop a solution which will bring health care to those individuals, who through no fault of their own, have highly inadequate health care now.

It may seem a dichotomy to quote a Chinese warlord at this time, but this was a wise man, and he obviously understood human nature. He is quoted as saying, "If your plan be for 1 year, plant rice; if your plan be for 100 years, plant trees; but if your plan be for 1,000 years, educate the people."

Therefore, we too must think in terms of many, many years; it is my hope that this legislation is a significant beginning for those individuals who are without opportunity and motivation to enter biomedical professions. They could find the encouragement through the benefits of this bill. Their education will be expanded to pursue a dream of becoming a paramedic, a doctor, nurse, dentist, a pharmacologist or any other medical profession they choose. It is also my hope that with succeeding in their chosen health field they will return to that area and serve in the communities where their families and friends live.

Graduate schools in the biomedical sciences would be encouraged to establish special after-school and summer study programs in the basic sciences, mathematics, and written comprehension for disadvantaged high school students. Ninth graders from economically disadvantaged backgrounds can begin participating in a project which would have at least 100 hours of classroom, laboratory, and field work experience in one or more of the biomedical sciences during the academic year. The program would continue throughout their high school years. They will receive counseling on the range of opportunities available upon completion of high school, college, and professional training.

Motivation does not compensate, however, for being poorly prepared for medical school. Having entered medical school, the chances of minority students completing medical courses are significantly less than for white students. In 1971, 9.7 percent of all black medical students in their first year had to repeat their course work, and 6.8 percent withdrew for academic or personal reasons, while only 2.6 percent of white students dropped out.

This amendment creating the biomedical studies program could substantially improve the opportunities of disadvantaged students in their preparation for a medical school experience. It guides these students toward premed studies in college and at the graduate school level.

Thus, let us not just plant only rice or trees; but rather let us plant the fer-

tile seeds of education for all our citizens and especially those who need a helping hand.●

Mr. MORGAN. Mr. President, I believe, under the previous order, the vote will come later.

The PRESIDING OFFICER. The Senator is correct.

Does any other Senator wish to speak now on the amendment offered by the Senator from North Carolina?

Mr. ROBERT C. BYRD. Mr. President, I believe it is now understood that the debate on the amendment by Senator MORGAN has ended, with the exception of 10 minutes, which will be equally divided. and which will transpire a little later today, just before the vote occurs on Mr. MORGAN'S amendment.

UP AMENDMENT NO. 1761

(Purpose: To clarify the purpose of the Advisory Panel on Financing Elementary and Secondary Education)

Mr. HATHAWAY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maine (Mr. HATHAWAY) for himself and Mr. MOYNIHAN proposes an unprinted amendment numbered 1761.

Mr. HATHAWAY. 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 page 328, line 4, between "of" and "elementary" insert "public and nonpublic."

On page 328, line 7, between "of" and "elementary" insert "public and nonpublic."

On page 328, line 9, between "financing" and "elementary" insert "public and nonpublic."

On page 328, line 15, between "of" and "elementary" insert "public and nonpublic."

On page 329, line 2, delete the semicolon and insert ", and between public and nonpublic schools;"

On page 328, line 5, strike out the period and insert in lieu the following: "including nonpublic education to the extent permissible under the Constitution.".

On page 329, line 7, strike out "and".

On page 329, after line 7, insert the following:

"(3) nonpublic schools to the extent permissible under the Constitution; and".

On page 329, line 8, strike out "(3)", and insert "(4)".

Mr. HATHAWAY. Mr. President, the purpose of this amendment is simply to include nonpublic schools within section 114 of the bill which establishes a presidentially appointed advisory panel on the financing of elementary and secondary education, with the caveat that nothing will be done that will be unconstitutional. I am pleased to be supported in this effort by the Senator from New York (Mr. MOYNIHAN).

I understand the floor manager, as well as the minority manager, are in agreement with the amendment. So I will not say anything more.

Mr. PELL. Mr. President, the Senator is absolutely correct. We have discussed this amendment. It is an excellent amendment, and it tries to bring a little more equity to the nonpublic schools, for whom I have been fighting so hard and who, I think, have received a very raw deal indeed. I am delighted to accept the amendment.

● Mr. MOYNIHAN. Mr. President, section 114 of the committee bill establishes an Advisory Panel on Financing Elementary and Secondary Education. This is a familiar and worthwhile undertaking reminiscent of the President's Commission on School Finance which I helped establish in the early 1970's and which produced generally excellent research and useful recommendations.

I am confident that the committee intended that the work of the Advisory Panel would include every branch of elementary and secondary educational finance. This presumably includes the financing of schools run directly by governmental units and also schools operated under nongovernmental auspices. Our amendment simply seeks to make explicit that which the Department of Health, Education, and Welfare, left to its own devices, might choose to overlook, by indicating in the appropriate places in the committee bill that the work of the Panel is to include both public and nonpublic education.

Of particular importance, it seems to me, is the charge to the Panel to develop a procedure for collecting uniform data on the financing of elementary and secondary education. If anything was clear in our debates of last week, it was that the Department of Health, Education, and Welfare does an unexcusably poor job of gathering information on the condition of nongovernment schools.●

Mr. STAFFORD. Speaking for the minority, the Senator from New England has again brought sense this morning, and we are prepared to accept the amendment.

Mr. HATHAWAY. I want to thank both the Senator from Rhode Island and the Senator from Vermont.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Maine.

The amendment was agreed to.

Mr. HATHAWAY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. I would hope that Mr. TOWER could come to the floor now and take up his amendment, on which there is a time agreement of not to exceed 1 hour. I also express the hope that any other Senators who have amendments will come to the floor and offer their amendments. The only amendments I know about——

The PRESIDING OFFICER. The Senator is advised that there is an order. The Senator from North Carolina (Mr. HELMS) is to be recognized.

Mr. ROBERT C. BYRD. I know about that order. Right now I am asking unanimous consent that that be kept in limbo for a moment. I am trying to get other Senators to the floor, so that we can get other votes lined up. Otherwise, we would have 10 minutes on that amendment and a vote. Mr. HELMS is not on the floor right now.

Mr. President, I ask unanimous consent that that may be waived temporarily, until we can get our bearings.

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

Mr. ROBERT C. BYRD. Mr. President, I understand that Mr. TOWER is on his way to the Chamber. Therefore, I ask unanimous consent that he be recognized following the quorum call, which I now suggest.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. CHILES may be recognized to call up an amendment at this time, without prejudice to the amendments of Messrs. HELMS and MORGAN.

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

The Senator from Florida.

UP AMENDMENT NO. 1762

Mr. CHILES. Mr. President, I commend the committee for the emphasis it has given the paperwork burden on local education agencies in drafting the reauthorization of elementary and secondary programs. The committee has demonstrated its support for the spirit and intent of the general education provisions, section 401, and the Federal Reports Act. This bill represents real progress in the effort to reverse the redtape and paperwork trend.

The amendment I am submitting in the nature of a substitute to title IV, section 401, seeks to insure the paperwork oversight process conforms with the provisions of the Federal Reports Act.

Mr. President, I send to the desk an amendment in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Florida (Mr. CHILES) on behalf of himself and Mr. HUDDLESTON, proposes an unprinted amendment numbered 1762.

Mr. CHILES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Delete section 401 of title IV of S. 1753 and replace with the following language.

SEC. 401. (a) Section 402 of the General Education Provisions Act is amended by adding at the end thereof the following new subsection:

"(c)(1)(A)(i) In order to eliminate excessive detail and unnecessary and redundant information requests and to achieve the collection of information in the most efficient and effective possible manner, the Secretary shall coordinate the collection of information and data acquisition activities of all Federal agencies, (I) whenever the respond-

ents are primarily educational agencies or institutions, and (II) whenever the purpose of such activities is to request information needed for the management of or the formulation of policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

"(ii) The Secretary shall appoint a Federal Education Data Acquisition Council consisting of three members representing the public and representatives of the major agencies which collect and use educational data, as designated by each such agency, including one representative each of the Office of Management and Budget and of the Office of Federal Statistical Policy and Standards. The members representing the public shall be appointed for nonrenewable terms. The Council shall advise and assist the Secretary with respect to the improvement, development, and coordination of Federal educational information and data acquisition activities.

"(B) For the purposes of this subsection, the term—

"(i) 'information' has the meaning given it by section 3502 of title 44, United States Code;

"(ii) 'Federal agency' has the meaning given it by section 3502 of title 44; and

"(iii) 'educational agency or institution' means any public or private agency or institution offering educational programs.

"(C) (i) The Secretary shall review and coordinate all collection of information and data acquisition activities described in paragraph (1) (A) (i) of this subsection, in accordance with procedures approved by the Federal Education Data Acquisition Council. Such procedures shall be designed in order to enable the Secretary to determine whether proposed collection of information and data acquisition activities are excessive in detail, unnecessary, redundant, ineffective, or excessively costly, and, if so, to advise the heads of the relevant Federal agencies.

"(ii) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency except as required by this subsection and by the rules and regulations established pursuant to section 3509 of title 44, United States Code.

"(iii) The procedures established by the Secretary shall include a review of plans for evaluations and for research when such plans are in their preliminary stages, in order to give advice to the heads of Federal agencies regarding the data acquisition aspects of such plans.

"(2) (A) The Secretary shall assist each Federal agency in performing the review and coordination required by this subsection and shall require of each agency a plan for each collection of information and data acquisition activity, which shall include—

"(i) a detailed justification of how information once collected will be used;

"(ii) the methods of analysis which will be applied to such data;

"(iii) the timetable for the dissemination of the collected data; and

"(iv) an estimate of the costs and man hours required by each educational agency or institution to complete the request and an estimate of costs to Federal agencies to collect, process and, analyze the information, based upon previous experience with similar data or upon a sample of respondents.

"(B) In performing the review and coordination required by this subsection, the Secretary shall assure that—

"(i) no information will be required of any educational agency or institution unless the plans for the acquisition of that information have been publicly announced by the February 15 preceding the beginning of the school year for which the information will be requested, unless there is an urgent need for this information or a very unusual circumstance exists regarding it;

"(ii) sampling techniques, instead of universal responses, will be used wherever possible with a special consideration being given to the burden being placed upon small school districts, colleges, and other educational agencies and institutions; and

"(iii) no request for information or data will be approved if such information or data exists in the same or a similar form in the automated indexing system required to be developed pursuant to paragraph (4).

"(C) Each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a thirty-day period, to comment to the Secretary on the collection of information and data acquisition activity. The exact data instruments for each proposed activity shall be available to the public upon request during this comment period.

"(D) No changes may be made in the plans for the acquisition of that information or data, except changes required as a result of the review described in this subsection, after such plans have been finally approved under this subsection, unless the changed plans go through the same approval process.

"(E) The Secretary may waive the requirements of this subsection for individual research and evaluation studies which are not designed for individual project monitoring or review, provided that—

"(i) the study shall be of a non-recurring nature;

"(ii) any educational agency or institution may choose whether or not to participate, and that any such decision shall not be used by any Federal agency for purposes of individual project monitoring or funding decisions;

"(iii) the man-hours necessary for educational agencies and institutions to respond to requests for information or data shall not be excessive, and the requests shall not be excessive in detail, unnecessary, redundant, ineffective, or excessively costly; and

"(iv) the Federal agency requesting information or data has announced the plans for the study in the Federal Register. The Secretary shall inform the relevant agency concerning the waiver decision within thirty days following such an announcement, or the study shall be deemed waived and may proceed. Any study waived under the provisions of this paragraph shall be subject to no other review than that of the agency requesting information or data from educational agencies or institutions.

"(F) Nothing in this subsection shall be construed to interfere with the enforcement of the provisions of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law.

"(3) The Secretary shall, insofar as practicable, and in accordance with the provisions of this Act, provide educational agencies and institutions and other Federal agencies, pursuant to the requirement of subsection (f) (2) (A), with summaries of information collected and the data acquired by Federal agencies, unless such data were acquired on a confidential basis.

"(4) The Secretary shall, insofar as practicable—

"(A) develop standard definitions and terms consistent with those established by the Office of Federal Statistical Policy and Standards, Department of Commerce, to be used by all Federal agencies in dealing with education-related information and data acquisition requests;

"(B) develop an automated indexing system cataloging all available data;

"(C) establish uniform reporting dates among Federal agencies for the information and data acquisitions required after review under this section;

"(D) publish annually a listing of education data requests, by Federal agency and for the programs administered in the Education Division, publish a listing annually of each such program with its appropriation and with the data burden resulting from such programs; and

"(E) require the Federal agency proposing the collection of information or data acquisition activity to identify in its data instrument the legislative authority specifically requiring such collection, if any, and require the responding educational agency or institution to make the same identification if it in turn collects such information or data from other agencies or individuals.

"(5) The Secretary shall submit a report to the Congress whenever he determines it necessary, but no later than once every three years, describing the implementation of this subsection. Such report shall contain recommendations for amendments to Federal laws which in the opinion of the Secretary are imposing undue burdens on educational agencies and institutions, and such recommendations shall not be subject to any review by any Federal agency outside the Education Division.

"(6) (A) The Secretary is authorized to make grants from sums appropriated pursuant to this subsection to State educational agencies, including State agencies responsible for postsecondary education, for the development or improvement of educational management information systems.

"(B) Any such agency is eligible for a grant of funds under this subsection if—

"(i) the agency agrees to use such funds for the development or improvement of its educational management information system and agrees to coordinate to the extent practicable all data collection for Federal programs administered by the agency through such a system; and

"(ii) the agency agrees to provide funds to local educational agencies and institutions of higher education for the development of management information systems when such grants are deemed necessary by the agency.

"(7) For the purpose of carrying out this subsection—

"(A) there are authorized to be appropriated for salaries and expenses the sums of $600,000 for fiscal year 1979, $1,000,000 for fiscal year 1980, and $1,200,000 for each of the fiscal years 1981, 1982, and 1983.

"(B) there are authorized to be appropriated for grants under paragraph (6) the sums of $5,000,000 for fiscal year 1979, $25,000,000 for fiscal year 1980, and $50,000,000 for each of the fiscal years 1981, 1982, and 1983; and

"(C) the sums appropriated according to subparagraphs (A) and (B) shall be appropriated as separate line items.". (b) Section 406 of such Act is amended—

(1) by striking out subsection (g), and

(2) by redesignating subsection (h), and all references thereto, as subsection (g).

Mr. CHILES. Mr. President, I have discussed this amendment with the distinguished chairman, Mr. PELL. As I say, the amendment simply tries to clarify further the process of making sure that we are not creating excess paperwork and attempts to reduce some of the paperwork we find has gotten into the education process.

Mr. PELL. Mr. President, I commend the Senator from Florida (Mr. CHILES) for his efforts in behalf of reducing unnecessary Federal paperwork in education programs. He was the primary author of the existing paperwork reduction section which became part of the educa-

tion amendments of 1976. While much progress in paperwork reduction has been made under this amendment, through the National Center for Education Statistics, the problem is much bigger than just the Education Division of HEW. Many other Federal agencies also collect information and data from schools and colleges. To date, there has been no coordination of these requests.

The amendment, as modified by the Senator, would authorize the Secretary of Health, Education, and Welfare to serve as a coordinator of education data collection across the Federal Government. For the first time, schools and colleges would have the opportunity to know of all potential data requests with which they would have to comply within the year, and would have an orderly method of making their comments—and complaints—known. In discussing this amendment in committee, I expressed the hope that its provisions would substantially reduce the paper that now seems inevitably to accompany Federal education programs. Concern with such excessive paperwork was a major theme of the hearings of the Education Subcommittee on this legislation.

The Senator's modification of the committee amendment is intended to preserve its antipaperwork thrust, while assuring that the role of the Office of Management and Budget under the Federal Reports Act is not undercut.

I believe it to be a good amendment. and will to accept it.

Mr. STAFFORD. Mr. President, the minority also has had an opportunity for the committee to examine the Senator's amendment, and we join in commending him for efforts to reduce the paperwork that we know is of a tremendous burden to the educational systems of the country. On behalf of the minority we are prepared to recommend acceptance of the amendment.

Mr. ROBERT C. BYRD. Vote!

Mr. PELL. Vote!

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. 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 that Mr. McINTYRE now be recognized without prejudice to the amendments of Mr. HELMS and Mr. MORGAN.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

AMENDMENT NO. 3536

(Purpose: To reduce the definition of a heavily impacted local educational agency from 25 to 20 percentum under section 3(d)(1)(A))

Mr. McINTYRE. Mr. President, I call up my amendment No. 3536 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Hampshire (Mr. McINTYRE), for himself and Mr. DURKIN, proposed an amendment numbered 3536.

Mr. McINTYRE. 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:

On page 332, between lines 24 and 25, insert the following:

"SEC. 204. (a) Section 3(d)(1)(A) of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) is amended by striking out '25 per centum' and inserting in lieu thereof '20 per centum' ".

On page 332, beginning with line 25, strike out through line 1 on page 333, and insert in lieu thereof the following: "(b) Section 3(d) of such Act is".

On page 333, line 8 strike out "(b)" and insert in lieu thereof "(c)".

The PRESIDING OFFICER. The Chair asks the Senator if this is the amendment on which there is to be a 30-minute time limitation.

Mr. McINTYRE. That is correct.

The PRESIDING OFFICER. The Chair thanks the Senator.

Mr. McINTYRE. Mr. President, the amendment I propose today along with my junior colleagues, seeks to address a serious financial problem faced by many communities throughout the Nation. This is typified by the case of Portsmouth, N.H., which is charged with the responsibility of educating the children of individuals attracted to the area because of intense Federal presence in the vicinity. This is particularly acute in the case of children of individuals who both live and work on Federal property. These so-called 3A students place a unique burden on the community because their parents live on Federal property and do not pay property taxes, and second, because the Federal Government property is exempt from local taxation. This leaves many communities with a significant additional burden on property taxpayers as they must make up the difference needed to educate the 3A students.

Thus, my junior colleague and I seek a reasonable change in the definition of a heavily impacted—or super 3A—district which would allow 100 percent funding through tier 2 where the impact of 3A students is 20 percent or more of enrollments. The Congressional Research Service estimates the nationwide cost to be $3.7 million, a modest price justified by the fact that the presence of these students is generated by a major local Federal activity. And, I might add, this will provide an extra measure of protection for hard-pressed property taxpayers in 21 States.

(Mrs. HUMPHREY assumed the chair.)

Mr. McINTYRE. Madam President, I ask unanimous consent that a survey of benefits distribution under the McIntyre-Durkin amendment be printed in the RECORD.

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

TABLE I.—PUBLIC LAW 874 IMPACT AID AS AMENDED BY S. 1753 WITH "SUPER 3(a)" ELIGIBILITY REDUCED TO 20 PERCENT (FISCAL YEAR 1979)[1][2]

	S. 1753 with current law super 3(a) eligibility		S. 1753 with super 3(a) eligibility reduced to 20 percent	
	Payment through tier 2 (in thousands)	Number of super 3(a) districts	Payment through tier 2 (in thousands)	Number of super 3(a) districts
Alabama	$14,775	0	$14,775	0
Alaska	57,880	31	57,884	32
Arizona	32,456	32	32,518	34
Arkansas	5,195	1	5,195	1
California	110,308	23	110,874	30
Colorado	17,734	3	17,734	3
Connecticut	7,769	1	7,769	1
Delaware	1,015	0	1,015	0
District of Columbia	6,794	0	6,794	0
Florida	29,151	0	29,151	0
Georgia	18,169	0	18,169	0
Guam	3,809	0	3,809	0
Hawaii	16,241	0	16,241	0
Idaho	5,756	2	5,760	3
Illinois	23,922	5	23,976	6
Indiana	4,456	1	4,456	1
Iowa	847	0	847	0
Kansas	8,785	3	8,785	3
Kentucky	4,832	0	4,832	0
Louisiana	8,303	0	8,303	0
Maine	3,798	5	3,798	5
Maryland	30,382	0	30,382	0
Massachusetts	11,531	1	11,531	1
Michigan	9,903	3	9,921	5
Minnesota	5,528	2	5,528	2
Mississippi	$5,913	0	$6,150	1
Missouri	11,024	2	11,195	3
Montana	10,468	35	10,514	38
Nebraska	9,221	5	9,221	5
Nevada	6,101	1	6,101	1
New Hampshire	2,883	0	3,121	1
New Jersey	19,898	5	20,283	6
New Mexico	24,800	8	24,890	9
New York	74,894	1	74,894	1
North Carolina	16,663	0	16,663	0
North Dakota	7,763	15	7,958	18
Ohio	16,922	0	17,224	2
Oklahoma	20,164	36	20,519	55
Oregon	4,729	3	4,735	4
Pennsylvania	18,730	0	18,730	0
Puerto Rico	12,309	0	12,309	0
Rhode Island	2,722	0	2,817	1
South Carolina	12,164	0	12,164	0
South Dakota	8,276	9	8,349	17
Tennessee	12,523	0	12,523	0
Texas	49,323	5	49,710	9
Utah	10,493	2	10,493	2
Vermont	282	0	282	0
Virgin Islands	1,218	0	1,218	0
Virginia	50,591	2	50,591	2

Footnotes at end of table.

TABLE I.—PUBLIC LAW 874 IMPACT AID AS AMENDED BY S. 1753 WITH "SUPER 3(a)" ELIGIBILITY REDUCED TO 20 PERCENT (FISCAL YEAR 1979) [1] [2]—Continued

	S. 1753 with current law super 3(a) eligibility		S. 1753 with super 3(a) eligibility reduced to 20 percent	
	Payment through tier 2 (in thousands)	Number of super 3(a) districts	Payment through tier 2 (in thousands)	Number of super 3(a) districts
Washington	$24,745	11	$25,126	15
West Virginia	971	0	971	0
Wisconsin	3,823	3	3,831	4
Wyoming	$4,737	3	$4,737	3
Total	883,690	259	887,366	324

[1] Allocation estimates do not include additional payments for districts with 50 percent or more section 3 children, handicapped children who are placed in private institutions or section 3 children whose parents work on property owned by foreign governments or international organizations or the U.S. Postal Service.

[2] Public Law 874 impact aid, as amended by S. 1753, provides that a school district must receive full program funding for its eligible 3(a)(1), 3(a)(2), and 3(b)(3) children if the district's total average daily attendance (TADA) is comprised of at least 25 percent of section 3(a) children. Also, the 3(a)(1) entitlement is increased from 90 to 100 percent for these districts.

Mr. McINTYRE. Madam President, we refer here to the impact of children of parents who both live and work on Federal property. This is an instance of Federal impact which weighs most heavily on the local community. To cite from the committee report on this legislation—referring to the impact aid program—

Along with the companion school construction program under Public Law 81-815, this legislation is based on the assumption that Federal activities place a financial burden on school districts by reducing local tax revenues and by causing increases in the number of children to be educated.

The focus on our concern today is those districts which are heavily impacted by local Federal presence. Again, quoting from the committee report,

In general, such districts have substantially lower assessed valuations per pupil and higher student/teacher ratios. Most of these districts encompass military bases, which take up high percentages of property and bring large numbers of families into the districts.

In 1974, Congress sought to address this unfair situation by stipulating districts whose A students constituted 25 percent or more of their total enrollments would be paid 100 percent of their A entitlements through the second tier. I agreed with this approach as a fair means of compensating local school districts for additional students they must educate solely because of a major Federal presence.

However, recent cut-backs in the impact aid program dictate action today to restore a fair Federal contribution to local education costs of Federal children. With the elimination of eligibility of out-of-State B's, many communities face added burdens. This is particularly true in the case of Portsmouth, N.H., sandwiched between Pease Air Force Base and the Portsmouth Naval Shipyard. However, the shipyard is located in Kittery, Maine, and with the elimination of out-of-State B's, Portsmouth is faced with a double whammy of Federal impact, but is not entitled to Federal payment for the out-of-State B's—even though the shipyard is a few short yards across the Piscataqua River.

Add to this the fact that this community is impacted 21.7 percent by 3A's—largely through the Federal presence at Pease. To alleviate this situation in Portsmouth and other communities located throughout the Nation, Senator DURKIN and I propose to reduce the super 3A ratio from 25 percent to 20 percent. This is a modest step, costing only $3.7 million, and providing extra Federal help to 21 States.

Further, I believe this amendment is consistent with the general thrust of the committee report since the committee did recognize the "unusual reliance of heavily impacted districts on impact aid to support their education program. What is needed is a less stringent definition of heavily impacted A's to allow a more reasonable Federal contribution to the costs of education of children present because of a high concentration of Federal activity in an area. The amendment we offer today is a fair move in that direction. This is a nationwide problem that deserves our consideration.

Madam President, I ask unanimous consent that two letters written by me, including one cosigned by my junior colleague, to the distinguished chairmen of the Senate Human Resources and Appropriations Committees, be printed in the RECORD. These will offer further description of the problems detailed in my statement.

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

MAY 3, 1978.

Hon. WARREN E. MAGNUSON,
Chairman, Senate Appropriations Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In the very near future the Appropriations Committee will begin markup of the Labor-HEW Appropriations bill for this year. I would like to bring to your attention two matters which are of critical importance to my state.

Over the years the Congress has seldom given full funding for School Assistance in Federally Affected areas and instead funded only a portion of the entitlement for each category. I can well appreciate the desire for economy and strict accountability of funding which this action by the Committee represents. We all want to see that Federal dollars are wisely and carefully spent.

An equally commendable goal is the adequate funding of our educational institutions so that they are capable of offering the kind of programs necessary for a basic education. In New Hampshire, a portion of that minimal level of funding has been the impact aid funds which over the years may have represented a small portion of a school's total budget, but at the same time a very important part. Further inroads in that funding would seriously jeopardize the ability of many of our schools to offer quality education. The yearly fractional funding of impact aid means that schools must trim budgets, in some communities to a point where it is only inevitable that services to our students will suffer. It is for this reason that I strongly urge the Committee to fully fund the impact aid program this year.

It has also come to my attention that the Office of Education intends to withhold Hold Harmless A and D funding, under the pretext that the Appropriations Committee did not directly instruct Office of Education officials to make such payments. Such action would have a detrimental impact on several school districts in my state. Often those funds represent the margin between quality educational programs and mediocre ones. I do not believe any action by the Congress last year or this intended that those categories of impact aid should be withheld. I earnestly solicit your assistance, therefore, in instructing the Office of Education to fund the Hold Harmless A and D categories.

Thank you for your attention to these matters. I believe strongly that the modest amount of funding which these requests represent would not compromise fiscal responsibility and at the same time would certainly strengthen in a substantial way the education that we in New Hampshire are able to offer our children.

Sincerely,

THOMAS J. MCINTYRE, *U.S. Senator.*

MAY 5, 1978.

Hon. HARRISON A. WILLIAMS, JR.,
Chairman, Committee on Human Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Today, you will be taking up several issues in the Human Resources Committee which are of particular interest to citizens of our State, many of whom have contacted us to express their vigorous opposition to proposed cuts in impact aid funding.

We are not myopic to the necessity of efficient utilization of Federal funding and we are also aware of much of the criticism that has been directed at this program. To be sure, some communities with substantial local support for educational programs receive additional funding from this program, the result being, in effect, that the Federal government and the American taxpayer subsidize the educational costs of communities which are fully able to support themselves. Yet we would argue that such inequities should not be used to justify wholesale curtailment of funds which are needed in other communities which are not so able to financially support educational programs.

In New Hampshire more than thirty communities receive impact aid funds. In some cases the percent of total budget represented by these funds is not great. In others they represent a sizeable fraction of total revenues. If the Committee were to adopt cuts such as those proposed by the Administration, many communities in New Hampshire would be severely affected and, regardless of how large or small their portion of such impact aid funding, every community would feel a fiancial strain. In the end, the individuals who would really suffer would not be New Hampshire taxpayers, but the children themselves.

We strongly urge the Committee to reject further erosion of the impact aid program. Further, we urge the Committee to consider increasing Category B funding to include students whose parents work at a Federal installation in another state from that in which the child's school district is located. Such actions by the Committee would be in the best interests of the school children of our State.

Again, we have full sympathy for the laudable goal of cost effectiveness and restructuring programs to insure justice and fairness. We also believe that these goals can be accomplished without unnecessarily burdening those communities which demonstrate a real and justified need for the impact aid program.

Sincerely,

THOMAS J. MCINTYRE,
U.S. Senator.
JOHN A. DURKIN,
U.S. Senator.

Mr. McINTYRE. Madam President, this is a matter of critical importance to thousands of property taxpayers throughout the land and I urge the Senate to adopt this amendment as a gesture of recognition of Federal responsibility in this area.

Madam President, I understand that due to some fine work by members of my staff, Senator DURKIN's staff and the staffs of the Human Resources and Appropriations Committees, there is generally no strong objection to this amendment.

Is that correct?

Mr. PELL. Madam President, the Senator from New Hampshire is correct. We have had a chance to examine this amendment. It seems to remedy an inequity. These heavily impacted 2A and 3A students are the ones for whom impacted aid originally was designed. It will cost $3.9 million, and I recommend we accept the excellent amendment of the Senator from New Hampshire.

Mr. McINTYRE. Madam President, I wish to ask the distinguished Senator from Rhode Island a question concerning what he just referred to. Last night we had a great deal of discussion upward, downward, and crosswise. We are talking here this morning, as the Senator just said, about the young students for whom impacted aid first came into being. So as far as this amendment is concerned, we do not have to worry about whether they are living off the post or not paying their fair share. This amendment is a prime example of where the need is necessary.

Mr. PELL. Exactly.

Mr. JAVITS. Madam President, the amendment proposes to reduce from 25 to 20 percent this requirement respecting the so-called "Super A" class of students to whom Senator MCINTYRE refers. What has bothered me about the proposed amendment is the fact that, though the amount involved is not all that great—as the Senator says it is somewhat under $4 million—it does come out of a pot and any such amount affects other tiers and other students, including students in the 50 States, or all the States that are concerned.

I understand that the figure in Portsmouth, N.H., is 23 percent and therefore the two Senators are under a need to bring the allowable level down to 20 percent, instead of a present 25 percent.

I am concerned about the fact that as we whittle down these percentages in order to suit a particular problem, such as the Senator identified, that process can go on and that it can extend to other jurisdictions which may want 19, 18, 17, or whatever percent suits them.

But as the matter stands it is de minimis; it is not a major problem which is presented in respect to impact aid, and so bearing in mind the realities of the situation, but being committed to stand for the Senate bill and the amendment which Senator MCINTYRE and his colleague will have in it, I am willing to take the amendment to conference. But I did want to state for the record our understanding of the situation, and I hope very much that it will not be taken as any precedent, and I am sure Senator MCINTYRE will agree with me, for some other areas or someone else who will want it down to 19 or 19¼ percent just to suit their situation.

So I join with Senator PELL in the acceptance of the amendment.

Mr. McINTYRE. I appreciate the remarks and the tremendous interest the Senator from New York has in this whole question of impacted aid, but I say that since this amendment deals with those young people—and property taxpayers—that were originally the cause for having impacted aid at all, that the answer to the Senator's question is not to look with some criticism on the amendment but to enlarge that pot that we are talking about.

So with my appreciation to the distinguished chairman of the Education Subcommittee and also appreciation to Senator MAGNUSON and members of the Appropriations Committee, I move the adoption of the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. CHAFEE. Madam President, I would like to ask a couple of questions on somebody's time, if I might.

Mr. McINTYRE. I yield 5 minutes.

Mr. PELL. I am glad to yield 5 minutes to the Senator, my colleague.

Mr. CHAFEE. Madam President, I would just like to say—and this is a prelude to the question—we all know that this impact aid has developed into a real scandal in this country, and it has gone on and on and has grown and grown. I am on the Human Resources Committee where every effort to cut the impact aid was rejected, and, as a matter of fact, it was increased over what it presently is. Yesterday that was cut back somewhat, and I understand we are about back to where the current law is.

But now comes another one, and I find it hard to understand why, although these are, as I understand we are dealing with, A students, why, after everybody has had his hand deep in the impact aid situation, we are at this late date enlarging it even more.

It has been told to us that it is de minimis, it is only $4.9 million.

Well, I do not know whether it is or is not, because these things seem to grow; they are $4.9 million this year, and somebody else will find out about it, and it will grow a little more.

Can the Senator explain exactly what is the problem with his students and the basis for it?

Mr. McINTYRE. The purpose of this amendment is to make certain that impacted aid goes in 100 percent to that situation that is most deserving of it. As the distinguished chairman of the Subcommittee on Education has said, it is the reason and rationale of why we have impacted aid at all. That is when you have a situation of a family on a base, say, in Portsmouth, N.H., with three youngsters who go to school in the Portsmouth School District where the base is tax exempt by virtue of being U.S. property, and where the mother and father of these youngsters pay no taxes, and the burden is cast upon the taxpayers of the city of Portsmouth. Here is the very wellspring from which impacted aid came into being.

I am not discussing the problem of the B students, the Montgomery County situation. I am talking about the real essence of need.

Mr. CHAFEE. Yes. But that is the A situation, and that is why we have impact aid. What is the matter with what they are getting now?

Mr. McINTYRE. Ninety percent, and I think they should get 100 percent. If the Senator does not believe it, come to Portsmouth, N.H., and talk to the mayor of that city; talk to him about his problems.

Mr. CHAFEE. He would rather have the base moved?

Mr. McINTYRE. I beg pardon?

Mr. CHAFEE. He would rather have the base moved?

Mr. McINTYRE. Well, at some times they may be not so sure.

Mr. CHAFEE. Do I understand as to A students that now the maximum they receive is 90 percent?

Mr. McINTYRE. That is correct.

Mr. CHAFEE. And this would boost it to 100 percent?

Mr. McINTYRE. Yes; beyond the 90 percent of the 3A entitlement the taxpayers of Portsmouth now receive.

Mr. CHAFEE. This would move it to 100 percent?

Mr. McINTYRE. Yes.

Mr. CHAFEE. The Senator is saying it is only $4.9 million?

Mr. McINTYRE. $3.7 million nationwide.

Mr. CHAFEE. It is astonishing, I just cannot believe that. All the A students in this country are going from 90 to 100 percent, and it is only, less than, $4 million? In other words, the whole program is only 10 times that; only $40 million for the whole country for the A students?

Mr. PELL. No. This is reducing the number where they would be counted. Where the portion of the students have heretofore been 25 percent, we are now saying that it should apply where it is only 20 percent. So it does not apply across the country. In most areas there would be substantially more or less than 25 percent. This amendment makes the cutoff in lieu of 25 percent, 20 percent. The cost is $3.7 million, and the main impact would be in New Hampshire.

It is of benefit to our own State of Rhode Island but in a very small amount.

Mr. McINTYRE. Rhode Island receives only about $95,000 in addition.

Mr. CHAFEE. I do not know what the administration says about this. They were very upset in committee when we increased it and eliminated some of the so-called reforms that took place in 1974.

If the cutoff now is going to be 20 percent, why not make it 15? That will be next year.

Mr. DURKIN. Madam President, will the Senator yield?

Mr. McINTYRE. I am happy to yield to my junior colleague.

Mr. DURKIN. I thank my colleague.

Madam President, I would like to join with my colleague in offering this amendment to cure an inequity in the impact aid program. Our amendment would simply lower the percentage of "A" students which a school district must have before it receives 100 percent of its "A" impact aid entitlement with appropriations at the tier 2 level.

School districts are entitled to payments under the impact aid program if there are students in the district whose parents live and/or work on Federal property. Being entitled to funds, however, does not mean that a school district automatically receives payments. Rather, under current law, only those school districts which have 25 percent category "A" students are funded at 100 percent of their "A" entitlement. This is the so-called super "A" category.

Category "A" students are those whose parents live and work on Federal property. These are the students whose parents pay no taxes to the locality which must educate them. Lower percentages of category "A" students in a school system result in less than 100 percent reimbursement.

The presence of category "A" students in a school district places a significant financial burden on the local school district's budget. These towns must truly provide "free" public education to "A" students. The town loses tax revenues twice; once because of the presence of Federal property, but once again because no taxes are paid by the persons living there.

The Federal Government does not fully meet the burden placed on school districts with 20 percent category "A" students. An example of the hardship this can cause on a community is demonstrated by the situation in a city in my State, Portsmouth, N.H., which is planning to close three schools because it cannot afford to support those schools and the schools for students who live on Federal military installations. The Federal Government has not met its obligation to the Portsmouth School District by fully supporting the costs of educating the district's "A" children.

Our amendment will help solve this problem which is faced by many school districts throughout the country. It will require the Federal Government to meet its full obligation to school districts which have 20 percent category "A" students. In other words, if the impact aid program is funded through the tier 2 level, as it has been for many years, school districts with 20 percent "A" students will receive 100 percent of that "A" entitlement rather than the 90 percent they would receive under the current law.

The amendment would increase the cost of the program by a comparatively modest amount, $3.7 million, and those funds would be distributed to 65 additional districts in 21 States.

I urge its acceptance by the Senate.

Madam President, this has been a very real and substantial problem in the community of Portsmouth. Senator McINTYRE has been intimately involved in this program, and I commend him for coming up with a solution that not only solves the problem for Portsmouth, N.H., but solves the problem for a number of other States similarly situated as follows: Alaska, Arizona, California, Idaho, Illinois, Michigan, Missouri, Montana, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, and Rhode Island will get an additional $95,000, South Dakota, Texas, Washington, and Wisconsin.

I yield back the remainder of my time and I thank the Senator.

Mr. CHAFEE. That is a bargain basement situation, I might say, all of those States for $4 million.

Mr. McINTYRE. I say to my friend from Rhode Island that not for every "A" student will the city be allowed to get additional funds. It is only where the impact of the "A" students exceeds 20 percent. So there is a real impact of this "A" type of student that I described, which is the fountainhead from which we started impact aid.

So if you have a community where you only have 5 percent of "A" students it does not apply to them. That is why the figure of $3.7 million seems unrealistic to the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. McINTYRE. Unless something further is to be said, I move the adoption of the amendment. I yield back my time.

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

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Hampshire.

The amendment was agreed to.

Mr. McINTYRE. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. PELL. Madam President, I ask unanimous consent that Mr. Larry Patton of Senator PROXMIRE's staff be given the privileges of the floor during the consideration of this measure.

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

Mr. ROBERT C. BYRD. Madam President, I ask unanimous consent that Mr. TOWER be recognized without prejudice to the agreement with respect to the amendments of Mr. HELMS and Mr. MORGAN.

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

Mr. TOWER. Madam President, I ask unanimous consent that Mr. Dave Martinez and Mrs. Cindy Root of my staff be permitted access to the floor during the consideration and debate respecting this measure and the votes thereon.

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

ORDER RECOGNIZING MR. HARRY F. BYRD, JR., FOR 10 MINUTES BEFORE PASSAGE

Mr. ROBERT C. BYRD. Madam President, I ask unanimous consent that following third reading and before passage of the bill Mr. HARRY F. BYRD, JR., may be recognized for 10 minutes.

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

UP AMENDMENT NO. 1763

(Purpose.—To require notification of noncompliance with title VI of the Civil Service Rights Act of 1964 for eligibility under the Emergency School Aid Act)

Mr. TOWER. Madam President, I have an amendment at the desk that I call up and ask the clerk to state.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas (Mr. TOWER), for himself and Mr. DOMENICI, proposes an unprinted amendment numbered 1763:

On page 377, after line 16, insert the following new section:

NOTIFICATION OF NONCOMPLIANCE FOR ELIGIBILITY OF CERTAIN GRANTS

SEC. 410. The General Education Provisions Act is amended by inserting after section 440 the following new section:

"NOTIFICATION OF NONCOMPLIANCE FOR ELIGIBILITY OF CERTAIN GRANTS

"SEC. 440A. (a) Notwithstanding any other provision of Sec. 440 the Secretary shall notify each local educational agency which has notified the Secretary of its intention to apply for funds under the Emergency School Aid Act, whether or not it is found to be in noncompliance with title VI of the Civil Rights Act of 1964, or any other nondiscrimination provision of Federal law.

Mr. TOWER. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. TOWER. I did want the clerk to read through that portion since I had made there a change that was suggested by Senator JAVITS and his staff.

The amendment is as follows:

On page 377, after line 16, insert the following new section:

NOTIFICATION OF NONCOMPLIANCE FOR ELIGIBILITY OF CERTAIN GRANTS

SEC. 410. The General Education Provisions Act is amended by inserting after section 440 the following new section:

"NOTIFICATION OF NONCOMPLIANCE FOR ELIGIBILITY OF CERTAIN GRANTS

"SEC. 440A. (a) Notwithstanding any other provision of Sec. 440 the Secretary shall notify each local educational agency which has notified the Secretary of its intention to apply for funds under the Emergency School Aid Act, whether or not it is found to be in noncompliance with title VI of the Civil Rights Act of 1964, or any other nondiscrimination provision of Federal law, with respect to eligibility for the Emergency School Aid Act, not later than June 1 in the year before the fiscal year for which the Assistant Secretary is determining eligibility under the Emergency School Aid Act.

"(b) The notification required by subsection (a) of this section shall include in detail the relevant information on which the determination of noncompliance is based.".

On page 21, in the Table of Contents, insert after item Sec. 409 the following new item:

"Sec. 410. Notification of noncompliance for eligibility of certain grants.".

Mr. TOWER. Madam President, I yield myself such time as I may require.

Madam President, the delays caused by late notifications to school districts of ineligibility due to noncompliance

constitute an unfair and improper management of the resources that Congress has appropriated to HEW to serve the critical educational needs of deserving students.

My amendment will require HEW and the Office for Civil Rights to reexamine its central office and regional office coordination and communication processes and make whatever modifications are necessary to obtain maximum efficiency from their operations. In the process, I expect it to eliminate the confusion in the contradictory policy directions that often are taken by the Central and Regional Office for Civil Rights as well as the undue administrative and processing delays.

Madam President, the American people expect the school districts of our country to serve the quality educational needs of all children. At the same time, I am confident all Americans will find it fair and reasonable to expect that the Office for Civil Rights will operate in an efficient manner and thereby permit it to notify local educational agencies found in noncompliance with title VI of the Civil Rights Act of 1964, or any other nondiscriminatory provision of Federal law, of that fact with the full particulars 60 days prior to the new funding cycle.

In June of this year, the HEW Office for Civil Rights notified approximately 50 school districts in my State that all ESAA funding in the new funding period beginning July 1, 1978, was being cut off. The reason given in each case was that the applicant school district had been found in noncompliance with the Office for Civil Rights requirements established under the Civil Rights Act of 1964 and applicable decisions of the Supreme Court.

In my view, there is no justification for HEW or the Office of Education waiting until the very last moment to notify school districts in my State or anywhere in this country that no ESAA funds will be received.

Without exception, recipients of ESAA moneys are local educational agencies with enrollments of students who are in critical need of the services and opportunities for quality education which the ESAA program offers.

Madam President, these are socially and economically disadvantaged students. For the most part, they are ethnic minority students. In the majority they are Mexican-Americans.

My objective here, Madam President, is simply to provide adequate notice and to provide for informing these school districts of the reasons why they were found to be in noncompliance and allow them to correct the deficiencies.

I might add that in some of these school districts, the administrators are Mexican-Americans themselves, and they are the ones being held in noncompliance for discrimination against Mexican-Americans. If that is the case, I can assure you it is very, very unintentional.

I just want to allow for reasonable notice to these school districts, so they can proceed in an orderly way with the funding of their school programs. I believe this amendment is consistent with the thrust of the language in the committee report on Labor-HEW appropriations, which says, on page 131:

> Since local school administrators have indicated strong interest in making positive efforts to insure compliance and avoid situations which generate complaints, the Committee directs that the OCR undertake efforts to inform local education agencies of what constitutes compliance with nondiscrimination statutes in areas such as classroom composition by race and sex, adequate counseling for elective courses, athletic programs, barrier removal for the handicapped, et cetera.

I want to emphasize that I have no desire to throw any obstacles in the way of compliance with the civil rights proscriptions. Quite to the contrary, I think my record will show that I have worked for years to insure Mexican-Americans equal opportunity with others. Indeed, I think we have far to go yet to correct past discriminations and past neglect, and I would see nothing stand in the way of that process. I simply want the disadvantaged children who are supposed to benefit from these programs to have those benefits without being the victims of what sometimes is simply a bureaucratic snarl.

I have discussed this amendment with our distinguished colleague from New York (Mr. JAVITS). I have not had an opportunity to discuss it with my friend from Rhode Island (Mr. PELL), but it does seem, as I have revised it since the amendment was filed last night, to have met the objections then voiced, and I think it will be acceptable.

Mr. JAVITS. Madam President, from the time in opposition I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from New York.

Mr. JAVITS. Madam President, this is a good amendment. We have worked it out with Senator TOWER; he has been very cooperative. The period of notice has been extended, the broad sweep of exemptions from existing law has been made detailed and specific, and I hope very much that this amendment may be found agreeable to the majority, as it is on this side.

Mr. PELL. Madam President, this amendment is acceptable to the majority. It seems to be a good example of comity in working things out between the Senators involved.

Mr. TOWER. I thank my colleagues from Rhode Island and New York, and I especially want to thank Senator JAVITS' staff for the courtesies afforded my staff and me in working the matter out.

I yield back the remainder of my time.

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

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Texas.

The amendment was agreed to.

Mr. TOWER. I move to reconsider the vote by which the amendment was adopted.

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

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Madam President, I now ask that the Senator from North Carolina (Mr. HELMS) be recognized to resume the consideration of his amendment.

AMENDMENT NO. 3538

(Purpose: To revise the authority relating to special projects)

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of the amendment (No. 3538) of the Senator from North Carolina (Mr. HELMS), on which there will be a time limitation of 10 minutes of debate, with the time to be equally divided.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

> The Senator from North Carolina (Mr. HELMS), for himself and Mr. MORGAN, proposes an amendment numbered 3538.

The PRESIDING OFFICER. Who yields time?

Mr. HELM. Madam President, I ask unanimous consent that Dr. James P. Lucier of my staff be accorded the privileges of the floor during consideration of this measure and any votes thereon.

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

Mr. HELMS. I thank the Chair. Madam President, I ask that I be advised when I have 1 minute remaining.

The PRESIDING OFFICER. The Chair will so advise the Senator.

Mr. HELMS. I thank the Chair.

Madam President, this amendment is very simple. And, incidentally, I want to thank my distinguished colleague from North Carolina (Mr. MORGAN) for his assistance with it and cosponsorship of it.

The Helms-Morgan amendment would simply restore current law with respect to special curricular projects, and would accomplish three objectives.

First, it would eliminate administration-opposed programs in health, education, biomedical education, and "population education." The Office of Management and Budget opposes the creation of these programs on the grounds that they are redundant of existent programs and overly expensive.

Second, our amendment would cut back the women's equity project to its current level of funding. S. 1753, unless this amendment is adopted, will increase that amount by 167 percent to a total cost of $80,000,000 a year.

Madam President, that is what will happen if this amendment is not adopted. This is almost twice the 1978 appropriation for all curricular programs combined.

We have been informed by a spokeswoman for the Office of Civil Rights that it intends to use the increased funding to help enforce and obtain compliance with title IX of the Civil Rights Act. With 15 percent of all high school graduates functionally illiterate, we simply cannot afford to secretly shift $320,000,000 of educational funding to efforts already authorized under other acts.

Third, our amendment would simplify the structure of titles III and XI of the bill. It would reconsolidate programs

and consequently remove some of the strain for higher appropriations.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. PELL. Mr. President, the amendment of the Senator from North Carolina would strike out the special projects title of the committee bill and replace it with basically the existing law concerning special projects. This would have two effects:

First. It would cut out valuable new programs proposed by the committee, such as corrections education and programs of biomedical education for minority group students.

Second. It would reinstate the funding pattern of existing law, which mandates a specified percentage for each special project out of a lump-sum appropriation. This is exactly the type of mandatory spending that Senator MAGNUSON opposed yesterday. The committee bill authorizes each program separately, allowing the flexibility the Budget and Appropriations Committee sought. This funding pattern should be sustained.

I urge my colleagues to support the committee bill.

Mr. JAVITS. Madam President, I yield myself 1 minute of the opposition time.

Madam President, this is one of the most gifted ideas we ever had, a basket of experimental educational projects. These are limited and circumscribed in terms of appropriations, with full freedom of action to the Appropriations Committee. If seasoned and proved right, which is something we rarely do in Government, then they could become permanent programs or, if not, be dropped. It is exactly what those who preach economy want in a governmental program.

Madam President, it has been creatively participated in by Senator KENNEDY, who is responsible for the law-related education section; by myself and Senator KENNEDY in respect of preparing low-income students for medical school; by Senator PELL on corrections education; and by those of my colleagues on the minority, Senator STAFFORD for population education and Senator CHAFEE for health education. I now yield 1 minute to Senator STAFFORD.

Mr. STAFFORD. I thank the distinguished Senator for yielding, Madam President.

I rise in opposition to the amendment of the Senator from North Carolina. I do think in particular that the popular education section, section K, is very important. It is designed to teach American youth, who are currently behind much of the world in understanding the problem, the implications of demographic developments in this country and around the world so that they can learn for themselves the consequences to themselves, their communities, their Nation, and the world of population changes in this period in which we have problems with respect to food, minerals, energy, and housing, just to name four. Understanding the future consequences of major changes in population is extremely important in trying to plan for a better world.

This provision, part K, is a counterpart of the provision which is in the House bill, and it is supported by the Presidential Commission on Population, the Federal Interagency Commission on Education, and, particularly, by the House Select Committee on Population.

I repeat, this provision is in the House bill. I urge defeat of the amendment of the Senator from North Carolina.

Mr. PELL. Madam President, I yield 1 minute to the Senator from Rhode Island and 1 minute to the Senator from Michigan.

Mr. CHAFEE. Madam President, this deals with health education. One of the real tragedies of our society is we spend literally millions and billions on taking care of people when they get sick, but we do not seem to have any programs designed anywhere in the U.S. Government to try and keep people healthy. This is the thrust, to educate the youngsters on keeping their health, eating decent foods, maintaining their physical fitness, staying away from drugs and abusive materials which are injurious to their health.

I just feel so strongly that this is the type of program which can yield tremendous savings to the Nation in the future. Let us keep the people out of the hospitals, teach them the way to stay healthy, and the whole Nation will be better off in the long run. For that reason I support the section as it emerged from the committee.

Mr. RIEGLE. I thank the Senator for yielding.

I think it is important to correct one misstatement made. The women's educational equity project does not authorize any interference with curriculums. It is not administered by the Office of Civil Rights, so any suggestions that OCR would be used to enforce compliance with title IX are false.

The Office of Education can only use it for voluntary programs.

It is significant that in that sense it is not coercive; it does not interfere with local school districts. They have to decide if they want to participate. I think that is a key point.

These programs are essential. At this point, a judgment to knock these out would seem to me to take us in exactly the wrong direction. I hope the Senate will choose to reject this amendment overwhelmingly.

Mr. BROOKE. Will the Senator yield 30 seconds?

Mr. PELL. I yield.

Mr. BROOKE. I have to speak against this amendment because I feel it would be very detrimental. I do not know if I can add to what the Senator from Michigan has said, the Senator from Vermont, or my friend from Rhode Island, but I hope this amendment is defeated.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HELMS. Am I correct in my understanding, Madam President, that I have about 3 minutes remaining?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I thank the Chair.

Madam President, I want to thank the Senator from Michigan for the legislative intent he has just made so clearly. If nothing else has been accomplished, his declarations are very valuable to this debate. I hope that in the coming months those who operate these programs will be attentive to what the Senator from Michigan has stated is the legislative intent. I thank him very much.

Madam President, my distinguished friend from New York said this is one of the most gifted ideas which has come along. It may be. The Senate is becoming more and more gifted in spending billions of dollars in excess of even what the administration says it can spend wisely. That is the "gifted" nature of this bill, and that is why Senator MORGAN and I have submitted this amendment—to cut down on the size of the "gift."

I ask unanimous consent that three explanations of the Carter administration's opposition to this excessive spending be printed in the RECORD at this point.

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

BIOMEDICAL SCIENCES

Explanation of amendment: The amendment would eliminate from the Special Projects Act a new program focused on preparing disadvantaged secondary students for training in the biomedical sciences. Reasons for opposing the new program are:

(1) It is narrowly focused on one field of professional development to the exclusion of other professions.

(2) There is no evidence that a Federal program is needed, or would be effective, in this area.

(3) The program is vastly overprescriptive by requiring local entities to adopt a particular training model, with requirements being imposed as to minimum numbers of hours on particular subjects, minimum numbers of participants and administrative arrangements. The program is a prime example of excessive Federal control of educational programs at the local level.

(4) Given expected budget constraints, there is unlikely to be sufficient funds available to implement the program.

(5) If a program of this type has merit, it should be implemented first as a demonstration under the Commissioner's discretionary authority in Special Projects.

HEALTH EDUCATION

Explanation of amendment: The amendment would delete from the Special Projects Act a new program focused on encouraging State and local education agencies to establish health education programs. Such a new Federal program is not needed because—

(1) health education is already a required part of the curriculum in most States;

(2) some Federal support for this activity is available through the Public Health Service Act;

(3) additional support, if warranted, could be provided as a discretionary activity under Special projects; and

(4) given expected budget constraints, funds are not likely to be available for a new program.

POPULATION EDUCATION

Explanation of amendment: The amendment would eliminate from the Special Projects Act a new program narrowly focused on implementing population education in elementary and secondary schools. Reasons for opposing the new program are:

(1) The concept of "population education" is extremely vague, and is not defined in the legislation.

(2) There is no demonstrated need for a Federal program to encourage developments in this field.

(3) Given expected budget constraints, sufficient funds are unlikely to be available to fund this program.

(4) This activity, if meritorious, could be undertaken within the Commissioner's discretionary authority in Special Projects.

Mr. HELMS. Let us summarize the Helms-Morgan amendment. It would do this: It would restore current law with respect to special federally funded curricular initiatives; it would cut by one-third the sixfold increase over last year's appropriations level—six times, Madam President, the appropriation level of last year is what is proposed in this bill—and, finally, this amendment simplifies multiple authorization for curricular programs by reconsolidating into a single section. I might add that last year's appropriation was $45 million. The level contemplated by this amendment is $200 million, and the bill level is $285 million. I contend that such sums so far in excess of last year are absolutely unnecessary and undesirable in view of the fact that the Federal deficit this year will be something in the neighborhood of $60 billion.

(Mr. ROBERT C. BYRD assumed the chair.)

Mr. HELMS. Mr. President, I yield back such time as I may have remaining. I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the distinguished Senator from North Carolina (Mr. HELMS). The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Hawaii (Mr. MATSUNAGA), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Nevada (Mr. LAXALT) are necessary absent.

The result was announced—yeas 25, nays 65, as follows:

[Rollcall Vote No. 359 Leg.]

YEAS—25

Bartlett	Griffin	Pearson
Bellmon	Hansen	Proxmire
Byrd, Harry F., Jr.	Hatch	Roth
Byrd, Robert C.	Hayakawa	Schmitt
Curtis	Helms	Scott
Dole	Lugar	Thurmond
Garn	McClure	Tower
Goldwater	Morgan	Wallop
	Nunn	

NAYS—65

Allen	Case	DeConcini
Bayh	Chafee	Durkin
Bentsen	Chiles	Eagleton
Biden	Church	Ford
Brooke	Clark	Glenn
Bumpers	Cranston	Gravel
Burdick	Culver	Hart
Cannon	Danforth	Haskell
Hatfield, Mark O.	Magnuson	Sarbanes
Hatfield, Paul G.	Mathias	Sasser
Hathaway	McGovern	Schweiker
Heinz	McIntyre	Sparkman
Hodges	Melcher	Stafford
Hollings	Metzenbaum	Stevens
Huddleston	Moynihan	Stevenson
Humphrey	Muskie	Stone
Jackson	Nelson	Talmadge
Javits	Packwood	Weicker
Kennedy	Pell	Williams
Leahy	Percy	Young
Long	Randolph	Zorinsky
	Ribicoff	
	Riegle	

NOT VOTING—10

Abourezk	Eastland	Matsunaga
Anderson	Inouye	Stennis
Baker	Johnston	
Domenici	Laxalt	

So the amendment (No. 3538) was rejected.

(Mrs. HUMPHREY assumed the chair.)

Mr. JAVITS. Madam President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina is recognized to resume consideration of his amendment, on which there shall be 10 minutes of debate, with a vote thereon to follow.

The Senator from North Carolina.

Mr. MORGAN. Madam President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their conversations to the cloakroom.

AMENDMENT NO. 3537

Mr. MORGAN. Madam President, the amendment I offered last night and called up and debated this morning strikes section 102 of this act. Section 102 creates a completely new grants program designed to assist in the basic skills in the educational system.

The committee justified this new program by saying it was concerned about the widespread concern with regard to the inability of young people to read and write. We all are concerned about that, but just throwing money at it does not solve it. What this does is to create a system of grants.

Mr. President, the Senate is not in order.

The PRESIDING OFFICER (Mr. HUDDLESTON). The Senate is not in order. The Senate will be in order.

Mr. MORGAN. Mr. President, my amendment strikes a whole new grant program for basic skills. The grants program, according to the Congressional Budget Office, would lead to an outlay of $683 million during the first 5 years. It would require that a State set up federally approved standards if it is to get any of the funds under this program.

In other words, Mr. President, here is another case of the Federal Government dangling the carrot before State and local school authorities in order to take over the control of what the committee accurately described as the foundations of our public schools.

The only program that resembles this one that we have had before was the reading improvement program, which was established in 1974, was evaluated by the General Accounting Office, and was held to be ineffective. We say, in effect, that one program has been eliminated, but what we are really doing is just embellishing that program and paying more money.

I would be opposed to this program even if we had plenty of money, because I think basic skills can best be handled by local education authorities. What may be needed, or decided is needed, by HEW here in Washington may not be what the authorities in North Carolina think would be best. But even if they were desirable, we do not have the money. We cannot afford to continue to appropriate three-quarters of a billion dollars for everything and ever expect to balance the budget and bring inflation under control. I am concerned about this, and I feel sure that the Appropriations Committee will be concerned about it, as well as the Budget Committee. I do not think it is a time to start new programs.

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

Mr. PELL. Mr. President, title II deals with improvement of basic skills on a totally voluntary basis. HEW would have absolutely no authority to impose tests or standards. The title would simply support States and school districts which wanted to undertake comprehensive programs to improve reading, writing, and math skills or to test their students' competency in basic skills.

It is a $47 million provision replacing an existing $27 million provision.

The estimate cited by the Senator from North Carolina of $69 million was the estimate that was given by the Congressional Budget Office. But the statement of the administration was that they wished to spend $47 million. It would replace the present program, which has not worked out, of $27 million. What it really does is to go after the problem that has plagued us all about which we know, and that is that we have youngsters going through school who wind up unable to read, write, or compute.

This matter received a great deal of publicity and attention about a year and half ago, and the committee sought to attack this problem. Title II represents the way we felt it could best be handled.

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

Mr. PELL. I yield the remainder of my time to the Senator from New York.

Mr. JAVITS. Mr. President, Members should read pages 36 and 37 of the committee's report. The facts are horrendous about the actual illiteracy of many who graduate from high school.

A Gallup poll showed last year that 83 percent of the American people favor "a back to basics movement," and other surveys indicated that more than 65 percent of U.S. parents do not believe their children are receiving adequate instruction in basic skills.

It is true that you cannot throw money at a program; nor can you neglect a situation where the complaint is so wide-

spread about the basic skill effectiveness of American education with respect to the American child.

So we are trying to do something about it. Considering the size of the national educational effort, spending about $120 billion a year, this is throwing very little money at the problem. To make this money useful will take a lot of brains and a lot of efficiency; but without some money—like oil for a major machine—you are not going to be able to accomplish anything.

So far as leaving it exclusively to the local communities and States is concerned, we have done that. and look at where we are.

So we have to try to improve the situation, at least with some sense of initiative and drive and stimulation from here.

It seems to me that this sum of money, under $50 million, is a very modest amount for this very basic problem in the whole American educational system.

For those reasons, I think we would be pennywise and pound foolish to strike title II from the bill. We all know it is not going to make any difference in the appropriation figure, considering the order of magnitude which is involved. This program is perhaps as useful as any in this bill. I strongly urge it upon the Senate.

Mr. MORGAN. Mr. President, the bill calls for a $54 billion authorization and such other funds as may be authorized. I went to the Congressional Budget Office and asked them to tell me what this title would cost, and they said it would cost $754 million in budget authority over the next 5 years and a $683 million estimated outlay.

Where we get into trouble in these bills is that we make a very small appropriation in the year we enact them, and then Congress has to cope with it as part of an uncontrollable budget down the road. If we ever are going to balance the budget, we have to look beyond that.

Mr. President, I do not know of any better authority to go to than the Congressional Budget Office, and that is their figure. So, as the Senator from Missouri said last night, if we want to build our record of budget cutting, this is a good time to start, because we would be eliminating a program that I think will not be effective.

As the Senator from New York said, 83 percent of the people do want to go back to the basics. They want to go back to teaching the basics of reading and writing that we were taught. They want to get away from some of these programs that have been encouraged by Federal grants and Federal funds. At the same time, it will eliminate the need for the Senate to continue to appropriate a total of $683 million in the next 5 years—and the Lord only knows how much beyond that.

I hope we will vote to strike this. Then, if there is a real need for it, let us have some public hearings next year. It is no more than 5 months away. We should do this rather than create another program that will run forever. Once you create them, you just do not ever stop them.

I hope Senators will vote to strike this and send the committee back to the drafting board.

Mr. PELL. Mr. President, the $54 million cited by the Senator from North Carolina was the amount for the reading fundamentals program over a 5-year period.

The estimate of the Congressional Budget Office is exactly as the Senator said, $69 million, with the administration proposing to spend $47 million in the following calendar year. The $54 million figure cited by the Senator was for a 5-year period.

I hope the amendment will be defeated.

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

Mr. PELL. I yield.

Mr. MAGNUSON. What is the percentage of the local contribution?

Mr. PELL. There are no provisions for matching funds in title II. It is a seed program which we would like to see taken on.

In general, as the Senator knows, the local contribution to the total cost of education is about 93 percent.

Mr. MAGNUSON. It is 93 percent of the total cost of education, about 92 percent really. But who is going to administer this program? Are we going to give it to the local people without a handle, or are they going to make a contribution? Obviously, it will not help all the schools all over the country unless this is a special Federal program.

Mr. PELL. The programs under title II will be administered by local people.

The PRESIDING OFFICER. The time of the Senator has expired.

The question is on agreeing to the amendment of the Senator from North Carolina. 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 Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Louisiana (Mr. LONG) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Nevada (Mr. LAXALT) are necessarily absent.

The result was announced—yeas 30, nays 62, as follows:

[Rollcall Vote No. 360 Leg.]

YEAS—30

Bartlett	DeConcini	Nunn
Bellmon	Durkin	Proxmire
Bentsen	Glenn	Sasser
Bumpers	Goldwater	Schmitt
Byrd, Harry F., Jr.	Helms	Scott
	Hodges	Stennis
Byrd, Robert C.	Hollings	Talmadge
Chiles	Lugar	Wallop
Church	Magnuson	Young
Curtis	Morgan	
Danforth	Muskie	

NAYS—62

Abourezk	Eagleton	Hathaway
Allen	Ford	Hayakawa
Bayh	Garn	Heinz
Biden	Gravel	Huddleston
Brooke	Griffin	Humphrey
Burdick	Hansen	Jackson
Cannon	Hart	Javits
Case	Haskell	Kennedy
Chafee	Hatch	Leahy
Clark	Hatfield, Mark O.	Mathias
Cranston		Matsunaga
Culver	Hatfield, Paul G.	McClure
Dole		McGovern
McIntyre	Randolph	Stevenson
Melcher	Ribicoff	Stone
Metzenbaum	Riegle	Thurmond
Moynihan	Roth	Tower
Nelson	Sarbanes	Weicker
Packwood	Schweiker	Williams
Pearson	Sparkman	Zorinsky
Pell	Stafford	
Percy	Stevens	

NOT VOTING—8

Anderson	Eastland	Laxalt
Baker	Inouye	Long
Domenici	Johnston	

So the amendment (No. 3537) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is now open for further amendment. The Senator from Oklahoma.

UP AMENDMENT NO. 1764

Mr. BELLMON. I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report.

The second assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. BELLMON) proposes an unprinted amendment numbered 1764.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BELLMON. 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:

Strike section 5(c)(2) of Public Law 94-874.

Mr. BELLMON. Mr. President, I can explain very quickly what this amendment does.

Last night there was an effort made to strike out the funding for the so-called "B" students. That amendment by Senator EAGLETON and myself lost.

As the bill now stands, there is a provision for the continuation of the so-called tiered funding approach which says that before we can provide money for the "A" students in any "tier," we have to provide money for all other classes of students in the "tier."

This device is designed to force appropriations for all of the different kinds of payments that are authorized in the bill. It precludes an appropriations committee decision to reduce payments for out-of-county students, for instance, unless we are also willing to reduce payments for the "A" students whose parents live and work on Federal property.

Another example is that the first and second tiers must each be fully funded. Neither tier can be partially funded under the act as it is now written.

I supported an amendment last night, to require a study of funding in impact aid, to examine the distributional effects compared to the stated objects of this program. I see no reason to await the results of a study to eliminate this appropriations-forcing provision.

Mr. President, what this would do is simply strike out the tiered funding and

make it possible for Congress each year to determine the proper level of funding for the "A" and "B" students and for and others in the program. So it is a simple amendment; but it does have a profound effect on the bill.

I ask unanimous consent that the committee be authorized to make necessary technical and conforming corrections to comply with my amendment, if it is adopted.

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

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

Mr. BELLMON. I would be very happy to yield.

Mr. JAVITS. Mr. President, it seems to me this is quite consistent with what the Appropriations Committee was talking about. They very carefully cut out the tiers because impact aid is the sacred cow around here, and that is what I protested against last night.

We wanted a piece of the sacred cow, and if we were not going to get one, my inclination is personally—and I do not speak now for the minority, because that would be quite improper—but as one Senator I intend to support the Senator's amendment.

I think if the Appropriations Committee is going to be free to pick and choose, it ought to be free to pick and choose on impact aid, too. I believe that the indications we give about tier 1, tier 2, tier 3 are good indications, good guidelines, and I am sure they will pay a lot of attention to them.

But to be absolutely latched onto them in the sense that, as they say, they are forced to appropriate for tier 1 if they want to reach tier 2, that is exactly what Senator MAGNUSON was moving against. So I agree with him. If that is the way we are going to do it, let us do it right across the board, and I shall support the amendment.

Mr. PELL. Mr. President, I understand the vexation and aggravation of the Senator from New York with what happened yesterday on public housing. As he knows, I joined with him in opposing that amendment, but I believe that this amendment would be harmful. It would be very harmful to those communities which have many category B students, and it would give the Appropriations Committee carte blanche to pick and choose among the various tiers. The existing structure of the law provides school districts with a measure of certainty as to their impact aid payments for any school year. Eliminating the tier system would destroy this certainty. School districts would not be able to plan their budgets from one year to the next. I think that decisions regarding categories of eligible impact aid children, and priorities for funding among such categories, should really be the job of the authorizing committee.

For that reason, I will be compelled to vote against the amendment of the Senator from Oklahoma.

Mr. BELLMON. Mr. President, I ask for the yeas and nays on the amendment.

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

The yeas and nays were ordered.

Mr. BELLMON. Before yielding back the remainder of my time, let me say that the statement just made by the distinguished Senator from Rhode Island, I feel, supports the position I have taken here, that is, that the Congress, not just the Appropriations Committee, but the whole Congress, should have the right every year to look at not only the spending levels for this program, but for other programs as well. One of the reasons why we find ourselves in such a financial bind is that we have locked in so many entitlement programs—or in this case tiered programs—that we do not have the flexibility we need to adjust the funding levels to the needs of the various programs as the years go by.

The PRESIDING OFFICER. The question is on agreeing to the amendment (UP No. 1764) of the Senator from Oklahoma (Mr. BELLMON). The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. JOHNSTON), the Senator from South Dakota (Mr. ABOUREZK), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Nevada (Mr. LAXALT) are necessarily absent.

The result was announced—yeas 57, nays 35, as follows:

[Rollcall Vote No. 361 Leg.]

YEAS—57

Allen	Glenn	Moynihan
Bartlett	Goldwater	Muskie
Bayh	Griffin	Nelson
Bellmon	Hansen	Packwood
Bentsen	Hart	Pearson
Bumpers	Hatch	Proxmire
Burdick	Hatfield,	Riegle
Byrd,	Mark O.	Sasser
Harry F., Jr.	Hayakawa	Schmitt
Byrd, Robert C.	Helms	Scott
Chafee	Hollings	Sparkman
Chiles	Huddleston	Stafford
Clark	Humphrey	Stevens
Cranston	Inouye	Stone
Culver	Javits	Talmadge
Danforth	Leahy	Thurmond
DeConcini	Lugar	Wallop
Eagleton	Magnuson	Weicker
Ford	McGovern	Young
Garn	Morgan	

NAYS—35

Biden	Hathaway	Nunn
Brooke	Heinz	Pell
Cannon	Hodges	Percy
Case	Jackson	Randolph
Church	Kennedy	Ribicoff
Curtis	Long	Roth
Dole	Mathias	Sarbanes
Durkin	Matsunaga	Schweiker
Gravel	McClure	Stevenson
Haskell	McIntyre	Tower
Hatfield,	Melcher	Williams
Paul G.	Metzenbaum	Zorinsky

NOT VOTING—8

Abourezk	Domenici	Laxalt
Anderson	Eastland	Stennis
Baker	Johnston	

So the amendment (UP No. 1764) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield to the Senator from Alaska.

UP AMENDMENT NO. 1765

Mr. GRAVEL. Mr. President, I send an amendment to 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 Alaska (Mr. GRAVEL), for himself and Mr. ABOUREZK, Mr. MCGOVERN, Mr. STEVENS, and Mr. DOMENICI, proposes an unprinted amendment numbered 1765.

Mr. GRAVEL. 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:

At the appropriate place in the bill insert the following:

Section 703(a)(1) is amended by striking out "and" at the end of clause (A), by inserting "and" at the end of clause (B) and by inserting after Clause B the following new clause:

"(C) individuals who are American Indian and Alaskan Native, students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency subject to such regulations as the Commissioner determined to be necessary;"

UP AMENDMENT NO. 1764—MOTIONS TO RECONSIDER AND TABLE

Mr. BELLMON. Mr. President, I move to reconsider the vote by which the last amendment was agreed to.

Mr. SCOTT. Mr. President, I move to lay that motion on the table.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move to reconsider the vote by which the last amendment was agreed to.

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

Mr. BELLMON. Mr. President, I move to reconsider the vote by which the last amendment was agreed to.

Mr. SCOTT. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRAVEL. Mr. President, the cosponsors of this amendment are Mr. ABOUREZK, Mr. MCGOVERN, Mr. STEVENS, and Mr. DOMENICI.

This amendment would very simply add a subsection that would extend the definition of limited English proficiency to include individuals who are American Indian and Alaskan Native students and who come from environments where a language other than English has had a significant impact on their level of English language proficiency.

Mr. PELL. Mr. President, we have had a chance to look over this amendment and have discussed it with the proponents. We think it is a good amendment and we are willing to accept it.

Mr. JAVITS. Is this in the bilingual program?

Mr. GRAVEL. Yes.

Mr. JAVITS. Are there adequate instructors in those native languages?

Mr. GRAVEL. Yes.

Mr. JAVITS. What does our staff say, I inquire of Senator PELL? In other

words, are we doing a vain thing here in writing this into the law?

Mr. PELL. I do not know and I do not think our staff knows if there are enough Alaskan natives to do the job, but this authorizes it. Obviously, if there are no instructors, there is no program.

Mr. JAVITS. Be it understood that if we take this into conference, we shall have to examine the pragmatic aspects of it. I have no objection to taking it into conference and it sounds like the right thing to do, but we shall have to discuss it with the Department.

I have no objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

● Mr. KENNEDY. Mr. President, I rise in support of S. 1753 as reported by the Committee on Human Resources, and urge my colleagues to pass it without major amendment. S. 1753 is indeed a landmark piece of legislation which I firmly believe will provide for a tremendous improvement in the delivery of educational services provided by Federal dollars.

I am particularly pleased with the provisions the committee has adopted for title I, the centerpiece of the Elementary and Secondary Education Act. Throughout the 12-year history of the title I program, Congress has demonstrated its concern about the educational barriers encountered by poor and disadvantaged children, and has demonstrated its continuing commitment to helping these children surmount these barriers. Moreover, we have consistently strengthened the title I mechanisms originally instituted to insure that the program will continue to focus on students with the greatest need for special assistance.

In developing the legislative provisions for title I, the committee was guided by the wealth of research and evaluative information which is now available concerning the program. In addition, the committee has been responsive to the broad range of concerns about title I raised by representatives of diverse interests. Our thorough consideration of these inputs has culminated in a bill which provides greater clarity and direction to assist administrators at the Federal, State, and local levels in implementing the title I program; and provides for greater program and fiscal accountability.

One aspect of the title I program that is of special interest to me is parental involvement. Parental involvement is one of the most viable and educationally sound components of title I. The role of parents in the title I program has been strengthened during the 12-year history of the program. In 1974, Congress amended title I to require the establishment of parent advisory councils to advise school districts in the planning, implementation, and evaluation of the program. In 1976, we added a requirement that parent advisory councils also be established at each school served by the title I program. While many school districts have been very supportive of parental involvement in all phases of title I, parent advisory councils in many other school districts have not been afforded the opportunity to function as the law intended.

Accordingly, the committee has adopted several amendments I introduced which will provide for greater unifomity in the procedures for establishing parent advisory councils, and will enhance the effectiveness of these councils. These amendments: First, establish a minimum size for school level advisory councils to insure adequate membership; second, provide for greater representation on councils for parents of program participants; third, provide for the election of members and officers to terms of sufficient duration to promote greater continuity of the councils; and fourth, stipulate that adequate training and information must be provided for council members so that they can acquire the knowledge and skills necessary to make them effective representatives of parents in the community and advisors to local school officials.

I have also offered two amendments which delegate to the U.S. Office of Education and the National Institute of Education further responsibility for promoting and facilitating parental involvement in title I. Pursuant to these amendments, the Commissioner of Education will sponsor regional workshops on parental involvement which will assist local title I officials in working more effectively with title I parents and parent advisory councils. In addition, the National Institute of Education will identify and develop model training programs for parents who serve on advisory councils. Through these two mechanisms, parents and administrators will be better able to work together cooperatively for the benefit of title I children.

Another concern I have about title I is the need for improved Federal administration and enforcement of the program.

To insure greater accountability for the Federal administration of the title I program, I have also offered an amendment which will require the Commissioner of Education to submit to Congress a biennial enforcement report concerning the compliance and enforcement activities of the Office of Education. The enforcement report will provide the information that is basic to the oversight of OE administration of title I.

An important issue related to title I which is addressed by S. 1753 is the need for continued compensatory services for pupils who formerly attended title I eligible schools but who no longer attend eligible schools because of reassignments or attendance area changes pursuant to desegregation plans. As many of my colleagues will recall, the Education Amendments of 1976 provided a special set-aside under the Emergency School Aid Act (ESAA) to provide compensatory services to students under such circumstances.

These funds will be available to school districts for the 1978–79 school year. To insure the continuation of special funds designated specifically for the purpose of providing compensatory services for students who are no longer receiving title I services as a result of a school district's implementation of a desegregation plan, I have offered an amendment to title VI of S. 1753, which authorizes an annual appropriation of $7.25 million for this purpose for the next 4 fiscal years. Moreover, additional appropriations are also authorized should the number of eligible students increase significantly in the future.

Mr. President, I am also pleased that S. 1753 adopted my amendment to include biomedical education which authorizes up to $40 million in grants to institutions of higher education to conduct partnership programs with area high schools.

Projects would provide after-school and summertime motivational encouragement and academic enrichment in the basic sciences, mathematics, and written comprehension and express for disadvantaged students from the 9th through 12th grades. As you know, there is a severe underrepresentation of minority and disadvantaged students in our Nation's medical schools. As a result, many disadvantaged communities have little access to quality health care.

Four years ago I was privileged to sponsor a demonstration of Project SEED for the Senate. At that time, a fifth grade class from a public school in Anacostia showed us that they were capable of doing mathematics that troubles many college graduates. The children had been taught for less than a week by Project SEED instructors, professional mathematicians and scientists, who teach high school and college level algebra on a daily basis to children from poverty and minority backgrounds. Because all students start at the same level in advanced mathematics and because the SEED instructors use a group discovery approach that encourages all students to participate, the children are successful no matter what their prior experience in mathematics has been. The program provides an ideal vehicle for assisting school districts in their desegregation efforts by providing an instructional setting in which students from different backgrounds interact and achieve together and in an academic subject. SEED also helps to overcome the effects of racial isolation by raising the achievement levels and self-confidence of minority students.

Following the demonstration, Senators MONDALE, TAFT, CRANSTON, BEALL, and I introduced an amendment which became section 708(a)(3) of the Emergency School Aid Act authorizing funding for mathematics programs such as SEED to assist school districts in carrying out the purposes of the act.

Gerald Klein, manager, Community and Urban Affairs for General Electric, wrote that—

> He regards SEED as the finest program of its kind ever developed, and dollar-for-dollar the best possible buy in supplemental educational programs.

The results which Project SEED has achieved in cities across the country during the past 3 years under ESAA

funding continue to demonstrate its effectiveness. Students from Browning, Mont., to Atlanta, Ga., and from Compton, Calif., to Boston in my own home State, gained 2 months in arithmetic achievement for each month in the program, regardless of their initial achievement levels—typically these students achieve at one-half to three-fourths the normal rate. This is an essential first step toward entry into scientific and technical jobs and careers, fields such as physics, engineering, and the biomedical sciences, that have been traditionally closed to students from minority and poverty backgrounds because of poor preparation in mathematics.

The program also has been successful in promoting the human relations goals of ESAA. I have received numerous letters from parents, teachers, administrators, and the students themselves, documenting the impact of the program in Boston. The comments of Mrs. Judy Fields, a teacher at the J. P. Timilty Middle School, are typical:

What Project SEED has been most successful in doing is uniting students in each class from different areas together as a class. Students from different parts of the city are becoming as a group more concerned with the lessons. And most important students are conversing with each other, aiding each other and questioning what they are learning as a group.

The SEED program also provides inservice for the regular classroom teachers who incorporate mathematics and methodology from the program into their own teaching.

Project SEED's success has implications for educational needs beyond those arising from the desegregation process. There is a growing concern about declining proficiency in the most fundamental skills—reading, writing, and mathematics. Programs, such as Project SEED, which demonstrate success in raising the achievement levels of the most profoundly educationally disadvantaged segments of our society, can serve as models for educational change, and as yardsticks by which other innovative programs must be measured.

It is with this in mind that the committee incorporated the language of our 1974 ESAA amendment into the administration's basic skills recommendations as section 215, special mathematics programs.

Mr. President, in reviewing title VII of ESEA, the Bilingual Education Act, the committee approved sevcral amendments that I feel strengthen the title and address the concerns expressed during the committee hearings.

Significant changes that were made include redefining of eligible participants. The term "children of limited English-speaking ability" has been changed to "children of limited English proficiency." I feel the new definition is less pejorative, proficiency is a more flexibile word and dropping the word "speaking" lessens the emphasis on verbal proficiency apart from reading and writing. An eligible participant is further defined as children who "have difficulty speaking, reading, writing, or understanding the English language at their appropriate age and grade levels. Children shall be considered to be proficient in English when they can speak, read, write and understand English at a level comparable to other children at their appropriate age and grade levels."

In response to a concern of parental lack of awareness of bilingual programs and goals, the committee added a new requirement that stipulates "parents of children particularly in a program of bilingual education, shall be informed of the institutional goals of the program and the progress of their children in such programs." This new requirement will enhance the parental involvement and provide the opportunity for heightened awareness of the bilingual program and its goals.

Under current law, 15 percent is earmarked for teacher training. The committee bill deletes this provision. A new provision mandates that the Commissioner determine that the applicant make "adequate provision for auxiliary and supplementary training programs in accordance with the relative training requirements of the statute."

In S. 1753, $20 million is authorized to carry out a strengthened research and development effort for 1979, and "such sums" for each year thereafter.

The committee bill also provides increased authcrizations for title VII from the current $160,000,000 for 1978 to $200 million for 1979, $250 million for 1980, and $50 million increments each year thereafter up to 1983's authorization of $400 million.

Mr. President, the committee's effort to strengthen title VII in my opinion will bolster the Federal effort in bilingual education and clearly indicate support for the students in need of bilingual services.

In closing, I wish to commend my colleagues on the Human Resources Committee for their excellent work. I strongly urge my other colleagues to unanimously endorse efforts of the committee.●

● Mr. HATHAWAY. Mr. President, I am pleased to support and cosponsor the pending bill which extends for 5 years a number of our most important Federal laws affecting elementary and secondary education—including the Elementary and Secondary Education Act, the Bilingual Education Act, the Emergency School Assistance Act, and impact aid, among others.

I am particularly gratified that the bill greatly simplifies and reduces paperwork burdens under title I of the ESEA, which since 1965 has formed the cornerstone of our Federal efforts to assist States and local educational agencies in meeting the needs of our disadvantaged children. Particularly helpful in this regard will be the policy manual to be made available to these officials.

Further, the bill contains a study to consider the possibility of allowing consolidated administration at the State level of a variety of Federal categorical grant programs, pursuant to the efforts of Senator DOMENICI and others. I shall look forward to reviewing the results of that study next year, and further considering proposals to reduce administrative burdens while preserving congressional intent.

The bill also establishes the gifted and talented program on a permanent basis. I was pleased to cosponsor the bill introduced by the Senator from New York (Mr. JAVITS) and to work for its inclusion in the pending omnibus measure.

The bill contains a number of improvements to the bilingual education program, which I have supported since its initiation in 1967.

In this regard, the bill includes the provisions of the Bilingual Education Equitable Distribution Act of 1978, which I introduced in April. This provides that in the consideration of inital grant application priority shall be given to underserved groups and regions, with a view toward equitable distribution throughout the Nation. Cited in the committee report as potentially eligible for this priority are Franco-Americans in New England. To further explain this amendment and its purposes, I would like to refer to the report language which states as follows:

The committee further agreed to amend the Bilingual Education Act with respect to procedures to be utilized in the evaluation of initial grant applications for assistance under that Act.

The amendment would require the Commissioner, in the consideration of initial applications from local educational agencies for bilingual education grant funds, to give priority to applications from such agencies located in geographical areas and proposing to assist children in need that have historically been underserved by programs of bilingual education. The amendment further requires that in approving such initial applications, the Commissioner shall to the extent feasible allocate funds in proportion to the geographical distribution of such children of limited English proficiency throughout the Nation with due regard for the ability of the local educational agency to carry out such a program, and the relative numbers of low income children sought to be benefitted.

The committee strongly believes that effective bilingual education programs ought to be implemented to benefit all children in need of such services throughout the Nation. At the same time, it is recognized that budget realities preculude this goal from being immediately realized through Federal programs. Currently 255,000 children are served by federally funded bilingual demonstration grants. This is far short of the need, however, since the Committee has received estimates of children who could benefit which range from 800,000 to 3.6 million. Thus, the shortfall in program resources to program need could be between 1 to 3 and 1 to 10.

Since it is not presently possible to establish federally assisted programs reaching all children in need of such assistance, the Committee believes that it is important to utilize scarce funds for demonstration programs and projects with a view toward stimulating interest and initiative among State and local educational agencies throughout the Nation which ultimately would lead to successful non-Federal programs.

The Office of Bilingual Education is urged to continue its efforts to provide technical assistance to local educational agencies interested in applying for such assistance, and is encouraged to engage in active outreach programs to stimulate such interest. The Committee also takes notice of the potential need for bilingual education programs among Franco-Americans and Portuguese-Americans in New England, for Spanish speaking persons of Caribbean origin through the

Northeast, and urges the Office of Bilingual Education to give appropriate attention to applications designed to meet this need.

The committee stresses that this amendment is not intended to be used as a basis for redistributing funds to favor one language group over another exclusive of need. Projects grants should continue to be awarded according to the degree of need for assistance and the quality of the existing projects or future project proposals. It is anticipated that increased funding for title VII in future years will enable the Commissioner to reach regions and groups which have historically been underserved.

Amendments requiring that the Federal bilingual program be staffed by individuals with experience in the field, and that instructional materials be upgraded should further strengthen this program.

Finally, an amendment to require that the Secretary submit to Congress by the end of 1981 a report on the procedures necessary to convert this program from a discretionary grant program to a formula grant program will be most helpful.

In this way Congress would be in a position to carefully consider such a proposal. At this point in time it is clear that there is a great unmet need for bilingual education. Currently 255,000 children are served by federally funded bilingual programs. But the estimated need ranges from 800,000 to 3.3 million for a shortfall of up to 10 to 1.

These factors were motivations behind my amendment to give priority in considering initial grants to areas and groups which have been underserved, and to move toward an equitable geographical distribution. As the committee report notes, there is an unmet need for such programs in New England among Franco-Americans, and this is particularly true in the State of Maine.

I look forward to this amendment providing momentum to meet all of these unmet needs.

The bill also contains the provisions of S. 2885, a bill I introduced in April to increase the authorization of funds for teacher centers and training programs to $100 million for the upcoming fiscal year, and to encourage statewide applications. These centers are vitally important to allow teachers to formulate curricula to meet the needs of their locality and to discuss alternative proposals with each other. The interest in this program is quite strong. The committee report points out that over 1,500 applications are pending but even if the program were fully funded at the current level of authorizations, only 400 could be funded. Under current appropriations, only 60 have been funded.

The bill also contains provisions establishing a 15-member advisory panel on the financing of elementary and secondary education. This panel would be charged with conducting a study of the financing prospects of public and private education over the next decade and the appropriate Federal role. It would be a high-ranking entity within the Department of Health, Education, and Welfare and its members would be appointed by the President.

I was pleased to propose this along with the Senator from Michigan (Mr. RIEGLE), and to have perfected it to include private education, along with the Senator from New York (Mr. MOYNIHAN).

Such an effort is vital to the future of our education policy. It has long been my view that education financing ought not to rely primarily on property taxes or sales taxes or other regressive mechanisms which hit those in the low- to middle-income range hardest, but rather should rely on progressively structured income taxes. I urge this panel to consider these and other issues.

The bill contains some very important provisions in the proposed new title II emphasizing basic skills. These provisions provide funds for States to formulate comprehensive plans to upgrade basic skills with greatest emphasis on oral and written communication skills and mathematics. It is strongly supported by the administration and I look forward to its successful implementation.

I do have a couple of concerns regarding this title. It allows for grants to States or local educational agencies, with a view toward fostering demonstration and experimentation. I would urge that where there has been a demonstrated success in a particular State and where the State has formulated a comprehensive plan, that funds be made available to the State to carry out that plan and channel funds to the local educational agencies within its borders.

It is for all the reasons which I have detailed here that I am pleased to give my support to this bill, and would also urge my colleagues to lend their support.●

EARLY CHILDHOOD PROGRAMS AND TRIO: ESEA AMENDMENTS

● Mrs. HUMPHREY. Mr. President, it had been my intention to call up amendments which focus on the critical needs of children in the early stages of their development. Since there are similar provisions in the House-passed version of this legislation, I believe the best course would be to accept these provisions in the House-Senate conference on the final bill.

These provisions establish specific authority for expanding vitally important early childhood and family education programs. These programs are based on the concept that learning begins at birth; and, that, while classroom instruction is important, early learning is crucial. They provide not only service, but also support to parents in educating their children.

My amendments would provide authority for special service components which provide educational and counseling services to parents of preschool children. They would also establish a means to identify potential barriers to learning and establish a referral service whereby eligible programs could tap into other sources of funding at the State, Federal, local, and private levels. In essence, these amendments establish a coordinated system for improving services to preschool children and their parents involved in developmental programs. It must be pointed out that these efforts are nonduplicative of those that other agencies such as Head Start or daycare perform.

I would also like to take this opportunity to thank Senator CLAIBORNE PELL, chairman of the Subcommittee on Education, Arts, and Humanities, and Senator ALAN CRANSTON, chairman of the Veterans' Affairs Committee, for raising the issue of extending the eligibility age of Vietnam veterans for participation in the veterans upward bound project. This revision, which I initially had recommended, is intended to reach those individuals who had dropped out of school, or those who had graduated but were not able to compete in postsecondary training.

Since this was a 9-month program, veterans upward bound was put under the Office of Education's TRIO program. The focus of the TRIO program is on disadvantaged youths. The TRIO program covers those who are aged 14 to 27.

We now find that there might be as many as 2 million Vietnam veterans who could participate in this program. What it means for them is a chance to finish their education, to have an opportunity for a better job, or a chance for their first job.

It has been determined by Senator PELL and Senator CRANSTON that the responsibility for advancing the age limitation for this program lies within the jurisdiction of HEW. They have urged that regulations be set forth which will change the age limit of TRIO. This seems an entirely reasonable approach, and I urge that HEW make this extension of age as soon as possible so that Vietnam veterans have the opportunity to participate in the veterans upward bound program.●

Mr. PELL. Mr. President, I ask for third reading.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, the Senator from Virginia has 10 minutes.

Mr. HARRY F. BYRD, JR. I yield to the Senator from West Virginia.

Mr. RANDOLPH. Mr. President, I am grateful to the distinguished Senator from Virginia.

As ranking majority member of the Subcommittee on Education, Arts, and Humanities of the Committee on Human Resources, it is a personal privilege to support our committee's reported bill, S 1753, the Elementary and Secondary Education Act Amendments of 1978.

I commend our colleague from Rhode Island (Mr. PELL) chairman of the subcommittee, and the Senator from New Jersey (Mr. WILLIAMS), the able chairman of the Committee on Human Resources, and the Senator from New York (Mr. JAVITS), our ranking minority mem-

ber, for their efforts in this reauthorization legislation to the Senate.

A positive vote for passage will insure that our children are given access to more effective, more responsive and more equitable educational opportunities. Our subcommittee, and its parent Committee on Human Resources, have long exercised strong leadership in fashioning necessary reforms to upgrade educational programs throughout our Nation.

We have reaffirmed our commitment to education for children from low-income families as provided in our simplified version of title I. In addition to the regular basic entitlements under title I for compensatory education, we have adopted incentives to encourage States to fund their own compensatory education programs, with $1 in Federal funds to match every $2 appropriated by the States. We have also adopted a new program of grants for counties with high concentrations of children from low-income families, with an authorization of $400 million.

A new title II provides assistance to States and local educational agencies for programs to assist in the improvement of the basic skills—reading, mathematics, and communications—both oral and written—the Basic Skills and Educational Proficiency Act. Our reforms of other titles, including bilingual education, the Emergency School Aid Act, Native American and minority students programs, education for the handicapped, State leadership, Ethnic Heritages Act, and women's educational equity programs, recognize the special role they contribute in providing extra resources to educational opportunity so vital to students from all segments of society.

I am especially gratified with new guidance and counseling authorities and the community schools title which allow schools to become an increasingly important part of the general community through matching those funds with moneys received under other community-based Federal programs.

In this measure we have strengthened programs already proven effective and improved programs which have experienced difficulties in the past. I commend those who gave us their counsel during public hearings on this legislation. These amendments are based on oral and written testimony submitted by witnesses from all walks of life—from the Secretary of HEW, Members of Congress, and national, State, and local leaders in the education community, all of whom regard education as a top domestic priority. Education has long been a major concern to me, and I have worked to provide not only access to, but quality in, education for all those who seek to learn. In this we underscore our commitment to stop future litanies concerning educational declines, of which we have heard and seen so much in the recent past.

Mr. President, I embrace this legislation and its implicit promise that new ways must be found, and will be implemented nationally, to teach children in such a manner as to prepare them for life and life's challenges.

During committee consideration of this bill, Mr. President, I cosponsored an amendment with Senator HAYAKAWA that was a modified version of S. 1780, introduced by Senators DOMENICI and BELLMON, which had 17 cosponsors in the Senate. S. 1780 proposed a 6-State demonstration project, to authorize the Commissioner of Education to certify a consolidated funding and accountability approach to education programs. It permitted States to operate their own programs free of the paperwork and redtape burdens currently imposed by Federal regulation. This measure was defeated in committee with a compromise to authorize and fund a study to determine the feasibility of S. 1780 as a demonstration effort in public education policy.

Since reporting this legislation, the committee staff has enlisted the services of the Educational Policy Research Institute of Washington, and the Congressional Research Service, both of which have presented acceptable outlines of their approach to analyze the potential impact of the consolidation proposal on education programs.

I have not taken part except very briefly in the debate on this legislation and the amendments that have been offered. I did have the privilege of working with the able chairman of our committee and also Mr. WILLIAMS and the helpful Senator from Rhode Island (Mr. PELL), the chairman of the subcommittee. I want to thank Senator JAVITS and others on this legislation, who fashioned it in the subcommittee and then in the full committee. It is an important legislative advance. It is creative, it is innovative; yet it is balanced and it strengthens the primary and secondary education program through amendments that were necessary to be passed this year.

Mr. HARRY F. BYRD, JR. I yield to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, Senator CRANSTON and I think it would be helpful to make a clarification regarding the deletion of the words "to progress effectively through the educational system" on page 275, section 704(i).

There are two points we would like to clarify on that change: first, that this deletion does not suggest that English language instruction is all that is needed; rather special instruction in basic subjects such as math and science are also critical as is continued emphasis on bilingual modes of instruction in title VII projects.

Second, the deletion does not in any way suggest that English language competence is an end in itself; rather, that competency is a means of the child's achieving his or her right to equal educational opportunity in the school system.

I think both of these points are clear from the full context of the provision in question. Does the distinguished floor manager agree?

Mr. PELL. I do agree. We have worked this colloquy out together. I believe the minority floor manager has a comment.

The PRESIDING OFFICER. The Chair advises that it will require unanimous consent to amend the bill after third reading.

Mr. KENNEDY. No; this is just legislative history, Mr. President.

Mr. JAVITS. Mr. President, respecting this particular question, I agree with the construction which is contained in the question. I should like to add this comment: We all realize that there is a certain tug of war as to when bilingual education is completed. Is it when the English language is reasonably learned, or is it when the capability of equal achievement in the whole education system has been attained? I believe that Senator MORGAN'S amendment has determined that issue, at least for the Senate version of the bill. That is a fair resolution; to wit, 2 years with an individual evaluation at the end of that time for the individual child.

I believe that the construction put upon this language, which was stated and requested by Senator KENNEDY, is entirely consistent with the total policy of the bill.

Mr. KENNEDY. I thank the Senator.

Mr. CRANSTON. May I briefly say that I fully share the concern of the Senator from Massachusetts. I appreciate the clarification by the manager of the bill.

Mr. KENNEDY. I thank the Senator from Virginia.

Mr. HARRY F. BYRD, JR. I yield to the distinguished Senator from Washington, Mr. President.

Mr. BELLMON. Will the Senator yield?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Oklahoma.

THE EDUCATION AMENDMENTS OF 1978 (ESEA)

Mr. BELLMON. Mr. President, the effectiveness of programs under this legislation is the standard by which many will measure the Federal commitment to the future of our young people. Education is a bright flame that helps fuel the national social melting pot and the expectation of a better tomorrow which characterizes America. The Elementary and Secondary Education Act is the cornerstone of the Federal Government's commitment to improved education.

For the most part, the bill before us today promises to fulfill our commitment and offers a standard against which we should be proud to be measured. For example, S. 1753 is designed to provide assistance to students from economically disadvantaged families; and the new concentration grants program included in the bill will provide additional assistance to districts with particularly high proportions of students from economically disadvantaged families. Most of the districts which will receive assistance under the new compensatory program are either in large cities already facing financial crises or in depressed rural areas. These areas do not have the tax base to finance the extraordinary costs of educating their large disadvantaged student populations, particularly in this time of rapidly growing costs.

Further, I support other compensatory programs which will be funded under the proposed legislation. We must focus our resources on critical problem areas—those where the States and localities have proved unable or unwilling to deal adequately with educational challenges such as compensatory education and desegregation assistance.

Having praised certain aspects of the bill, I nevertheless have had several concerns and specific objections with the reported bill. One concern involves the

general spending levels for education. Mr. President, Federal expenditures for education increased 16 percent from fiscal year 1977 to 1978. If we stay within the targets established in the first concurrent resolution on the budget this year—which seems by no means certain—they will increase another 18 percent, from fiscal year 1978 to 1979. Mr. President, we are now raising Federal spending on education by more than $1.5 billion each year. And because we start each year from a larger base, unless we arrest the trend, we will be raising Federal spending over $3 billion annually within 5 years. Even with the improvements made in this bill over the last 24 hours, I am still concerned about education spending levels.

Mr. President, I had other specific objections to this bill which I am pleased to say have been addressed by the actions taken on this bill last night.

My specific objections with this bill fell into three categories: First, a major expansion of the impact aid program; second, a number of entitlement-like provisions designed to limit the discretion of the Appropriations Committee, and the Senate as a whole, in our annual reviews of competing priorities; and third, a major expansion of Federal assistance to private schools.

First, I was concerned that the committee's recommendations regarding impact aid simply did not recognize the discomfort with which many of us have watched this program grow like topsy. Secretary Califano has said that it has "become an annual rite of spring" for the administration to march up on Capitol Hill with proposed reforms in the impact aid program, and to come down again emptyhanded.

Indeed, the Carter administration proposed a series of reasonable "reforms" in the impact aid program this year. The Human Resources Committee, however, not only rejected out of hand the administration's proposed reforms, it recommended in the bill before us that we broaden eligibility to include children of postal workers, for instance, and that we expand the funding for this program.

I cosponsored the Eagleton amendment to delete expansion of impact aid to postal workers and otherwise limit expenditures in this program. I am pleased that my colleagues supported this amendment. Another feature of the impact aid proposal before us about which I am seriously concerned, Mr. President, is the continuation of the "tiered funding" approach. This device is designed to force appropriations for all of the different kinds of payments authorized in the bill. It precludes an Appropriations Committee decision to reduce payments for out of county "B" students, for instance, unless we are also willing to reduce payments for "A" students whose parents live and work on Federal property. Another example is that second "tiers" must be each fully funded, neither "tier" can be partially funded under the act. I supported an amendment to require a study of "tier funding" in impact aid to examine the distributional effects compared to the stated objectives of this program. Mr. EAGLETON and I failed in our attempt to eliminate payments for all but "A" students; but amendments adopted last night are a start toward bringing this program under control. My amendment would allow Congress to determine annually the proper level of appropriation.

My second basic objection, Mr. President, involved other provisions in the bill which constrain appropriations and budgetary control over funding levels and force minimum appropriations for specific programs. One such provision involved the concentration grants program. I support that program. I supported funding for the new concentration grants program during markup on the first concurrent resolution on the budget. But my concern for the integrity of the budget and appropriations processes is not limited to programs I do not like; it also extends to those programs I support. This bill reserved the first $400 million appropriated for title I for the new concentration grants. Unless the Appropriations Committee wanted to cut the regular program below current levels, they would have been required to fully fund this new program. I am gratified that we eliminated the mandatory minimum appropriations for this program.

Further, I applaud the Human Resources Committee's action in attempting to create inducements to States to set up their own compensatory education programs, Mr. President. I think the new program, proposed in this bill, to provide a Federal match for States which undertake to establish such programs is well conceived and certainly preferable to full Federal funding. But as the bill was presented to us, Mr. President, it required that once this program was funded, it would always have continued at the previous year's level. Again, I am pleased that the Senate eliminated this provision.

Another similar provision of the bill mandated minimum appropriations for the guidance, counseling and testing service to be funded under the act. We can properly ask, in view of these provisions, why the committee did not just recommend we mandate minimum appropriations for everything under the act? For that matter, why do not all committees do the same thing for all programs under their jurisdictions? Or why not go even farther, and simply mandate appropriations levels, period, for all programs, in all authorizing legislation? Then we could just disband the Appropriations Committee; and the Budget Committee's job would be reduced to an annual review of requirements under all existing legislation—and possible later requirements under proposed new legislation, much as we do in the entitlement programs now. I will tell you why not. If we continued in this fashion, there would be no hope, ever, for controlling Federal expenditures; and if you and I go home and tell our constituents that we have given up all hope of controlling Government expenditures, I can assure you, our constituents will eventually replace us here with a new group of Senators who are, at least, willing to try. I cosponsored an amendment to eliminate the new minimum funding provisions and spending triggers; and I am pleased that this amendment carried.

Finally, Mr. President my third objection involved the proposal for a major expansion of Federal assistance to private elementary and secondary schools. As much as I favor high quality education I simply cannot support this provision. Competition is a great thing. It is the very heart of our economic system. But competition with yourself is foolish. If our public schools are inadequate, let us improve them. No matter how fine our public schools are, there will always be people who choose to send their children to private institutions. Let them. But I cannot be a party to deliberately constructing parallel, duplicate systems, with the taxpayers' money, in the name of freedom of choice. The message from the taxpayers all over the country should be clear to all of us by now. They want less—not more; smaller—not larger; more efficient—not less efficient, government. In the face of all this sentiment, and in the face of commonsense, I cannot agree to systematically spending tax money to fund another system to compete with our public schools.

Mr. President, I wish to thank and congratulate the managers of the bill for their diligent efforts to improve existing programs and their cooperation with others concerned about education. While we did not always agree, their staff worked long and hard with other Senators and staff members to try to work out our differences. As my colleagues know, the managers were able to agree to many of the amendments, which I believe have made this a better bill—and because of the extremely complex nature of this legislation, their assistance was invaluable.

With the changes that have been made, I am pleased to support S. 1753, Mr. President, and I urge my colleagues to do likewise.

Mr. HARRY F. BYRD, JR. Mr. President, it is not pleasant elementary and secondary education authorization bill. Indeed, it is most unpleasant.

But the legislation before the Senate today would authorize to be appropriated for fiscal year 1979 an amount of public funds twice as great as the amount appropriated for the current fiscal year.

To me this is unreasonable.

In addition, the legislation provides for a substantial increase over 1979 for fiscal year 1980, and another substantial increase for fiscal year 1981, and another substantial increase for fiscal year 1982.

In addition, the bill before the Senate today further injects the Federal Government into the operation of the local public schools.

As the chairman of the Budget Committee noted last night, in reply to a question that I asked, the $11 billion the pending legislation authorizes to be appropriated for 1979, if fully funded, is double the amount approved by the first budget resolution a few months ago. That amount, as Senator MUSKIE noted was $5.2 billion.

I end by quoting a query I put last eve-

ning to the Senator from Rhode Island (Mr. PELL), floor manager of the pending legislation, as reported in the CONGRESSIONAL RECORD of August 23:

Mr. HARRY F. BYRD, JR.: So what your committee is asking the Senate to do is to authorize twice as much money as is being spent in fiscal 1978; is that correct?

Mr. PELL: That is correct.

I am not willing to vote to authorize for next year twice as much money as is being spent in the current year.

I shall vote against the pending legislation.

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. SCOTT. Mr. President, I wish to associate myself with the remarks made by my distinguished friend and colleague from Virginia. There had been some indication a few minutes ago that this bill that might ultimately authorize as much as $50 billion——

Mr. HARRY F. BYRD, JR. $55 billion.

Mr. SCOTT. Fifty-five billion dollars—might be carried on a voice vote. I should say that any time any bill is before the Senate that involves $1 billion, we ought to have our name recorded for or against that bill.

I thank the distinguished Senator for yielding.

Mr. HARRY F. BYRD, JR. I thank my colleague.

Mr. JAVITS. Mr. President, just before we vote, while Members are here, I wish to note that this has been an absolutely monumental bill. It represents an unbelievable amount of labor and expertise by the Senate staff. I think while Members are here, we should give due credit to our staffs: on my own part, Gregory Fusco, Kristi Hanson, and David Morse; on the part of Senator PELL, Jean Frohlicher, Richard Jerue; for Senator WILLIAMS, Frank Zweig; for Senator STAFFORD, Sven Groennings; for Senator SCHWEIKER, Polly Gault; for Senator HATCH, Ron Docksai; for Senator CHAFEE, Nancy Barrow, and for Senator HAYAKAWA, John Backer.

I wish to again express my great appreciation and deep feeling of gratification for being able to work so constructively with Senator PELL and with the majority and minority leaders, and to thank Senator STAFFORD for the unusual cooperation he showed in respect to the management of this.

Mr. PELL. Mr. President, I thank the Senator from New York for his kind words.

I wish to add what a pleasure it has been to work with him and with Senator STAFFORD in bringing this bill to fruition.

I also thank, very much, indeed, the Senator from West Virginia (Mr. RANDOLPH) for all he has contributed, to this legislation. He is a devoted member of the Education Subcommittee, and his work in behalf of education is admired by all. He has greatly aided me in developing this legislation, and the subcommittee would have been at a loss without his knowledge, experience, and assistance.

I also want to acknowledge the help that the Senator from Maine, Mr. HATHAWAY, has been in the development of this legislation. He has offered many helpful suggestions during the Education Subcommittee's deliberations, and I am grateful for the support he has provided.

I also thank, tremendously, Jean Frohlicher and Richard Jerue of my staff, without whom I could not possibly have handled this bill.

I thank our colleagues, both majority and minority, for all their cooperation. I hope we will continue to enjoy that cooperation in what looks like a fairly feisty conference.

Mr. YOUNG. Mr. President, I ask the floor managers of this bill, how much of these funds being authorized are subject to appropriation; all of them or any part of them?

Mr. PELL. It is my understanding that every dollar is subject to appropriation.

Mr. ROBERT C. BYRD. Mr. President, S. 1753, the Education Amendments of 1978, extends for 5 years existing programs contained in the landmark legislation—the Elementary and Secondary Education Act of 1965 (ESEA). I say "landmark," Mr. President, because this act mandated for the very first time the Federal Government's commitment to providing educational opportunities to our Nation's disadvantaged and poor children—children who might otherwise have been denied the promise of learning to read and write simply because their families had not the financial means to send them to school, or the district they lived in was ill-equipped to provide adequate public education.

S. 1753 continues that commitment to providing educational opportunities—through the various programs contained in the bill—to children who come from low-income families. Moreover, that commitment has been improved and strengthened in this bill. Obsolete programs were eliminated. Duplicative programs were consolidated; others were simplified.

For this, we have to thank the distinguished Senator from Rhode Island and chairman of the Subcommittee on Education, Arts and Humanities of the Human Resources Committee (Mr. PELL). I commend him for his outstanding contribution to this all-important legislation. I also wish to commend the ranking member of the subcommittee (Mr. RANDOLPH), who has continued his untiring efforts on behalf of a better quality of education for our children. Chairman of the Subcommittee on Education, Arts and Humanities for 9 years, Senator PELL's expertise in the field of education is widely known; his dedication to the cause of providing disadvantaged youths the opportunity of an education is deeply respected.

I also want to thank Senator STAFFORD, the ranking minority member of the committee, as well as the other members of the subcommittee and the full Human Resources Committee for their contributions to the bill.

It was no easy task. The Elementary and Secondary Education Act of 1965 contains many programs which required close and careful examination. In his opening statement, Senator PELL expressed the hope that the bill eventually reported by the subcommittee would "articulate a sensible, rational, and simplified Federal educational policy." After 2 weeks of hearings during which the subcommittee received testimony from educators, school administrators, public officials, concerned citizens and parents—the whole spectrum of those in education—the subcommittee reported a bill which reflected the goals outlined by Mr. PELL in his opening remarks.

Title I of ESEA is the largest Federal program for elementary and secondary education. It now provides almost $2 billion for compensatory education programs in nearly 90 percent of the Nation's school districts—that is, 14,000 local educational agencies (LEA's). About 5 million children are participating in local title I projects.

Needless to say, a program of this magnitude can become complicated and difficult to administer over the years. The committee moved to correct these problems by simplifying and codifying the provisions contained in title I. Regulations and guidelines were simplified for easier understanding, and several substantive changes were made to facilitate smoother operation of the program.

We are all aware of the serious problem of declining test scores. We are continually confronted with situations where students graduate from elementary or high school and it is discovered that they cannot read, write, or count. S. 1753 strengthens Federal involvement in improving the quality of American education in a number of important ways. One example is title II, basic skills and educational proficiency, a new title which would provide assistance to States and local educational agencies for programs to assist in the improvement of the basic skills of reading, mathematics, and oral and written communication.

S. 1753 makes several changes in title VII, the bilingual education program to improve and strengthen the Federal bilingual effort.

Title X (community schools) authorizes a new program of assistance to community school programs.

These are just a few examples representative of the committee's commitment to thoroughly examine every program in the bill—clarify its intentions, simplify its requirements, and strengthen its objectives. That is why, Mr. President, we are considering today a bill which makes the Elementary and Secondary Education Act of 1965 more responsive to the educational needs of low-income children, making sure that they make sufficient progress in the basic skills of reading, writing, and arithmetic. It makes its easier for States and local education agencies to implement ESEA programs by reducing paperwork requirements and giving them greater flexibility to administer the programs.

Again, I applaud Senators PELL and JAVITS and the other members of the committee for the yeoman's task they performed on this bill. It will serve as the basis for Federal education policy for the next 5 years.

Year after year, they demonstrated their dedication, their skills, and great

knowledge of this subject matter. In my opinion, the Senate and the country are in their debt.

Again, I congratulate them.

Mr. PELL. I thank the majority leader for his very kind words. I appreciate them tremendously.

I also want to add a word of appreciation to the chairman of the full committee (Mr. WILLIAMS) who has been of such inestimable help in developing this bill. Mr. WILLIAMS is an able and distinguished supporter of education, and I thank him for the guidance and support he has given this legislation.

H.R. 15

Mr. President, I move that the Senate proceed to the consideration of H.R. 15, an act to extend and amend expiring elementary and secondary education programs.

The PRESIDING OFFICER (Mr. HODGES). The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 15) to extend and amend expiring elementary and secondary education programs, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed immediately to the consideration of the bill.

Mr. PELL. Mr. President, I move to strike all after the enacting clause and insert in lieu thereof the text of S. 1753, as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Rhode Island.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. PELL. Mr. President, I move passage of H.R. 15, as amended.

Mr. SCOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. SCOTT. Mr. President, I do feel we should have the yeas and nays. They have been ordered to the other bill.

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

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent the yeas and nays that were ordered on the Senate bill be vitiated.

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

The bill having been read the third time, the question is, Shall it pass?

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

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from South Dakota (Mr. ABOUREZK) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), and the Senator from Nevada (Mr. LAXALT) are necessarily absent.

The result was announced—yeas 86, nays 7, as follows:

[Rollcall Vote No. 362 Leg.]

YEAS—86

Allen	Hart	Muskie
Bartlett	Haskell	Nelson
Bayh	Hatch	Nunn
Bellmon	Hatfield, Mark O.	Packwood
Bentsen	Hatfield, Paul G.	Pearson
Biden	Hathaway	Pell
Brooke	Hayakawa	Percy
Bumpers	Heinz	Randolph
Burdick	Hodges	Ribicoff
Byrd, Robert C.	Hollings	Riegle
Cannon	Huddleston	Sarbanes
Case	Humphrey	Sasser
Chafee	Inouye	Schmitt
Chiles	Jackson	Schweiker
Church	Javits	Sparkman
Clark	Kennedy	Stafford
Cranston	Leahy	Stennis
Culver	Long	Stevens
Curtis	Lugar	Stevenson
Danforth	Magnuson	Stone
DeConcini	Mathias	Talmadge
Dole	Matsunaga	Thurmond
Durkin	McGovern	Tower
Eagleton	McIntyre	Wallop
Ford	Melcher	Weicker
Garn	Metzenbaum	Williams
Glenn	Morgan	Young
Gravel	Moynihan	Zorinsky
Griffin		
Hansen		

NAYS—7

Byrd, Harry F., Jr.	Helms	Roth
Goldwater	McClure	Scott
	Proxmire	

NOT VOTING—7

Abourezk	Domenici	Laxalt
Anderson	Eastland	
Baker	Johnston	

So the bill (H.R. 15), as amended, was passed.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. PELL. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make any necessary technical and clerical corrections in the engrossment of the Senate amendments to H.R. 15.

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

Mr. PELL. Mr. President, I move that the Senate insist on its amendments and request a conference with the House of Representatives on the disagreeing votes thereon, and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. HODGES) appointed Mr. PELL, Mr. RANDOLPH, Mr. KENNEDY, Mr. EAGLETON, Mr. WILLIAMS, Mr. STAFFORD, Mr. SCHWEIKER, Mr. HAYAKAWA, and Mr. JAVITS conferees on the part of the Senate.

Mr. PELL. Mr. President, I ask unanimous consent that S. 1753 be indefinitely postponed.

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

PRIVILEGE OF THE FLOOR—S. 2640

Mr. JAVITS. Mr. President, I ask unanimous consent on behalf of Senator STEVENS of Alaska that in connection with the consideration of the civil service reform bill Carl Flair and Jamie Cowan, of the Government Affairs Committee staff, be accorded the privilege of the floor.

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

CIVIL SERVICE REFORM ACT OF 1978

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Chair lay before the Senate calendar order No. 900.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2640) to reform the civil service laws.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. GRIFFIN. Mr. President, I object and call for the regular order.

Mr. ROBERT C. BYRD. Mr. President, what is the regular order?

The PRESIDING OFFICER. There is nothing before the Senate.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the Civil Service Reform bill so that debate can be started. There is no time agreement on the bill whatsoever.

Mr. GRIFFIN. Mr. President, will the distinguished majority leader yield for a comment?

Mr. ROBERT C. BYRD. I yield.

Mr. GRIFFIN. I understand there is no agreement on this, and I had been under the impression that the CETA legislation was before the Senate and had been laid aside. Am I incorrect?

Mr. ROBERT C. BYRD. Just temporarily. It will be my intention——

Mr. GRIFFIN. If it was temporarily laid aside, is it not now the pending business?

Mr. ROBERT C. BYRD. No. There is an order.

The PRESIDING OFFICER. It is not.

Mr. ROBERT C. BYRD. I have an order authorizing me to go back to that and to several tax bills which I intend to go back to, but I wanted to get the civil service bill before the Senate and let the principals present their opening statements and probably during the afternoon go back to the tax bills.

Mr. GRIFFIN. When does the majority leader intend to finish the CETA legislation?

Mr. ROBERT C. BYRD. Before we go out. It could be today; it could be tomorrow.

Mr. GRIFFIN. Of course, he has a time agreement on the CETA legislation.

Mr. ROBERT C. BYRD. Yes.

Mr. GRIFFIN. And it could be handled and disposed of; whereas, as to the civil service legislation, where there is no time agreement, obviously it is going to be very difficult to dispose of that.

Mr. ROBERT C. BYRD. The Senator

has my assurance that the CETA bill will be called up either today or tomorrow and disposed of whether or not action is finished on civil service.

Mr. GRIFFIN. The Senator from Michigan is very concerned that the CETA legislation may not be handled and disposed of before Saturday.

Mr. ROBERT C. BYRD. The Senator has my assurance it will be because we have an agreement on that, and we have disposed of most of the amendments, I think, on it already.

Mr. GRIFFIN. I want to let the majority leader know that there is a good deal of feeling, at least from this Senator, that it would be well to get the CETA legislation and handle that as soon as possible, and I will cooperate if the majority leader has that intention, and I appreciate his expression.

Mr. ROBERT C. BYRD. The Senator has that assurance.

Mr. JAVITS. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. I, too, am questioning. I will be in charge of that bill, and I am the ranking minority member of the subcommittee and the full committee, and we are fully ready. The majority leader has given me the same assurance and I shall rely on them, that this will be dealt with before we go out and that he will use every power and influence to see that it is before tomorrow night.

I appreciate the Senator's problems of Saturday, and I will be just as cooperative.

We were here until 1 a.m. this morning, and I am willing to be here until 1 a.m. Saturday morning so the Senator will be able to keep his engagement.

Mr. ROBERT C. BYRD. I will assure the Senator from Michigan with all of the power that I have that the measure will be disposed of before the close of business tomorrow.

Mr. GRIFFIN. It is very difficult to understand why the matter the Senator is about to go to could not be handled after the CETA legislation.

Mr. ROBERT C. BYRD. The reason is that I assured Mr. RIBICOFF and Mr. PERCY that we would at least get started on their bill today, and the Senator from Michigan has my assurance the Senate will go back to CETA because under the order I can go to that at any time. We will go back to that if not today, certainly tomorrow.

Mr. GRIFFIN. All right.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Michigan (Mr. GRIFFIN).

The PRESIDING OFFICER. The question is on agreeing to the request to proceed to the consideration of S. 2640.

There being no objection, the Senate proceeded to consider the bill, which had reported from the Committee on Governmental Affairs with an amendment in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the following staff members be granted the privilege of the floor during consideration and votes on S. 2640.

Richard Wegman, Paul Hoff, Paul Rosenthal, Claude Barfield and Claudia Ingram of the Governmental Affairs Committee staff; John Childers, Connie Evans, Kenneth Ackerman, Brian Conboy and Jackie Abelman of the minority staff; Brian Walsh of Senator CHILES' staff; Emily Eiselman of Senator EAGLETON'S staff; Knox Walkup, Cindy Anderson, Howard Orenstein, and Edwin Jayne of Senator SASSER'S staff; and Bill Motes of Senator CLARK'S staff.

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

Mr. RIBICOFF. Mr. President, I ask unanimous consent that Senator CLARK be added as a cosponsor of S. 2640.

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

THE CIVIL SERVICE REFORM ACT OF 1978

Mr. RIBICOFF. Mr. President, today the Senate begins consideration of S. 2640, the Civil Service Reform Act of 1978. The changes in law which are proposed in S. 2640 will constitute the most comprehensive reform of the Federal civilian work force since passage of the Pendleton Act in 1883. Since that time, total civilian employment has increased from approximately 131,000 to almost 2.9 million employees. In 1977, the Federal civilian payroll amounted to over $46 billion, more than 11 percent of Federal outlays for that year. Despite the enormous growth in Federal employment and the accompanying increase in the laws and regulations governing the civil service, no systematic congressional review or revision of the system has been attempted in almost a century. S. 2640 is that long overdue, comprehensive reform.

The existing civil service system is the product of an earlier reform movement which arose in protest against the 19th century spoils system. The civil service system promised a work force in which employees were selected and advanced on the basis of competence rather than political or personal favoritism. Although that goal has largely been realized, there have still been assaults on the merit system. These assaults have taken place despite, and in some instances because of, the complicated rules and procedures that have developed over the last century.

Unfortunately, the complex rules that have emerged threaten to kill the merit principle itself. Since the Second Hoover Commission in the 1950's, complaints have been heard that existing procedures have become the refuge of the incompetent employee. The existing system impairs the ability of managers to effectively perform their program responsibilities. When incompetent and inefficient employees are allowed to stay on the rolls, it is the dedicated and competent employee who must increase his workload so that the public may be benefited. The morale of the best motivated employee is bound to suffer under such a system. Moreover, the system's rigid procedures—providing almost automatic pay increases for all employees—makes it as difficult to reward the outstanding public servant as it is to remove an incompetent employee.

It is the public which suffers from a system which neither permits managers to manage nor provides assurance against political abuse. It is the public which suffers when insufficient attention is given to the hiring, training, and advancement of people who manage the 20 or 30 percent of the income which people pay the Federal Government in taxes. It is the public which suffers when excellence is no more rewarded than mediocrity.

Federal employees, too, deserve a better civil service system. Federal employees are dedicated and hardworking but the civil service system serves now to unjustifiably tarnish the public image of these employees. Civil servants do not deserve a system in which both the excellent and poor employee march in lockstep through their careers.

Mr. President, we have an opportunity to create a civil service system that is worthy of the public and its confidence: One in which hiring, promotion, and pay is truly based on merit and one in which those who cannot or will not perform their jobs well will not perform at all for the Federal Government. This bill makes important changes so that our civil service will be more efficient and accountable.

At the same time, it adds in many ways to the protections against political abuse that now exist in the civil service system. Enactment of this bill will actually reduce the danger that the merit system will be undermined for political purposes.

I ask unanimous consent that there be included at the conclusion of my remarks a summary of some 18 different areas where this bill adds new protections against political abuse not now existing in law.

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

(See exhibit 1.)

Mr. RIBICOFF. Let me briefly list some of the most significant provisions of the bill. The bill—

Codifies, for the first time, merit system principles and prohibited personnel practices. Employees who commit prohibited personnel practices would be subject to disciplinary action;

Provides for an independent Merit Systems Protection Board and special counsel to adjudicate employee appeals and serve as the "watchdog" of the merit system;

Provides new protections for employees who disclose illegal or improper Government conduct;

Empowers a new Office of Personnel Management to supervise personnel management in the executive branch and delegate certain personnel authority to the agencies;

Establishes new performance appraisal systems and requires that decisions to advance, pay, or discipline employees be based on performance;

Creates new standards for dismissal based on unacceptable performance and streamlines the processes for dismissing and disciplining employees;

Creates a new Senior Executive Service where tenure, development, and rewards will be based on managerial accomplishment;

Authorizes the Office of Personnel Management to conduct research in public management and carry out demonstration projects that test new approaches to Federal personnel administration; and

Creates a statutory base for the improvement of labor-management relations, including the establishment in statute of the Federal Labor Relations Authority.

These proposals have been reviewed and debated extensively. The President's personnel management project conducted a 5-month study of the civil service system. The great majority of the 110 staff members of that project were career employees. The project staff held 17 public hearings throughout the United States in which approximately 7,000 individuals participated as part of the consultation process. Also, 800 organizations were contacted for comments on options papers. Many of the recommendations from the study were incorporated in S. 2640.

The Governmental Affairs Committee held 12 days of hearings, during which 86 individuals, representing 55 organizations, testified. The committee held seven markup sessions before ordering the bill reported to the full Senate.

During the course of these extensive deliberations, the committee was vitally concerned with providing adequate management flexibility while at the same time assuring that the civil service system and employees are protected against partisan political abuse and arbitrary actions. The bill accomplishes these objectives.

In sum, Mr. President, S. 2640 is a bill which the Congress and the American people can be proud of. It will help to restore merit to the merit system. The Government will be made more efficient and accountable. It is a reform that is long overdue. I urge the Senate to adopt S. 2640 without delay.

EXHIBIT 1

SUMMARY OF HOW S. 2640 INCREASES OVER PRESENT LAW THE PROTECTIONS AGAINST POLITICAL ABUSES

The following is a summary of 18 major areas in titles I, II, and IV of S. 2640 where the bill adds new protections—not now in current law—to prevent the merit system from being undermined by political abuses. In 14 of these areas, the protections were added or significantly strengthened by Committee amendments.

TITLE I—MERIT SYSTEM PRINCIPLES

Specifically, title I—

Establishes as a merit system principle that personnel action may not be taken on basis of political affiliation. The bill prohibits all Federal employees—including all political employees—from violating this principle. There is no statutory prohibition now against an agency taking a personnel action against an employee because of his political affiliation.

*Bars, as a prohibited personnel action, reprisal against any employee who discloses information about the employee's agency. The protections apply to information that may be embarrassing to political officials in the agency because it suggests violations of law, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety. Current law provides no similar protection for whistleblowers.

Charges the head of each agency with personal responsibility for seeing to it that no employee is the subject of a prohibited personnel practice motivated by political favoritism. Current law does not specifically hold the head of the agency responsible for actions by subordinates that undermine the merit system.

Directs GAO to conduct audits and review to assure agency compliance with the laws. The current civil service laws do not charge GAO with this responsibility.

TITLE II

Specifically, title II—

Creates a new 3-member Board, bipartisan in make-up, whose sole responsibility will be to enforce the merit system principle and the civil service laws generally. It will be free of any inconsistent responsibility to develop or manage personnel policies favored by the President and other political officials in the government. The responsibilities of the current Civil Service Commission for both the management of the civil service system, and adjudication of complaints against the way the system is implemented, create an irreconcilable conflict.

*Establishes set terms for both the Board members and the Director of OPM, and prohibits the President from removing Board members or the Director of OPM for political reasons, or for any other reason except for cause, that is, inefficiency, neglect of duty, or malfeasance in office. The present Civil Service Commission members are appointed by the President, for a set term, but they may be removed by the President at any time for any reason. Consequently the Commission is not a safe check against the broad discretionary powers the President has under the civil service laws to issue rules, and direct the management of the civil service system.

*Protects the independence of the Board from political pressures from the White House by allowing the Board to represent itself in any court, except the Supreme Court, free of Justice Department supervision; requires separate Senate confirmation of any effort by the President to replace the Chairman of the Board; prohibits OPM or the White House from affecting for political purposes the selection of the top staff hired by the Board; and assures direct access by Congress to the views and budget requests of the Board without OMB clearance. None of these provisions currently protect the independence and integrity of the Civil Service Commission.

*Directs the Board to hear and adjudicate complaints that the merit principles have been violated, including complaints that an employee has been discriminated against because of his political affiliation. The Board has the authority to issue and enforce any orders against agencies necessary to correct these practices. The current statutes do not give the Civil Service Commission comparable authority.

*Authorizes the Board to issue both preliminary and permanent stays where the political heads of agencies seek to coerce employees into engaging in political activities or to take reprisal against an employee because of his political activities, or because of the statements the employee makes about the activities of the agency. No comparable injunctive authority exists in current law to stay Hatch Act violations, or prevent reprisals against whistleblowers.

*Requires the Board to report to Congress annually on whether OPM policies and decisions are in accord with the merit system principles, including the prohibitions against political abuses, and authorizes the Board to conduct any additional, special studies it wants on such matters. The management policies of the Civil Service Commission are not subject now to any similar kind of independent evaluation.

*Creates a separate, independent Special Counsel who shall serve a four-year term, and who may not be removed by the President during the term except for inefficiency, neglect of duty, or malfeasance in office. No watchdog office like the Special Counsel exists under the present system.

*Authorizes the Special Counsel to initiate on his own, or in response to complaints, investigations of any violations of the laws protecting the merit system for political abuses. No comparable procedure exists in current law.

*Authorizes the Special Counsel to initiate, on his own initiative, actions before the Board to correct political practices or other violations of the merit system principles, or to discipline officials who violate the merit principles. No comparable procedure exists under current law.

*Provides that the Board may dismiss, suspend, fine, cut an employee's salary off, or otherwise discipline employees who are guilty of political abuses or otherwise violate the law. Except in the case of specific Hatch Act violations, the Civil Service Commission has no clear authority under current statute to impose such sanctions on government officials.

*Directs the Director of OPM to observe the provisions in the Administrative Procedure Act requiring public notice and comment before issuing any regulations. Current law does not require the Civil Service Commission to comply with the Administrative Procedure Act when issuing rules.

TITLE IV—SENIOR EXECUTIVE SERVICE

Any career appointee serving in the SES will be protected by the safeguards established in titles I and II. In addition, the IV specifically

Limits the number of top executive positions governmentwide, and in each agency, which may be filled on a political basis. Henceforth, no more than 10% of the top jobs in the government may be filled by noncareer, political appointees. Under current law the President directly, or through the Civil Service Commission, could make all these supergrade positions non-career jobs that could be filled on a political basis.

*Prohibits the agencies from hiring any career executives unless an independent qualification review board—staffed by a majority of career executives—certifies the executive's managerial qualifications. In the case of several thousand supergrade positions that will be largely filled by career appointees to the SES, the Civil Service Commission now has no way of assuring the merit qualifications of the career employees hired. Even in the case of career appointments to the remaining supergrade jobs, there now is no independent review process by independent experts comparable to the independent qualifications review boards established by the bill.

*Prohibits removal or reassignment of a career member of the SES within 120 days after the appointment of either a new agency head, or the political appointee who is the executive's immediate boss. Under present law a career executive may be reassigned at any time by political appointees in the agency.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that Mr. Tom Polgar, of Senator MORGAN'S staff, be granted the privileges of the floor.

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

Mr. RIBICOFF. 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.

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*Provisions added or significantly strengthened in Committee.

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

Mr. ROBERT C. BYRD. Mr. President, I would hope Senators who have amendments to this bill would come to the floor and offer those amendments so that they may be disposed of.

Mr. RIBICOFF. Mr. President, we are calling up those Senators who we know have amendments and asking them to come and present their amendments. Many of these amendments are acceptable to the manager of the bill, and my feeling is that if the Senators come to the floor the noncontroversial ones can be disposed of rather rapidly.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that Karen Minton of Senator BUMPERS' staff have the privileges of the floor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GARN. 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. GARN. I ask unanimous consent that Jeff Bingham of my staff be allowed the privileges of the floor during the debate and votes on this issue.

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

Mr. GRIFFIN. Mr. President, I make a similar request with regard to Marc Steinberg of my staff.

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

The Senator from Indiana.

Mr. BAYH. I make a similar request for Fred Williams and Barbara Dixon of my staff.

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

Mr. GRIFFIN. Mr. President, on behalf of two other Senators, I ask unanimous consent that similar privileges be granted for David Gogle of Senator LUGAR'S staff, and Joseph di Genova of Senator MATHIAS' staff.

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

The Senator from Illinois.

Mr. PERCY. Mr. President, the original Civil Service Act of 1883 embodies two basic principles of good government which still hold true today: first, that persons be chosen for positions of responsibility in the Federal Government on the basis of individual qualifications to do the job well; and, second, that the Federal executive bureaucracy be politically neutral, insulated from the destructive effects of partisan patronage manifested in the "spoils system" prevalent at that time.

In recent years, we have seen an erosion of both of these principles which lie at the heart of our system of government organization. Political assaults on the civil service, particularly during the last decade, have shown just how vulnerable the current system is to concerted attack by partisan forces. On the other hand, because of the maze of rules, regulations, legalese, and bureaucratese that has grown up around this system over past decades, the principle of "merit" has become largely replaced with incentives for mediocrity. A system where 95 percent of employees receive an annual performance rating of satisfactory and where 98 percent of employees receive periodic pay increases regardless of merit is certainly in need of reform. This is simply not credible to a single Member of this body that spends an important part of his or her office allowance on doing "case work" and trying to get decisions or action out of, too frequently, an unresponsive, insensitive, and lackadaisical bureaucracy.

If we really had, as indicated by the rating system, 95 percent of the 2 million employees under civil service who deserved a satisfactory rating and 98 percent who deserved periodic pay increases, if they really were competent, and really were doing those jobs, we would not need to spend the millions of dollars we do to redress the grievances of citizens, whether it be of veterans or of social security retirees whose payments are late, or whatever group it may be. The bureaucracy loads this city with lobbyists, loads this city with businessmen, loads this city with labor leaders, loads it with other people who simply cannot get decisions out of the bureaucracy and cannot get action. It is those kinds of costs that Congress is being blamed for. Congress is having mounting payrolls, and yet the unresponsiveness and unwillingness of that bureaucracy to face and solve their own problems is what creates the huge amount of mail, the huge number of phone calls, and the great number of visitors we have.

So no one can tell this body that 95 percent of all civil service workers should be rated as satisfactory in their jobs, when we see the poor job being done by the present bureacracy.

The legislation before the Senate today, S. 2640, the Civil Service Reform Act of 1978, is aimed at correcting both of the aforementioned problems. It represents the first comprehensive overhaul of this system in 95 years.

I wish, certainly, to pay tribute to my distinguished colleague with whom I have been privileged to work for so many years, the Senator from Connecticut (Mr. RIBICOFF), and a truly outstanding staff, for bringing this monumental piece of legislation to the floor at this time. Both of us pay tribute to the joint leadership for scheduling it this early, which will give us adequate time to debate the issue, but also time to complete the work. Also, we both wish to indicate the fine degree of cooperation we have had from President Carter, from the members of the White House Staff, and from Mr. Campbell, the chairman of the Civil Service Commission, who has worked very closely with us to bring forward a monumental piece of legislation which will be a giant forward step to improve the effectiveness of the Government. And I wish to commend not only our chairman but, as I know he would, I wish to commend every member of the Governmental Affairs Committee and every member of the minority and majority staffs that have worked so closely with us.

Mr. RIBICOFF. Mr. President, if the Senator will yield, I pay tribute to the distinguished Senator from Illinois, the ranking minority member. It is really a privilege to work with him on this important legislation.

Our efforts on the committee can truly be said to be bipartisan. I do not recall any major piece of legislation in which the committee has divided along partisan lines. We try to do a truly constructive piece of workmanship on every item of legislation we have before us.

We are truly fortunate in the members of the committee and in our committee staff, led by Mr. Wegman and Mr. Hoff on the majority side and, at the moment, Mr. Ken Ackerman on the minority side.

We have had truly magnificent cooperation from Mr. Campbell of the Commission, and from the President of the United States. I will have some comments to make when our distinguished colleague from Maryland (Mr. MATHIAS) introduces his amendment, because without the constructive effort and cooperation of the Senator from Maryland (Mr. MATHIAS) and the Senator from Alaska (Mr. STEVENS) we could not have achieved a well-rounded bill.

Senator MATHIAS and Senator STEVENS are truly the experts in this body on the entire civil service establishment. Both of those Senators have large numbers of civil servants in their jurisdictions. They are most sensitive and knowledgeable concerning all the problems of the civil service. We found that time and time again we called upon their knowledge and experience in helping us fashion a good bill.

There were some differences between the objectives that we thought were necessary and those of the Senator from Maryland and the Senator from Alaska; and yet, through careful work between ourselves and our respective staffs, I think we did fashion some constructive alternatives which are included in the amendments to be offered by the Senator from Maryland and the Senator from Alaska.

The ranking minority member, the Senator from Illinois (Mr. PERCY) and I consider it a privilege to cosponsor those amendments, because we do feel they add to the value of the legislation.

Mr. PERCY. I thank my distinguished colleague for his comments, and join with him in paying tribute to the assistant minority leader, the distinguished Senator from Alaska (Mr. STEVENS), who has worked valiantly with us over a period of many months to protect the interests of the Federal workers, but to do so consistent with what most of those workers want—a competent, highly respected civil service that will be a credit to this country.

I commend Senator MATHIAS' deep background, his compassion, his understanding, his concern for the rights of all individuals, not strictly those employed by the Federal Government—which we term the bureaucracy, but we do it many

times in the best sense of that term. Many civil servants are criticized because of the incompetence of some, the lackadaisical attitude of others, and the indecisiveness of others—those, we would hope, are in the minority. We must recognize that we need to protect the rights of those who are employed by the Federal Government, but that we also need to recognize outstanding service as well as that which is less than competent. We have balanced out a bill which, with the amendments, which I will be proud to support, offered by Senators MATHIAS and STEVENS, will be a bill than can serve and accomplish our major overall objective.

The Federal Government currently maintains a work force of some 2.8 million civilian employees at an annual payroll cost in excess of $46 billion. More than 2 million of these employees fall within the civil service merit system. Only if these individuals work to their fullest potential, only if our system of personnel management is structured to bring out the best in each of them, will government programs succeed. Government consists of people and quality government requires quality people performing quality work. A system in which rewards for exceptional performance are rare and subpar performance is rarely disciplined can only result in mediocre performance, and mediocre government. This is basic commonsense.

The problem with the present system is pointedly seen in one story related to the Governmental Affairs Committee by a high agency official. That official, in an attempt to improve agency productivity and identify problem areas, asked her personnel managers for an assessment of employee performance. The result—97 percent of the employees in that agency (EPA) were rated "satisfactory." Obviously, the current system is of no help to management in achieving one of the central purposes of evaluation—to improve agency performance.

The basic thrust of S. 2640 is threefold: First, to assure that an employee's career prospects are more directly tied to his or her performance; second, to provide management with greater flexibility to implement programs and policies mandated by the people; and third, to assure that merit principles and employee rights are tightly protected.

This is, of course, the obvious area in which Senators MATHIAS and STEVENS have been extraordinarily helpful.

The benefits of this legislation will flow, not only to the taxpayers who are sick to death of paying for waste and inefficiency; not only to the consumers of Government services who are equally frustrated from dealing with indifferent agency officials more concerned with their own institutional self-interests than the interests of the people that they serve; but also to the Government employees themselves who will now receive the benefits of excellence, and who will have a new pride in their careers as Government servants.

The protections built into this legislation against political abuse and derogation of employee rights are strong and significant. A new Merit Systems Protection Board and special counsel with authority to uncover and correct merit abuses, discipline violators, enforce employee protections, and objectively oversee new management flexibilities, encompass significant improvements over the present system under which the Civil Service Commission plays the roles of both administrator and watchdog. The inherent institutional conflicts of interests have detracted from both roles.

The Committee on Government Affairs has studied this legislation thoroughly, having conducted 12 days of public hearings at which 86 individual witnesses representing 55 organizations were heard from, in addition to the administration. In addition, I have conducted field hearings on this legislation in Rock Island, Springfield, East St. Louis, and Chicago, Ill. I commend S. 2640 to my colleagues.

Mr. President, I point out that the text of the bill before us extends from page 129 to page 322. The pending amendment before the Senate is the text of some 13 pages and inasmuch as Mr. Ken Ackerman of the Senate minority staff has prepared a brief summary of the Civil Service Reform Act of 1978, S. 2640, I ask unanimous consent that a brief summary of the bill be printed in the RECORD.

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

BRIEF SUMMARY, CIVIL SERVICE REFORM ACT OF 1978—S. 2640

Title I establishes (1) Merit System Principles to govern all Federal personnel actions and (2) Prohibited Personnel Practices. Violation of Merit System Principles is a prohibited Personnel Practice.

MERIT PRINCIPLES

The Merit System Principles are:

1. Recruitment of qualified candidates for positions aimed at achieving a workforce from all segments of society, selection and advancement determined solely on merit after fair and open competition, equal opportunity;
2. No discrimination;
3. Equal pay for equal work, incentives for excellent performance;
4. High standard of integrity, conduct, concern for the public interest;
5. Efficiency and effectiveness in use of the Federal workforce;
6. Retention of employees based on adequacy of performance, inadequate performance should be corrected, unfit employees should be separated;
7. Training for employees;
8. Protection against arbitrary action, personal favoritism, partisan political coercion, prohibition against use of official authority to influence elections.

PROHIBITED PERSONNEL PRACTICES

The Prohibited Personnel Practices are:

1. No illegal discrimination;
2. No solicitation on consideration of recommendations unless based on personal knowledge or review of records and consisting of evaluation of competence, character, loyalty, or suitability;
3. No political coercion;
4. No willful deception or obstruction of the right of an individual to compete for a Federal job;
5. No influencing of persons to withdraw from competition for Federal positions so as to improve or injure employment prospects of any applicant;
6. No granting of any preference not authorized by law, rule, or regulation;
7. No nepotism;
8. No reprisals against whistleblowers;
9. No reprisals for use of appeal rights;
10. No violation of law, rule, regulation, or merit system principles.

An employee who commits a Prohibited Personnel Practice is subject to disciplinary action by the Merit Systems Protection Board, leading to penalties including reprimand, civil fine, removal, or disbarment from Federal employment for up to five years.

Title II reorganizes the Civil Service Commission and establishes rules for adverse actions against employees.

REORGANIZATION

The 95-year-old Civil Service Commission is abolished, and two new agencies are created in its place:

1. An Office of Personnel Management (OPM) headed by a single Director, appointed by the President, subject to Senate confirmation, for a 4 year term co-terminous with the President, removable by the President only for cause.

OPM would be the administrative arm of Federal personnel management, serve as Presidential policy advisor, would promulgate regulations, set policy, run research and development programs, implement rules and regulations, and would manage a centralized, innovative Federal personnel program.

All regulatory functions of OPM would be subject to the provisions of the Administrative Procedures Act, including public notice, comment on proposed regulations and open hearings. OPM would not be permitted to become involved in recommending political appointments to the President.

OPM would be authorized to *delegate* personnel functions, including competitive examining of applicants, to agency heads subject to various controls. The purpose of decentralization is to increase efficiency and reduce delay and "red tape" in personnel actions, such as promotions, hiring, and such.

2. A Merit Systems Protection Board (MSPB) composed of 3 members, appointed by the President, confirmed by the Senate, removable for cause only, serving 7 year, nonrenewable terms, no more than 2 members from the same political party. The MSPB will (a) hear appeals from agency personnel actions, including adverse actions; (b) hear and decide disciplinary cases against alleged violators of Prohibited Personnel Practices, and dispense penalties where changes are sustained; (c) grant stays to prevent reprisals against whistleblowers or political reprisals against employees; (d) order agencies to comply with its decisions, and enforce such compliance; (e) conduct studies of the merit system to ensure that merit principles are being respected, and (f) oversee the OPM.

To assure the independence of the MSPB, (a) its budget and legislative recommendations would be submitted directly to Congress; (b) it would be allowed to represent itself in court; (c) it would have access to records of OPM and agencies, and be authorized to issue subpoenas to individuals; (d) its personnel would not be subject to White House or OPM clearance; (e) plus the structural protections noted above.

The MSPB would have a Special Counsel appointed by the President, confirmed by the Senate, removable for cause, serving a 4-year term co-terminous with the President. The Special Counsel would (1) investigate alleged abuses of the merit system; (2) bring disciplinary actions against violators; (3) petition the MSPB to grant stays against reprisals against whistleblowers and victims of political reprisals; (4) refer information concerning abuses to relevant agencies, be authorized to require the agency to report on what action it has taken to solve the problem, and issue public reports on abuses; (5) refer whistleblower allegation to relevant agencies for investigation; and (6) investigate Hatch Act violations, withholding of information under the Freedom of Information Act, and discrimination.

Disciplinary sanctions against employees who commit Prohibited Personnel Practices may include removal, demotion, suspension, reprimand, civil fine up to $1,000, or debarment from Federal employment for up to five years. If the employee is a Presidential appointee confirmed by the Senate, however, the Special Counsel would refer his charges to the President.

Performance Appraisals.—Each agency would be required to establish systems for appraising the work of employees, and using the results of appraisals as the basis for promoting, demoting, training, reassigning, retaining, or separating employees. Performance standards would be communicated to employees at the beginning of each appraisal period. Employees would participate in establishing standards, would be assisted in getting their performance up to par, and those whose performance continues to be unacceptable would be subject to adverse actions.

RULES FOR ADVERSE ACTIONS

Two adverse action procedures are established by S. 2640, one for actions based on unacceptable performance (incompetence), the other for actions based on other cause (such as misconduct). In either case, the employee would be removable on 30 days notice stating reasons, have the right to respond, be represented by an attorney or other representative, and receive a written decision. Once removed, the employee could appeal the action to the MSPB where an evidentiary hearing would be guaranteed whereever a material issue of fact is in dispute. The difference between the two types of cases is in the burden of proof needed to sustain the agency action.

For actions based on unacceptable performance, the agency would have the initial burden to establish a reasonable basis on the record, subject to rebuttal by the employee, that the employee's performance was unacceptable, subject to affirmative defenses of discrimination, substantial procedual error, or other violation of law (including prohibited personnel practices). For actions based on other cause, the agency would have the burden of establishing substantial evidence on the record that the energy action promoted the efficiency of the service.

Adverse action decisions by MSP would be subject to judicial review in a United States Court of Appeals or Court Claims.

Title III allows agencies to use student volunteers where such use would not take jobs away from Civil Service employees; establish probation periods for employees; allow training programs; and make other changes.

Title V creates a Senior Executive Service (SES) consisting of Federal managers GS–16 throughout Executive Level IV, some 8,500–9,200 individuals. The SES would be a highly mobile corps of government executives who can easily be moved where needed, rewarded through bonuses, removed for less than satisfactory performance, and otherwise placed in a system where excellence can be rewarded while unsatisfactory performance can be eliminated.

To prevent politicization of the SES, no more than 10 percent of the SES governmentwide can consist of political appointees, nor can there be any more than 25 percent within any one agency or more than the pre-existing proportion of political appointees. Further, the SES would be subject to the full policing and disciplinary powers of the MSPB and its Special Counsel to assure against abuse.

Career appointees to SES would have their qualifications certified by Qualifications Review Boards, a majority of which must consist of career employees.

Removal for less than satisfactory performance would be tightly tied to performance Review Boards, would not be appealable to the MSPB, and employees so removed would be returned to the GS–15 level. Removals for other cause (such as misconduct) would be appealable to the MSPB, and require 30 days notice to the employee.

Pay for SES Executives would be set by the particular appointing authority within the agency, would be at one of five levels of pay within the GS–16 through Executive Level IV range set by the President, could be adjusted not less frequently than annually. A lowering in pay would not constitute an adverse action, as would a demotion for a non-SES employee.

Bonuses for SES executives would be limited to those who received at least a satisfactory rating on their performance appraisals, and would be subject to recommendations by Performance Review Boards. No more than 50 per cent of SES could receive bonuses of no more than 20 per cent of base salary during any one year. Other incentive awards would be authorized, including those for Meritorious Executives (no more than 5 per cent of SES—$2,500/year for five years) and Distinguished Executives (no more than 1 per cent of SES—$5,000/year for five years).

To protect against abuse of the bonus system and easy removal procedures, a written record would be kept by Performance Review Boards in arriving at their recommendations, a record which could later be used by the MSPB Special Counsel in investigating allegations of abuse.

For special needs, there would be authorized Limited Emergency Appointments (non-career-18 month limit) and Limited Term Appointments (non-career-3 year limit) for particular emergency, isolated situations.

Title V establishes a system of Merit Pay for Federal managers GS–13 through GS–15, (some 72,000 individuals). Decisions as to who would receive merit pay would be made by the agency. Merit pay would replace current quality step increases. No employee would have current salary decreased by this provision.

Title VI authorizes OPM to conduct research and demonstration projects to improve Federal personnel management policies and practices. Demonstration projects could involve up to 5,000 employees for up to 5 years, and, in creating experimental conditions, OPM would be authorized to waive certain provisions of Title 5, United States Code. To protect against abuse of this authority, S. 2640 specifies that the rules governing Merit Systems Principles and Prohibited Personnel Practices must be adhered to, Congress must be given 3 months prior notification, employees 6 months notification, the project Plan must be published in the Federal Register and subjected to public hearings, and employees or employee organizations must be given an opportunity to consult. Projects could not violate agency-union agreements.

Title VI also amends the Intergovernmental Personnel Act to provide that adherence to merit system principles by State and local governments may be a condition of receiving Federal grants.

Title VII concerns Federal labor-management relations, the manner in which the government deals with employee unions. Currently, some 58 per cent of all Federal Civil Service employees are represented by unions. A Federal Labor Relations Authority (FLRA) is created, consisting of 3 members, appointed by the President, subject to Senate confirmation, serving rotating 5 year terms. The FLRA would administer the Federal labor relations program, decide questions concerning appropriate units for representation, supervise elections, decide unfair labor practices, hear exceptions to arbitration awards, and decide other matters. The FLRA would be authorized to issue cease and desist orders, issue subpoenas, and require remedial actions.

The FRLA would have a General Counsel who would investigate and prosecute complaints of "unfair labor practices" before the FLRA.

Title VII codifies into statute Executive Order 11491 in that it authorizes employees to form and bargain collectively through unions over matters regarding working conditions in the Federal government. Specifically excluded from the scope of bargaining are agency budgets; mission; organization; security; hire, promotion, transfer, and removal of employees; maintenance of agency efficiency; method, means, and personnel of agency operations; and emergency operations. All parties are required to bargain in good faith, and unfair labor practices are specified for both agency management and labor.

Negotiated grievance procedures leading to binding arbitration are authorized, including arbitration of adverse actions against employees where the employee, at his or her option, chooses arbitration as an alternative to statutory appeals rights. Arbitration of adverse actions would be subject to the same burdens of proof as applicable to the MSPB for similar cases, and subject to similar court review. Arbitration of adverse actions is the single substantive departure of Title VII from E.O. 11491.

A Federal Service Impasses Panel is established to intervene where union-agency contract negotiations have broken down.

Mr. STEVENS. Mr. President, the civil service reform bill will produce extensive changes to the existing Federal personnel system. The three-member, bipartisan Civil Service Commission will be replaced by a single Director. This new Director, as head of the Office of Personnel Management, will have enormous authority to promulgate new rules, regulations, and policy with the power to implement. A second radical management change results in the creation of a Senior Executive Service. The reform bill will organize most of the top civil service managers into an executive group having separate procedures for pay, promotion, and separation. This Executive Service will consist of both career service employees and political appointees. The Office of Personnel Management which I mentioned will establish procedures and regulations for personnel administration of the Senior Executive Service.

My major concerns with Senate bill 2640 relate to the politicization of jobs which could result from these two major changes. Even with a bipartisan Civil Service Commission, several administrations have manipulated Federal personnel regulations for partisan reasons. The Office of Personnel Management could increase any administration's leverage in the pursuit of political goals. The Senior Executive Service expands that influence by grouping most agency supergrades under one system. These managers will be exposed to higher degrees of political influence in the name of efficiency and responsiveness.

For the purpose of confirming my reservations about the proposed civil service reform, I would like to review some significant events in the history of the civil service.

Mr. President, I shall present a study prepared by my staff entitled "Politics and the Federal Service."

I urge individuals interested in this legislation to reflect upon the review. It is important to put reform measures in perspective with what has happened in the past and with what might occur in the future. What is finally accomplished by this bill should generate lasting benefit without the need to make corrections every few years.

The Hoover Commission developed the substance of what has proved to be a lasting reform of civil service. I would like to discuss some of the considerations and conclusions of that Commission's findings.

THE HOOVER COMMISSION

On July 7, 1947, the 80th Congress approved Public Law 162, thereby establishing the Commission on Organization of the executive branch of the Government. The Commission became known as the First Hoover Commission. It was directed to investigate the structure of the executive branch and recommend ways of improving its efficiency, effectiveness, and accountability.

Between July of 1947 and May of 1949, 300 men and women worked for the Hoover Commission. Twenty-four task forces scrutinized each of the major functional areas of the Government and reported their findings and recommendations. The Commission then studied and evaluated the task force reports and issued a series of 19 reports to the Congress.

In a statement of purpose and principle, the Hoover Commission declared:

> There is perhaps no time in history when it has been more important to evaluate the effectiveness of the executive branch of the Government in carrying out the will of the Congress and the people. While we recognize that efficiency in itself is no guarantee of democratic government, the sobering fact remains that the highest ideals and aims of democracy can be thwarted through excessive administrative costs and through waste, disunity, apathy, irresponsibility, and other byproducts of inefficient government.
>
> The Commission's recommendations in total, therefore, are directed to the achievement of reforms which it hopes will bring about a more responsible and a more responsive government, a government that will act with dispatch, with greater internal coordination and harmony, with consistency of administrative policy, and economy of operation.

Thus, the fundamental objective of the First Hoover Commission was to determine methods of making the Federal Government more efficient. Ever since the establishment of the Civil Service Commission under the Pendleton Act of 1883, a conflict has existed between the desire for governmental efficiency and the need for political independence in the Federal service. Because the Senate now deliberates a bill which could unnecessarily sacrifice the political neutrality of the civil service to its improved efficiency, it is important to consider the personnel recommendations of the First Hoover Commission. For, despite the preoccupation of the Commission with improving the performance of the executive branch, it maintained a conscientious concern for preserving the integrity of the civil service.

The Commission argued that the Government had exceeded a limit in its size and complexity beyond which services could not be furnished without serious bottlenecks, delays, and confusion. It therefore urged that the form and functions of executive agencies be modified to implement the principle of decentralized administration under centralized control. However, in the consideration of personnel organizations, the Commission was particularly cautious.

It recommended that "recruitment, selection, and other processes of personnel administration be decentralized to the agencies under standards to be approved and enforced by the Civil Service Commission." In addition, the Civil Service Commission would have to develop unmistakably clear policies, establish standards of performance, and improve its systems of reporting and inspection to insure that its policies were carried out.

The Hoover Commission declared:

> The Civil Service Commission, as the central personnel agency of the government, should direct its efforts towards developing standards designed to secure economy and the uniform observance of government-wide policies governing civil rights, employee loyalty, veterans' preference, and the protection of the merit system. It must likewise give positive assistance to the agencies in introducing these standards, as well as conduct inspections to review the compliance of the agencies with established standards.

The Commission contended that decentralization would require "a realinement in the internal organization of the Civil Service Commission to secure more unified administration and to place greater emphasis upon standards, inspection, and information activities."

On considering restructuring the Civil Service Commission, the Hoover Commission warned that "the Government must impose upon itself many regulations and controls to fend off myriad pressures and influences which seek special privilege or gain, particularly for political reasons." It therefore rejected all single-administrator forms of organization and concentrated on organizational structures which would protect the merit system and at the same time provide the desirable benefits of single administration. It refused to propose any reorganization which would weaken the protective functions of or sacrifice the public confidence in a full-time, bipartisan commission of three members.

Accordingly, the Hoover Commission recommended that the bipartisan, three-member Commission form be retained but that the President designate one of the Commissioners as Chairman and vest in him full responsibility for administering the operating organization and program of the Commission. The Chairman's role, apart from that of the other Commissioners, was to be the principal point of contact between the President and the heads of operating agencies in all matters of civilian personnel management, both domestic and foreign, acting within the rules and regulations established by the full Commission.

The full Commission would be required, by majority action, to: prepare rules and regulations for consideration by the President; review and recommend new or revised legislation affecting Federal personnel management; promulgate rules and regulations to preserve and strengthen any phase of the merit system; investigate any phase of the merit system; and, establish appellate bodies, supervise their work, and act as court of final appeal.

Thus, while the Chairman would exercise authority to implement the rules and regulations of the civil service, the full Commission would retain its power and responsibility for establishing those rules and regulations. In addition, the Hoover Commission assigned to the Commissioners not designated as Chairman the duty of continuing the study of the nature, frequency, and source of abuses of the merit system in order to initiate steps to prevent their recurrence.

The first Hoover Commission acknowledged the threat to the merit system posed by its proposed concentration of authority in the Chairman of the Civil Service Commission. Consequently, it sustained a scrupulous concern for precluding political abuse.

The Commission reported shortcomings in the application of the merit system and urged its extension. It criticized improper exceptions from the competitive service and unwarranted political clearance of appointments and promotions. It exposed methods of undermining the purpose of the "rule of three" and suggested ways of preventing the subversion of the merit system.

With respect to the expansion of the competitive service, the Commission remarked:

> While much progress has been made over the years in bringing positions under the competitive service, further progress can still be made * * * The existence of a large block of "non-status" employees restricts career and promotion opportunities for the employees concerned and deprives the agencies in many cases of desirable flexibility in promoting and assigning employees.

The Hoover Commission believed that in a true career service, the employee could go as far as his ability and initiative and qualifications indicated, excepting only decisionmaking or confidential posts. It held:

> Top policy-making officials must and should be appointed by the President. But all employment activities below these levels, including some positions now in the exempt category, should be carried on within the framework of (the civil service system).

The Hoover Commission was anxious to ensure that its reorganization of the Civil Service Commission would not erode the integrity of the civil service. Accordingly, it decided that "in order to strengthen the application of the merit system under the proposed plan of decentralization, it is recommended that there be enacted into law * * * the prohibition against political favoritism in appointments which appears in the Tennessee Valley Authority Act of 1933." The TVA Act makes mandatory the removal of appointing officers exercising political favoritism in making appointments. The Hoover Commission assigned such importance to this requirement which it raised seven times, in seven separate places. Outlawing political favoritism appeared first on the list of steps to authorize the Commission's proposals in personnel management. It immediately followed the requirement that the recruiting, examining, and selection of personnel be handled in conformance with "reasonable economy and protection of the merit system."

The First Hoover Commission spent nearly 2 years considering many methods of improving the efficiency of the executive branch and evaluating each method with regard to its effects on the justice and integrity of the Government's performance. In the area of personnel management, where the streamlining of the Civil Service Commission threatened to undermine its political neutrality, the Hoover Commission was especially wary. The Commission warned in the conclusion of its report on personnel management:

> We desire to emphasize that the recommendations in this report, and the actions which may be taken as a result of the recommendations, are to be subject to just one test: namely, their ability to provide the United States Government * * * with men and women of unquestionable ability, integrity, and devotion to the common good.

The U.S. civil service faces the same difficult task in 1978 as it has in every year since 1883: to operate with dispatch while thwarting political manipulation. It is ill-advised to attempt a restructuring of the civil service without comprehensive consideration of both aspects of the mandate of the civil service system.

Our consideration of S. 2640 must focus on the basic need for apolitical management of the personnel system. We must not sacrifice an independent, public conscience in rulemaking to flexibility in management style. We must achieve a harmony between efficiency and effectiveness in the executive branch and merit and political neutrality in the Federal service.

We shall submit amendments to check the concentrated authority vested in the Office of Personnel Management. The Senate must act to insure that new Federal personnel rules and regulations are founded in the spirit of merit principles and protected from unwarranted political interference.

With the same concern, we must consider the unfavorable repercussions of a Senior Executive Service. There is reason to question the effect of this executive service on long-standing career managers of the Federal Government. Previous administrations have not hesitated to bend the personnel rules for promotion of political goals.

RECENT ADMINISTRATION HISTORIES

In our governmental system, Federal employees are intended to be protected from political influences which may mar the performance of their official duties. We need only to examine the history of our Government to find numerous examples of job politicization within the Federal service. A view of recent administrations and their interactions with the Civil Service Commission will show that with tightening legislative controls over governmental employment and managing policies, those who still wish to influence the Government's actions, beyond the point permitted by law, have resorted to ever more complex and secretive designs. Among others, Presidents Kennedy, Johnson, and Nixon made elaborate attempts to control politically useful sectors of our Government. The Civil Service Commission has had increasing difficulty withstanding the varied tactics employed by the administration in power to infiltrate the Commission's ranks and to guide its actions.

The determination and ingenuity, with which some of our administrations have tried to intervene in the lawful functioning of the Civil Service Commission, should give us insight into the considerations which must be addressed in reform legislation.

President Kennedy entered the White House after Republicans had occupied it for 8 years. He found himself surrounded by an administration which he felt was unsympathetic to his views. In order to get the best results possible out of his New Frontier program, he wanted to find ideological sympathizers to fill policymaking positions. Kennedy appointed his Special Assistant for Congressional Relations to "clear out the executive branch" of all persons whom he felt could not be trusted politically. With the help of the Departments and Agencies, the assignment was reportedly completed in 180 days.

During both the Kennedy and Johnson administrations, the patronage pressures of FDR's New Deal and Eisenhower's administration returned. In certain ways, President Johnson went further than Kennedy in an effort to restaff the executive branch. Johnson's Special Assistant in direct charge of the recruitment of ranking administration officials, the political clearance system at the White House, and the White House political control over personnel in the executive branch, simultaneously became the Chairman of the Civil Service Commission. A former staff member in charge of Democratic patronage matters for the House of Representatives' Democratic Caucus became the Vice Chairman of the Civil Service Commission. Together the two held a majority on the three-member Commission .

Furthermore, all nominees for executive level and supergrade positions in the Government were interviewed and cleared by the White House—before or at the same time that paperwork was submitted to the Civil Service Commission. In addition, "insurance" was obtained with respect to the loyal performance of the appointee by first positioning him or her under Limited Executive Assignment and then converting that person to career status a year later.

A final objective of the Johnson administration was to insure the continued loyalty of the bureaucracy to democratic programs and Johnson policies after takeover by the Nixon administration. This was accomplished through last minute appointments and reorganizations that placed political appointees within the career service.

The Nixon administration has been attributed with the "rape of the merit system." It was during these years that the "Federal Political Personnel Manual" was prepared. It is not clear how much of the program's design to subvert the merit system actually went into effect and what precise role the Civil Service Commission played. The various schemes developed, however, emphasize the vulnerability of the civil service at the hands of the President. The purpose of the manual was to politicize the executive branch; the document exposes the immense power available to an incumbent President to undercut civil service reform and to increase his own power.

"Grantsmanship" was practiced with such recognized patronage "resources" as jobs, contracts, grants, subsidies, the execution of Federal law, public relations offices, and the provision of domestic and international transportation. This process was made more effective by feeding money to "target areas" considered crucial to the election. For example, the General Services Administration was supposed to emphasize minority procurement "in those States and areas where there is a real opportunity to win some of the black vote."

According to one of Nixon's assistants, each governmental department was expected to draw up a plan to make governmental resources responsive to political needs. The White House would review each plan and insure compliance through the use of progress reports, evaluations, and followups. Nearly all the agencies drew up plans. Once a grant had been designated a "must," a White House coordinating group would determine the kind of grant appropriate. A local official would be informed as to what kind of grant application to submit and the White House would insure its acceptance.

The executive branch needed to control civil servants if it was to manipulate programs and, in some cases, violate the law. The manual outlined the establishment of a "political personnel office to insure political control of each department." It was to find an Assistant Secretary loyal to the President and a key budget official to create extra positions. In a reference form of this office, the applicant's name and his political desirability would be specified.

Besides recruitment, this office was also to reward loyal political employees by raising their grade. It was claimed that a "loyal classification specialist" could get any grade he asked for, on the other hand, the manual stated that the civil service system creates many hardships in the removal of politically undesirable employees from their posts. Instead of lowering the status or grades of these employees, the process of which required formal procedures, other methods were employed. One was to ask the employee to resign with a farewell luncheon and a positive recommendation. An uncooperative employee could later be forced out and "his employment references from the department and his permanent personnel record (would) not look the same as if he had accepted (the) offer."

A second method, the "Transfer Technique," suggested finding some geographical location such that the employee would rather resign than be transferred there. There was also the "Special Assignment" for the family man who did not enjoy traveling; he would be assigned a special evaluation project supposedly because of "special competence," but in fact to drive him into submission by keeping him on the road. Other un-

desirable employees could also be transferred to apparently meaningful, but essentially meaningless positions.

The Senate Watergate report summarized the effects of the incumbency-responsiveness program of the Nixon administration. These included flagrant abuses of Federal funding of minority and constituent groups stemming from the "improper involvement of campaign officials in Government decisionmaking." One example involved a Spanish-American official, of the Committee to Re-Elect the President, having the power to approve or disapprove grants to Spanish-speaking communities. Another showed campaign officials taking part in the selection process of money awards of GSA architectural and engineering design contracts. A special report procedure was established at GSA to facilitate the patronage effort.

Under Nixon was assembled a group of men who were determined to do everything possible to insure the President's reelection. Programs were evaluated in terms of contribution to the President's positive image and vote count. Most communications between the White House and the departments were verbal. No documents were to indicate White House involvement in any way. This would keep the President disassociated from any questionable program in case of a leak. A sort of filter system was created at the White House. Stanton Anderson became the initial White House contact point for any grant proposals. If action should be taken, Anderson would talk to Nixon's OMB aide on the issue. A plan for "Executive Branch reponsiveness" was drawn up in which all policy matters would be handled by the Domestic Council staff, and all operational matters by two of the President's Special Assistants. When questioned by James Hamilton late in 1973 as to whether the President was informed about the responsiveness program and whether he had approved it, Stanton Anderson said it "would not be the kind of thing they would tell him about."

What seemed to have been built up during the Nixon administration was the blueprint for an executive tyranny surrounded and protected by an army of ambitious men. Their web of influence, as indicated by the manual and other documents, had the potential to spread and control more and more of the civil service system. The full extent of the Nixon administration's actions is uncertain; it is likely we are all still feeling its effects in more ways than the widely publicized Watergate revelations have made apparent.

These experiences in past administrations establish the need to analyze carefully provisions of the bill which expose the career service to political interference. The Senior Executive Service was vulnerable to political manipulation as drafted by the administration. In my opinion, the bill under Senate consideration still lacks adequate safeguards for the career manager dedicated to public service. We have submitted amendments to allay these concerns.

My statement began with the identification of problems contained in the civil service reform bill. The balance of my comments should convince the Senate of a need to consider these problems seriously. My concerns with this legislation are founded in the reality of historical experience. That experience demands the Senate's consideration of the following established facts:

Previous studies of the civil service have established a fundamental need to maintain political independence in reform programs intending to improve the efficiency of the Federal personnel system.

The First Hoover Commission warned against weakening the protective function embodied in an independent rulemaking Civil Service Commission. Public confidence in the promulgation of Federal personnel rules must be preserved.

The Hoover Commission recommended decentralization but strongly advocated increasing controls and auditing when such changes were made.

The Hoover Commission recommended strengthening the merit system by minimizing noncareer appointments and prohibiting political favoritism in appointments.

My review of recent administrations has established the reality of ever present political threats to the Federal personnel system.

I recognize the need and commend the effort to make the civil service more efficient, responsive, and effective. But we must acknowledge the previous abuses and manipulations, for partisan purposes, of the civil service system. Even with its existing protections, the Civil Service Commission has constantly had to contend against improper political assaults on merit principles. Before we restructure these protections, we should reflect on the persistence and insatiability of partisan pressures and consider reform measures which preserve the principles of the civil service.

I want to emphasize that the patronage influences imposed in the past upon the Civil Service take no political form. They have appeared in Democratic and Republican administrations alike. The desire of a new President to use a broom and sweep the office clean has always emerged—always.

I think that those who say that we need civil service reform in order to protect the public merit commendation. Those who would allow civil service reform to bring about additional political pressures upon the 2.1 million people in this country who have entered the career Federal service should be restrained.

POLITICS AND THE FEDERAL SERVICE

Mr. President, the relationship between the Civil Service and politics has been a controversial issue and persistent problem throughout the history of the United States. The President has always needed a small group of executives politically sympathetic with him. Yet political partisanship has always infiltrated and influenced the large group of what should be independent civil servants. Though civil service reform efforts have restored merit to offices once distributed as spoils, they have never successfully rid the system of improper political interference. As we consider a bill which purposes to make the administration of the Civil Service more efficient and effective, we must reflect on the inefficiency and ineffectiveness inflicted on the Federal service by excessive executive authority. We must realize that unless we take adequate precautions against politicization, we will allow the Civil Service again to be used as a political treasure trove.

Article II, section 2, of the Constitution provides that the President "shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: But the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

The first Presidents desired to adhere to the principle of appointing on the basis of merit. George Washington wrote:

> I must be permitted, with the best lights I can obtain, and upon a general view of characters and circumstances to nominate such persons alone to offices, as in my judgment shall be the best qualified to discharge the functions of the departments to which they have been appointed.

Thomas Jefferson claimed that the only questions concerning a candidate should be: Is he honest? Is he capable? Is he faithful to the Constitution?

Nevertheless, Chief Executives yielded to the political and administrative expedience of making tenure of office contingent upon party loyalty. During the years while Washington was President, removals for political reasons were unknown. However, after Adams became President, he was urged at times to replace officials for party reasons and a few changes were made in which political differences played a role. With the inauguration of Jefferson in 1801, the Presidency passed from the Federalists to the Democratic-Republicans. Jefferson observed:

> Out of about six hundred officers named by the President there were six Republicans only when I came into office, and these were chiefly half-breeds.

He claimed:

> I had foreseen, years ago, that the first republican President who should come into office after all the places in the government had become exclusively occupied by federalists, would have a dreadful operation to perform. That the republicans would consent to a continuation of everything in federal hands, was not to be expected, because neither just nor politic. On him, then, was to devolve the office of an executioner.

The Civil Service Commission's history, "Biography of an Ideal," notes that the series of appointments made by Adams as a lame duck and the reaction of Jefferson to confronting a politically incompatible Federal service set in motion partisan patterns which culminated in the spoils system. Once the pendulum started swinging, it became increasingly difficult to stop.

The Tenure of Office Act, passed in 1820, facilitated the replacement of civil

servants. It specified a 4-year limit to many offices of indeterminate length. Jefferson, in a letter to Madison prompted by Monroe's signing the Tenure of Office Act, reviled the bill and eloquently outlined its implications:

(The Act) will keep in constant excitement all the hungry cormorants for office, render them as well as those in place, sycophants to their Senators, engaging these in eternal intrigue to turn out one and put in another, in cabals to stop work; and make of them what all executive directories become, mere sinks of corruption and faction. This must have been one of the midnight signatures of the President, when he had not time to consider, or even read the law.

An attempt at civil service reform was made in 1829. The Senate Select Committee on Executive Patronage, known as the Benton Committee, was created to "inquire into the expediency of reducing the Patronage of the Executive Government of the United States."

The committee observed that neither the jealous foresight of the authors of the Constitution nor any human sagacity could have foreseen, and placed a competent guard upon, every possible avenue to the abuse of power. It argued that because the appointing power, the President, was not an emanation of the popular will, he could not be trusted with the sole direction of the Federal service. The committee suggested six bills to govern appointments, but all six were tabled.

With Andrew Jackson's inauguration in 1829, the spoils system became a tradition openly practiced. Though Jackson did not introduce the theory of rotation in office or the use of patronage for political advantage, he did introduce the spoils system on a wider scale than his predecessors had and did carry it out openly rather than apologetically and quietly.

Rotation-in-office under Jackson helped to destroy the concept of property in office and to solve the problems of disability and superannuation in the civil service. Jackson stated:

I can not believe that more is lost by the long continuance of men in office than is generally gained by their experience.

However, the fundamental motivation for the implementation of widespread removal was its political desirability.

During Jackson's second term, Clay, Calhoun, and Webster led a series of debates attacking the patronage system. Clay warned:

Incumbents, feeling the instability of their situations, and knowing their liability to periodic removals, at short terms, without any regard to the manner in which they have executed their trust will be disposed to make the most of their uncertain officers while they have them, and hence we may expect immediate cases of fraud, predation, and corruption.

Nevertheless, the patronage system was to become ingrained, not excised.

It was a fundamental weakness of the civil service as established in the United States that when one party had begun to turn out its opponents, its successors were almost forced to do the same. The alternation in party control of the Presidency between 1840 and 1860 reinforced the pattern. The Whigs carried the 1840 election; the Democrats returned in 1844 only to be thrown out again in the election of 1848. The Whigs lost in 1852 and it was not until then that the Democrats were able to remain in office for two consecutive terms. They were defeated in 1860 by a new national party that had never held the Presidency. No sequence of events could have been more conducive to coerce party leaders to apply the doctrine of rotation. Thus, in the period between the administration of Andrew Jackson and Abraham Lincoln, the apogee of the spoils system was reached. Old traditions of respectability had passed away and the later spirit of reform had not arisen. The victors distributed the spoils and were unashamed. The Presidential election became a quadrennial contest, with the civil service as the prize.

Political abuses were flagrant and egregious. Julius Bing, an advocate of civil service reform, declared in 1868:

At present there is no organization save that of corruption; no system save that of chaos; no test of integrity save that of partisanship; no test of qualification save that of intrigue.

Seward, later to be Lincoln's Secretary of State, remarked in 1849:

The world seems almost divided into two classes: those who are going to California in search of gold, and those going to Washington in quest of office.

President Polk had conducted a series of removals more extensive than any before this, despite having succeeded a President who had filled many positions with their common adherents. And even Polk was repulsed by the depth of the desire for Federal jobs. He wrote in his diary:

The passion for office among members of Congress is very great, if not absolutely disruptable, and greatly embarrasses the operations of the Government. They create offices by their own votes and then seek to fill them themselves. I shall refuse to appoint them . . . because their appointment would be most corrupting in its tendency.

The effort to establish and insure the political neutrality of the civil service began in 1864 when Senator Sumner offered a bill which he described as providing for "the greater efficiency of the civil service." The Sumner bill was tabled; a similar bill introduced in 1865 by Representative Jenckes received no immediate action. However, in 1866 the House approved Jenckes' resolution to establish a select committee to investigate the civil service and suggest methods of improving it. Between 1867 and 1869, Jenckes offered four bills requiring open competitive examinations administered by a commission. The problems generated by politicization had become intolerable. Charles Eliot Norton declared in 1869:

The question seems to be now whether the policians,—"the men inside politics,"—will ruin the country, or the country take summary vengeance, by means of Jenckes' bill, upon them.

The civil service reform movement achieved its first major victory in 1871 during the closing moments of a lame-duck session. Congress passed a civil appropriations bill with a rider authorizing the President to prescribe rules for the election of qualified candidates and to employ people to conduct the investigation of the candidates.

President Grant exercised the authority provided him and appointed a seven-member commission. The Grant Commission prohibited political evaluation of candidates and promulgated four requirements: Competitive examinations for appointments, the "rule of three," a 6-month probationary period, and competitive examinations for promotion.

However, in 1875 Congress refused to appropriate funds for the Civil Service Commission. President Grant, having insisted that he would not maintain the civil service regulations without congressional support, terminated the civil service rules and regulations and abolished the examining boards. In spite of this suffocation the Grant Civil Service Commission left a legacy in both law and practice.

Public support for civil service reform swelled. Leagues formed to promote "reforms to remove the evils of patronage, favoritism, and partisan coercion from the civil service, and cause appointments, promotions, and removals to be made with due reference to character, merit, and economy."

As President, Hayes made repeated requests for reform legislation and revival of the Grant Commission. In his third annual message he made a particularly strong plea for reform:

The authority of appointment and removal is not a prerequisite, which may be used to aid a friend or reward a partisan, but is a trust, to be exercised in the public interest under all the sanctions which attend the obligation to apply the public funds only for public purposes.

In February 1881, Senator Pendleton reported, from the select committee to examine the several branches of the civil service, a bill providing for competitive examinations administered by a commission. The comittee report cited the repeated requests from Presidents Grant and Hayes for continued appropriations to the Civil Service Commission and pointed out that the pleas never met with congressional action. The report concluded:

It was therefore Congress, and not the Executive, which arrested the new system based on character, capacity, and common justice.

Ironically, the lame-duck session adjourned without considering the bill.

It took a tragedy to stimulate legislative action. James Garfield had declared:

The present (spoils) system . . . impairs the efficiency of the legislators; . . . it degrades the civil service; . . . it repels from the service those high and manly qualities which are so necessary to a pure and efficient administration; and finally, it debauches the public mind by holding up public office as the reward of mere party zeal.

On July 2, 1881, Garfield was assassinated by a disappointed office-seeker.

The public instinctively associated the President's murder with the spoils system. One reformer exclaimed:

On the myriad pages of our journals, of every section and class, the truth has been daily uttered in words of mingled anxiety, shame and detestation.

Late in 1881, Pendleton reintroduced

his civil service reform bill. The full Senate again took no action; but the Committee on Civil Service and Retrenchment issued a report suporting civil service reform and declaring:

In the discharge of (the appointing power), the highest of all executive functions, political influences and compensations have come to dominate and to subordinate all other considerations; and the distribution of official spoils has come to be the logical prerogative of political ascendancy.

Finally, in January of 1883, the Pendleton Act was passed by Congress and signed by President Arthur. The Pendleton Act established the three-member, bipartisan Civil Service Commission to enforce the merit system. It provided for competitive examinations and political neutrality and made tenure contingent upon satisfactory performance. It required a probationary period for the evaluation of appointees, the continuation of veterans' preference, and promotion on the basis of merit and competition.

One would expect that at the triumph of the reform movement, the motives of the supporters of the Civil Service Act would be pure and altruistic. In fact, much of the support for the bill was impelled by political considerations. The outlook for the Republican Party in 1884 was not promising; Republicans were filled with apprehension and Democrats with anticipation. Those who very shortly would be out of Congress were in a majority and controlled the Presidency. It would be advantageous for Republicans to make permanent the tenure of office-holding friends while supporting the reform their constituents so obviously desired. Republicans supported the Pendleton Act for two reasons: They could pose as reformers in 1884 and win back lost support and they could freeze Republicans in office behind civil service rules in case the Democrats won the election.

Though political pragmatism constituted the motives of some Members of Congress, it in no way compromised the longrun design of civil service reform. Indeed, during the two decades following the passage of the Pendleton Act, patronage itself effected the expansion of the merit system.

The principles of civil service reform advanced not because of further action by Congress, but because of Executive action. After 1883, Presidents had a general responsibility for personnel administration: Approval of the rules of the Civil Service Commission and extension of the merit system. The Executive Orders from 1883 to 1901 were almost wholly devoted to civil service matters. Ironically, Executive action stemmed more from a desire to place fellow members permanently in the civil service than from a wish to reform. The process involved placing political friends in a branch of the unclassified, or unreformed, service and extending the rules to cover it. Incumbents, when the civil service rules were extended to a new class of officers, were included within the protection of the civil service rules without the trial of an examination. Therefore, Presidents extended the classification to protect their party friends.

This process was hastened by the alternation of party control in the 1880's and 1890's, which led Presidents to make additions to the classified list every 4 years. During this period, Presidents entered office taking full advantage of their patronage prerogatives within the unclassified service, but left office with extensions of the merit system to their credit.

During the last two decades of the 19th century, the classified service expanded for political reasons. Meanwhile, Congress faced attempts to dissolve the Civil Service Commission. Seven bills to repeal the Pendleton Act were offered during Cleveland's first administration. Eight were introduced in Harrison's. Four were offered during Cleveland's second. In addition to outright rescission, attempts were made to starve the Civil Service Commission by curtailing its boards, and to specify fixed terms for all Government employees. Thus in its inception, the Civil Service Commission had to contend against legislative assaults and to expand primarily through the blanketing in of patronage appointees.

In 1903, Roosevelt revised and consolidated the civil service rules. Until 1903, the competitive service was identified by specifically enumerating the parts of the executive branch to which it applied. President Roosevelt defined the competitive service as all positions in the executive branch except those specifically exempted by Congress or the President. He thereby shifted the burden of specification from including positions to excluding them.

Excepting positions from the civil service rules became a customary practice. The most common antimerit system legislation following 1903 specifically exempted new or old positions from the requirements of the Pendleton Act. Such exemptions were made repeatedly.

Circumvention of the merit principles was accomplished even without legislation. Temporary employees could be hired without going through the civil service procedures. Thus temporary posts were ideally suited for the continuation of spoils practices.

The practice of exempting positions from civil service rules culminated in the early 1930's. The Great Depression and the change of administration in 1933 combined to encourage sweeping exceptions from civil service jurisdiction. Eighty percent of the civilian-occupied Federal positions were within the competitive service in 1932. Only 60 percent were within the service in 1936. During this period the excepted service grew by 200,000 positions or 160 percent.

Relief agencies were created outside of the requirements of the merit system. The expressed justification was that the agencies were temporary, but a fundamental motive was the desire to control a pool of patronage jobs. One Congressman declared:

We have had twelve long, lean and hungry years in this country . . . I may say I do hope and pray, adopting somewhat the spirit of old Andrew Jackson on these propositions of rewarding the faithful, inasmuch as we have so many faithful and so many deserving . . . that the rights and interests of really deserving Democrats will not be forgotten.

The reported circumvention of merit principles and practices generated protests within and outside the Government. While the number of positions excepted from civil service laws was increasing from 111,000 in 1932 to 309,000 in 1937, public interest in the extension and improvement of the merit system was increasing to a level unequaled since the Pendleton Act. The executive council of the National Federation of Federal Employees wrote President Roosevelt:

Democratic government cannot thrive when political considerations are the dominant factors in appointments to the federal service. Waste, maladministration, inefficiency, and corruption inevitably follow when a spoils policy is substituted for a sound civil service system under which men and women attain their positions through competitive examination and retain them through proved capacity.

The extension of the merit system was a major campaign issue in 1936. The platforms of both parties pledged support for expanding the coverage of the competitive service.

Between 1936 and 1940, Executive orders and laws reinforced the merit principles. President Roosevelt in 1936 revised the civil service rules to require that incumbents meet noncompetitive standards in order to acquire permanent status. In 1938, he extended the competitive service to include most of the exempted positions which he had the power to convert. The Hatch Act prohibiting active participation in politics by employees and officials of the executive branch was passed in 1939. In the next year, Congress passed the Ramspeck Act, which authorized the President to extend the classified service to cover almost all positions previously exempted by statute.

With respect to the development of the merit system, the outstanding characteristic of the emergency war years of the forties and early fifties was that the expansions and contractions of the civil service were contained within the classified service. Despite extensive delegation of examining authority to the employing agencies, merit system standards and practices were respected.

Nevertheless, patronage influences continued to impose themselves as they had in the past. The Second Hoover Commission in 1955 declared:

There has never been a clean break with the mid-nineteenth century patronage system . . . The merit system and the spoils system have continued to exist side by side . . . Until a clear-cut decision is made to get rid of patronage in the civil service and to concentrate political appointments in the area of political executives . . . , patronage will continue to affect both the efficiency and the prestige of the public service adversely.

Manipulation of the civil service for political ends has continued during recent administrations. President Johnson appointed his special assistant responsible for the White House recruitment and political clearance system to hold simultaneously the post of Civil Service Commission Chairman. He acquired a politically sympathetic majority on the Commission by appoint-

ing, as its Vice Chairman, a staff member in charge of patronage for the House Democratic Caucus. Though President Johnson had insured political sensitivity in the administration of the civil service, he further required that all nominees for executive level and supergrade positions be interviewed and cleared by the White House before the Civil Service Commission screening was initiated.

We have seen, and I reiterate to demonstrate that there is no politics in the statement I am making, that the Nixon administration attempted a vast subversion of the merit system. Agencies were instructed by the Federal Political Personnel Manual to appoint politically loyal candidates. Promotions and removals were to be made on the basis of partisan support. Transfers to force the employees were utilized in an especially ruthless manner.

Clearly, the civil service has had to struggle to serve the needs of the public while serving the interests of the Executive. It has been employed as a reservoir for political patronage while being a repository for public trust.

Senate bill 2640 still, in my opinion, threatens to efface the accomplishments made during 100 years of struggle against political manipulation of the civil service. I support making the civil service more efficient; I uphold making it more effective. But I am convinced that neither efficiency nor effectiveness will be attained unless politicization is precluded.

Mr. President, there is a series of amendments within this amendment. One deals with rule-posting requirements; another with the policy of career placement in the SES; another with OPM certification of appraisal systems; another with an advisory committee for the Director of the Office of Personnel Management; and another with the payment of attorneys' fees in arbitration.

I will make statements on these matters after the remarks of my distinguished colleague from Maryland.

I commend the managers of the bill, the Senator from Connecticut and the Senator from Illinois, for being patient with those of us who feel that we must persist in making certain that if we have reform it will not make the avenue into the career civil service the avenue of politics.

Mr. PERCY. Mr. President, I ask unanimous consent that Chris Brewster, of the staff of Senator DANFORTH, be granted the privileges of the floor during the discussion and votes on the pending bill.

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

Mr. CRANSTON. Mr. President, I ask unanimous consent that Jon Steinberg, Bill Brew, Babette Polzer, Janice Orr, Jack Wickes, and John Pressly be granted the privileges of the floor throughout consideration of S. 2640 and S. 2570.

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

Mr. MATHIAS. May I make the same request, Mr. President, for Peter Connolly, of Senator NELSON's staff?

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

Mr. STEVENS. Mr. President, I see that the Senator from Tennessee (Mr. SASSER) is on his feet and seeks recognition. He and I have worked together on these matters in a spirit of bipartisanship. I am most delighted to have the opportunity to participate with him on Senate bill 2640.

It is a necessity, I feel, for the Senate to have Members on both sides of the aisle who are willing to give their time to what often seems to be small, minor, or technical amendments, but which have far-reaching impact upon those people who serve the Federal Government in all times, through good times and times of crisis, with devotion to our system.

I want to say, with the two ranking members present, that I am delighted that we have had the assistance of my good friend from Tennessee, and to recognize him here as a participant on this bill.

Mr. RIBICOFF. Mr. President, if the Senator will yield, the distinguished Senator from Tennessee (Mr. SASSER), the chairman of the subcommittee which has the responsibility for Civil Service, has been invaluable to the entire committee. This is hard work. It is work that takes a great deal of time. The Senator from Tennessee has devoted himself to all these problems, and his contributions have been invaluable in the formulation of this legislation.

Mr. SASSER. Mr. President, let me first say that I am greatly indebted to the distinguished Senator from Alaska for the splendid spirit of cooperation he has displayed as the ranking minority member of the Civil Service Committee. He makes a tremendous contribution, and it is always a great pleasure to work with him; and I thank him for his kind and generous remarks.

Also to the distinguished manager of the bill, Mr. President, I wish to express my appreciation for his generous remarks and for his splendid assistance and guidance in getting this bill through the shoals of the committee and to the Senate floor today.

Mr. President, the Civil Service Reform Act of 1978, S. 2640, is one of the most important and historic pieces of legislation this Chamber will consider for many years.

Our civil service system is composed of over 2 million workers. It has grown tremendously in size and responsibility since 1883, when the Pendleton Act first established the civil service. Yet it has undergone no major revision for 95 years. We have had piecemeal change lumped on top of piecemeal change, sometimes without regard for how the overall system woull be affected.

Now, in 1978, we find the civil service to be the target of a great deal of criticism. It's time to make comprehensive changes in the way our Government's personnel system is operated. Not to make such changes is to encourage continued criticism of the system and to undermine further the morale of the Federal employees themselves.

THE SPOILS SYSTEM

The nature of the Federal personnel system has been constantly evolving through history. For our Nation's first century, entry into the Federal service was most often accomplished strictly on the basis of patronage. Patronage politics was a principal plank in the platform of a fellow Tennessean, Andrew Jackson, who believed that "to the victor goes the spoils." Jackson thought that all Federal employees should be politically loyal to the President, and that it was best to rotate citizens in and out of Federal jobs in order that an elite bureaucratic class not develop. Many Americans shared Jackson's views, which he succinctly defined in his first annual address in 1829:

> I cannot but believe that more is lost by the long continuance of men in office than is generally gained by their experience.

Although President Jackson was one of the few Presidents who loudly proclaimed the virtues of spoils, his successors continued the Jacksonian policy of rewarding the party faithful with Federal appointments.

PASSAGE OF THE PENDLETON ACT

History, however, and changing circumstances, demonstrated that the worst aspects of the spoils system outweighed the benefits. The spoils system had a debilitating effect in the long run on the efficiency of the Federal service.

In 1871, Congress, under pressure from a "good government" movement led by progressives in the electorate, sensed that the Nation was swinging to the idea that good government meant neutral and impartial government. Civil service reform became a rallying cry. This was a switch from the idea that government should at all levels reflect the character of those who won the last election—that in order to be responsive to the people, public officials had to be appointees of those whom the people elected.

The rejection of the spoils system and calls for civil service reform led to the popular acceptance of the "merit" concept for public employment. Politics was removed from the running of Government, both in the appointments process, where competitive examination replaced political connections, and in the day-to-day operation of the Federal service.

The "good government" movement culminated in 1883, after nearly a century of the spoils system and patronage politics, in the passage of the Pendleton Act, which established the merit system and created the Civil Service Commission. At that time, however, only 10.5 percent of the Federal workforce, or 13,780 employees, was included in the merit system.

Successive acts of Congress authorized Presidents to classify more and more positions in the Federal service under the merit system. And as Government continued to grow, the new positions, more often than not, were classified in the competitive service rather than as patronage. By 1904, when President Theodore Roosevelt took office, the percentage of the Federal workforce under the merit system had increased to 53, and the number of Federal employees in the competitive service had increased to 154,093. These numbers continued to increase to 83.1 percent and 2,430,144 employees in the competitive service in 1971, when the

Postal Reorganization Act was passed and a different merit personnel system was established for the postal service.

CHANGING NATURE OF COMMISSION

With the rapid expansion of Government services in the 1930's to cope with the effects of the Depression, the Government's personnel system became stretched and strained. On the one hand, the Civil Service Commission was evolving into the central personnel agency for the Federal Government. The transition from serving primarily as policeman to administrative leader of the Government personnel network was accompanied by a growing list of expanded functions for the Commission. By the mid-fifties, according to one report:

In addition to its historical responsibilities in examining, the Commission now had responsibilities under the Hatch Acts (1939 and 1940), and the Veterans' Preference Act (1944); as well as for position classification in both the departmental and field service (the Classification Act of 1949). It had responsibilities for Performance Rating (1950), for Incentive Awards (1954) and for the Group Life Insurance Act (1954), not to mention a number of other statutes, or a host of important responsibilities under Executive Order (such as in the area of employee suitability and loyalty).

And the period from 1958 to the present continued the trend. Just to name a few of the major bills among the 25 or so civil service measures passed by each Congress, there has been the Employees Training Act of 1958, the Federal Employees Health Benefits Act of 1959, the Federal Salary Reform Act of 1962, the Federal Pay Comparability Act of 1970 and the Intergovernmental Personnel Act of 1970.

CHANGING WORKFORCE—COLLECTIVE BARGAINING

Further, the Commission has had to deal with the ramifications at the Federal level of the rapid rise of unionization in public sector employment. With the decline of the notion of the sovereignty of the State in labor relations with public workers, labor organizations in government increased their efforts to improve relations with their employers. From 1949 to 1961, labor organizations of Federal workers pressed for legislation in Congress to authorize statutorily the concept of union recognition and bargaining among Federal employees. The Federal employee labor groups, which had been excluded from the National Labor Relations Act, pursuaded various Congressmen to introduce legislation on their behalf, and hearings were held in the 82d, 84th, and 86th Congresses.

The interest and pressures generated by these bills caused President Kennedy to appoint a task force to study employment management in the Federal service. The recommendations of the task force resulted in the eventual promulgation of Executive Order 10988, "Employee-Management Cooperation in the Federal Service," in 1962. Executive Order 10988 established the first formal labor-management relations system for Federal employees of the several agencies of the executive branch, although certain employees, such as those in the Tennessee Valley Authority, had for years operated under their own statutory collective bargaining law.

Today, combined with the rapid growth of the public employment and the changing nature of personnel administration, 58 percent of the Federal workforce is represented by exclusive bargaining agents in work-related areas, excluding pay and fringe benefits. The Civil Service Commission has had to adjust its functions accordingly, but without the benefit of any new laws or the guidance of congressional intent.

NEED FOR COMPREHENSIVE STRUCTURAL REFORM

It is not difficult, then, to see how massively the Federal personnel system has changed since the passage of the Pendleton Act in 1883. But the civil service laws have not adequately changed with the growth of the system. Modernization of public administration techniques, the greatly expanded role of the Civil Service Commission, and the increasing reality of a highly organized Federal work force have not been reflected in the civil service laws.

Attempts have been made to address these issues, yet no comprehensive reform bill has been seriously considered by Congress.

The first and second Hoover Commissions, which made detailed inquiries into the state of the civil service, submitted recommendations which were considered but never adopted. Among those recommendations was the suggestion that the functions of the Civil Service Commission be decentralized. It was felt that the Commission was taking on too many conflicting roles and that its functions should be narrowed.

One legislative initiative was made to respond to the issues raised by the Hoover Commissions and other recommendations of civil service experts. In 1958 and 1959, Senator Joseph Clark introduced legislation which, according to a report of the Post Office and Civil Service Committee:

Would establish an Office of Personnel Management in the Executive Office of the President and transfer to it those functions of the Civil Service Commission which comprise the positive leadership functions in the field of personnel administration now assigned to the Commission but more properly the function of the Chief Executive. The Civil Service Commission would retain those functions associated with its "watchdog" role as the protector of the merit system.

Hearings were held on the Clark bill, but no Senate action was ever taken. The Clark bill represented the last major congressional consideration of the Civil Service Commission until the 1970's, when merit abuses by the Nixon administration heightened congressional concern over the civil service laws and regulations.

The bill we have before us today, Mr. President, is finally a comprehensive effort to address the concerns that have been raised about the Federal personnel system over the past 95 years. We have found that there is not enough merit in the merit system, and yet at the same time there is not sufficient administrative flexibility to operate the Federal Government in an efficient and productive manner, consistent with the latest techniques in public administration. S. 2640 would address both of these problems by strengthening the protection against merit abuse and by giving greater flexibility to Government managers to run their programs for the benefit of the people without delay and redtape.

SUBCOMMITTEE AND COMMITTEE ACTION

Mr. President, as chairman of the Senate Subcommittee on Civil Service and General Services, and as a member of the Senate Committee on Governmental Affairs, I have had an ongoing concern that the civil service laws reflect the current state of the Federal work force; that they be fair to those who have chosen Government service as a career; and that they promote efficiency in administration.

In 1977, when the new Civil Service Commissioners, Dr. Campbell, Mr. Sugarman, and Ms. Poston, came before the committee to be confirmed, I raised many of the issues that are now addressed by this bill, S. 2640, today. I raised the subject of protection for civil servants from merit abuse. This subject particularly concerned me and concerned those who work for the Government, after repeated attempts by past administrations to use the civil service for partisan purposes.

I raised the question of the lack of opportunities in our Federal Government for women and minorities.

The Commissioners were asked at those hearings about the dual function of the Civil Service Commission, and whether those functions should be split.

I raised the question of lengthy and often-wasteful appeals procedures, which often did not help those who were in the right but allowed those who were in the wrong to tie up their superiors in mounds of paperwork and months of proceedings.

One of the most important questions in those confirmation hearings dealt with protections for whistleblowers.

I raise the issue that many Federal employees consider the current Executive order governing labor-management relations to be inadequate.

THE INK REPORT

The administration's response to these and other issues raised was, first of all, a comprehensive study of the entire Federal personnel system. The Federal personnel management project, conducted mainly by career civil servants, was a top-to-bottom review of every personnel law and regulation and their effect on the efficiency of the public service. This project was headed by Mr. Dwight Ink, a public administration expert.

The Ink project was an outgrowth not only of congressional concern, but also of President Carter's clear commitment to reorganization and reform of the civil service.

As a candidate, Jimmy Carter had repeatedly expressed his belief that the Federal Government was too big, too disorganized, and too unresponsive. In early 1976, candidate Carter said:

There is a pervasive tendency in government toward unrestrained growth in salaries, number of personnel, and expenditure of funds. This growth often bears little relationship to the actual need for government services. . . . The first piece of legislation I will send to Congress will initiate a complete

overhaul of our federal bureaucracy and budgeting systems. The second part, as a follow-up to the first, will initiate the reorganization of our federal bureaucratic structure. . . . The greatest need facing the United States today is for a well-managed structure of government—one that is simple, efficient and economical.

The Federal personnel management project issued study finding and option papers in installments throughout much of last year, and concluded its operations in November 1977.

The findings of the Ink report touched upon virtually every aspect of the Federal civil service system.

Among the hundreds of recommendations made were proposals to abolish the Civil Service Commission to create a new office of personnel management, to create an independent merit protection board, to create a senior executive service, to simplify Federal staffing procedures, to reform and streamline various Federal pay systems, to give agency managers more authority to recruit and examine, to provide for a system of financial incentives and bonuses, to reform the "rule of three" and other certification processes, and to provide greater promotion flexibility.

On December 19, 1977, President Carter gave his approval to the proposal to abolish the existing Civil Service Commission and create two new agencies in its place.

On March 2, 1978, the President sent his civil service reform message to Congress, stating:

The simple concept of a "merit system" has grown into a tangled web of complicated rules and regulations. Managers are weakened in their ability to reward the best and most talented people—and to fire those few who are unwilling to work.

The sad fact is that it is easier to promote and transfer incompetent employees than to get rid of them. It may take as long as three years merely to fire someone for just cause, and at the same time the protection of legitimate rights is a costly and time-consuming process for the employee.

You cannot run a farm that way, you cannot run a factory that way, and you certainly cannot run a government that way.

S. 2640

The bill we have before us here today, Mr. President, addresses these issues in a straightforward and comprehensive manner. When S. 2640 was submitted by the administration in March, it contained the following provisions:

Codification, for the first time, of basic merit principles governing the Federal personnel system, and specific identification of prohibited personnel practices which undermine the merit system;

Improved and streamlined procedures for deciding employee appeals;

New procedures for appraising employee performance, with less cumbersome procedures for taking corrective action on the basis of poor performance records;

Additional participation by agencies in the staffing process, with increased flexibility in hiring decisions;

Increased opportunities in Federal employment for disabled and Vietnam-era veterans and for minorities and women;

A Senior Executive Service to utilize the skills of the Nation's best public administrators and to give managers more flexibility and better rewards for outstanding performance;

An incentive pay plan for lower-level managers and supervisors at the GS–13 through GS–15 grade range which relates pay increases to the quality of their performance;

An authorization for research and demonstration projects aimed at experimenting with new personnel management techniques and improving the efficiency of the Federal service;

Statutory creation of an Office of Personnel Management, to be the administration's chief personnel bureau and to make policy decisions for the President on personnel matters; and

Statutory creation of a Merit Systems Protection Board, to hear appeals from employees against whom an adverse action has been taken, to give protection to Federal employees who disclose examples of Government wrongdoing, and to be the watchdog over merit abuses within the system.

These provisions were included in the bill in the following titles:

Title I, merit system principles.

Title II, civil service functions; performance appraisal; adverse actions.

Title III, staffing.

Title IV, senior executive service.

Title V, merit pay.

Title VI, research and demonstration authority.

On April 25, 1978, the President submitted as an amendment title VII, which would create an independent Federal Labor Relations Authority to administer the Federal labor relations program, and which would codify the existing Executive Order 11491, which now governs labor relations in the Federal sector.

The Civil Service Reform Act of 1978, S. 2640, was a companion to Reorganization Plan No. 2 of 1978, which seeks to abolish the Civil Service Commission and replace it with a single-headed Office of Personnel Management, a Merit Systems Protection Board, and a Federal Labor Relations Authority. The reorganization plan makes the major structural changes in the civil service system, while the legislation implements the policy changes President Carter feels are essential to reforming the Federal personnel system.

Mr. President, I would like at this time to highlight the major areas of reform addressed by this bill and to underscore why they are so essential to getting a handle on the bureaucracy, affording greater management flexibility, and insuring fair treatment and adequate rewards for Federal employees who do their jobs.

I. ABOLISHING THE CIVIL SERVICE COMMISSION AND REPLACING IT WITH AN OFFICE OF PERSONNEL MANAGEMENT AND A MERIT SYSTEMS PROTECTION BOARD

Nearly every witness who testified before the Committee on Governmental Affairs supported the concept of splitting the Civil Service Commission into an Office of Personnel Management and a Merit Systems Protection Board.

The Office of Personnel Management would be the primary agent advising the President and helping him carry out his duty to manage the Federal workforce. As noted earlier, it has been the feeling of public administrators going back to President Roosevelt's Committee on Administrative Management in 1937 that there should be a single-headed entity to direct the Federal personnel system. The concept has been discussed for decades and has been adopted extensively with success at the State and local government levels.

The Merit Systems Protection Board would have three members appointed by the President. It would, along with its Special Counsel, be responsible for safeguarding the effective operation of the merit principles in practice. The Board would decide cases brought to it by employees who feel they have been disciplined in a manner inconsistent with the merit principles or who bring to the attention of the Special Counsel other instances of Federal employees acting in violation of the merit principles.

A strong, independent Merit Protection Board was also endorsed by witnesses before the committee. It is obvious, in studying the merit abuses which were found to be prevalent in past administrations, that the current Civil Service Commission was not adequately carrying out its role as protector of the merit system.

The need to establish the adjudicatory and the personnel management functions of the Commission in two separate bodies was pointed out by the public administration experts who testified before the committee. Thus, it was felt not only that the functions of the Commission needed to be better defined, but that it should be done by removing the oftentimes conflicting nature of the Commission's duties. A simple reorganization of functions was felt to be insufficient. Instead, it is time in this bill for major structural reform of the civil service.

The General Accounting Office examined the dual nature of the Commission last year and recommended that Congress eleminate the conflicting roles of the Civil Service Commission as policymaker, prosecutor, judge, and employee protector.

I ask unanimous consent, Mr. President, that the testimony of other expert witnesses and interested groups before the committee on this issue be inserted in the RECORD at this point.

The material follows:

The American Society for Personnel Administration:

Dividing the Civil Service Commission into the Office of Personnel Management and the Merit System Protection Board would alleviate the conflicting roles the current Civil Service Commission is required to perform. . .

As a nation, we rely on our system of checks and balances. However, this system does not appear to exist in the current operation of the Civil Service system, but would be established under this proposal.

The National Academy of Public Administration:

We agree that a serious conflict does exist in the Civil Service Commission's responsibilities, that its personnel management and policing roles are fundamentally incompatible and should be performed by two different organizations.

National Civil Service League:

We strongly favor the replacement of the Civil Service Commission by (1) an Office

of Personnel Management and (2) a Merit Systems Protection Board.

The National Federation of Professional Organizations:

Our group is in accord with the stated purposes of S. 2640, which is to split the present Civil Service Commission into two organizations, the Office of Personnel Management, and the Merit Systems Protection Board. The Civil Service Commission has long been entrapped in conflict of interest, in attempting to be the adviser to agencies on personnel matters, and also the independent, impartial adjudicator of disputes between employees and their agencies.

American Civil Liberties Union:

We wholeheartedly support the division of the present Civil Service Commission into two independent agencies. One of our major objections to the present system is that the Commission serves as co-plaintiff, investigator, prosecutor and judge in personnel actions, insuring a management-oriented result in the majority of cases.

Committee for Economic Development:

The CED plan and the President's plan on termination of the Civil Service Commission, creation of the Office of Personnel Management and the creation of a Board ("Federal Public Service Board" or Merit System Protection Board") are nearly identical.

Common Cause:

The existing Civil Service Commission, serving as the primary personnel agency of the federal government, has a number of responsibilities which are so disparate and inconsistent that it is presently unable to fulfill any of them adequately . . .

Common Cause strongly supports the Administration's proposal to divide the existing Civil Service Commission into an Office of Personnel Management (OPM) and a Merit Systems Protection Board (MSPB).

International Personnel Management Association:

IPMA endorses the establishment of the Office of Personnel Management and the Merit Systems Protection Board. The inherently conflicting roles of the current Civil Service Commission have impaired its effectiveness and credibility.

Ralph Nader:

Structurally, the Civil Service Commission has two inherently contradictory roles, to be the top personnel manager of the federal government and to protect the non-political, competitive nature of civil service. The Commission has tilted toward the management role at the expense of the merit protector role. President Carter has recognized this role conflict and, in Reorganization Plan Number 2, has recommended splitting the Civil Service Commission. This proposal should have a positive impact and we endorse it.

Mr. SASSER. Mr. President, the proposed reorganization and restructuring of the Civil Service Commission is absolutely essential to assuring each President that he will be able to run the bureaucracy effectively and to assuring Federal employees that their job security will not be threatened by arbitrary actions based on political motivations.

II. PROTECTION FOR WHISTLEBLOWERS

I am pleased that this legislation addressed a long-standing deficiency in the civil service laws: that patriotic employees who bring examples of official wrongdoing to the public's attention have, in the past, enjoyed no meaningful protection against reprisals by their supervisors.

Mr. President, it should be public policy to encourage responsible whistleblowing rather than chill it. It is in the true nature of public service for an employee to blow the whistle on superiors who are misspending the taxpayers' dollars or who are breaking the law.

Nevertheless, we have seen too many examples in the past of Federal employees who found themselves fired, transferred, or deprived of meaningful work simply because they were brave enough to place the public interest ahead of their own personal career interest.

There is no reason, Mr. President, why an employee should have to risk his career and his family's financial stability for performing a public service.

Because of past examples of whistleblowers who suffered reprisals, legislation has been introduced to offer meaningful protection for employees who find themselves in such a situation. In particular, my distinguished colleagues, Senators ABOUREZK and LEAHY, have done outstanding work in this area. Also, Senator METZENBAUM has introduced legislation which is currently pending in the Judiciary Committee.

The Governmental Affairs Committee, after hearing considerable testimony highlighting the urgent need for whistleblower protection, considered each of these bills, together with the administration's proposal in S. 2640, as introduced. The committee's version of whistleblower protection is commendable for balancing the need for legitimate protections for whistleblowers and potential whistleblowers with the concern that Government not be endlessly tied up by unfounded complaints from employees with less-exalted motives.

The committee bill gives the Special Counsel of the Merit Systems Protection Board the power to step in and request a stay of any personnel action if he determines that such action is a reprisal against an employee who disclosed illegal or improper Government action. This is an important new statutory provision that goes much farther than ever before to protect whistleblowers.

The committee felt, however, that this bill should address only the personnel aspect of a whistleblower complaint. The resolution of the substance of the revelation of Government wrongdoing should be handled by the agency involved and by the President—not by the Special Counsel or the Merit Systems Protection Board.

I agree with the committee's decision to limit the whistleblower language in this bill to personnel actions. The committee has also recommended to the Senate legislation to establish office of inspector general in each of the agencies. These offices are the appropriate mechanism for investigating and correcting instances of official wrongdoing.

The whistleblower protections offered in S. 2640, as reported, are strong and meaningful, and I urge their adoption by the Senate.

III. CREATION OF A SENIOR EXECUTIVE SERVICE

One of the bill's most innovative reforms is the proposed creation of a new senior executive service.

While many people have expressed legitimate concerns that the senior executive service could be politicized, I believe that the bill adequately protects senior executives from improper political manipulation or coercion.

Except for the concerns about politicization, the concept of a senior executive service received broad bipartisan support from witnesses who testified before the committee. I, too, support the creation of a senior executive service.

The SES would accomplish the following important reforms:

Encourage mobility of senior executives among agencies;

Reward outstanding performance of career executives with additional compensation in the form of bonuses and status;

Provide flexibility to agency heads in the assignment of executives;

Provide opportunities for career executives to serve in higher level positions, including Presidential appointments, without losing their identification with the career service;

Provide for performance appraisals that meaningfully reflect both the executive's individual performance and his unit's success in carrying out its functions; and

Eliminate redtape and delay in the removal of executives whose performance is unsatisfactory or marginal.

Mr. President, the U.S. Government is the largest employer in the Nation. Its programs are far reaching, complex, and widely varied. They must be conducted with sensitivity to conflicting interests and under constant public and media attention, for they affect every citizen. To meet this responsibility requires an executive work force that is carefully chosen, well trained, well motivated, farsighted, able to respond to events, and able to achieve Presidential and congressional goals.

Nevertheless, no fully effective Government-wide system exists today for selecting, assigning, developing, advancing, rewarding, and managing the men and women who administer the hundreds of Federal programs that are vital to the Nation.

The Senior Executive Service is designed to provide such a system.

IV. STAFFING

One of the foremost problems identified in the Ink report of the Federal personnel management project was that there was insufficient flexibility in the staffing process. Since all staffing has been done through the Civil Service Commission, there too often are months of needless delay, mounds of redtape, and other administrative burdens associated simply with hiring one employee in one agency.

The reform proposal provides for delegation of selected personnel authority to departments and agencies. Any potential abuse stemming from increased agency personnel authority would be minimized by performance agreements between agencies and the Office of Personnel Management, reporting requirements, and followup evaluations. The OPM would have the authority to direct corrective action whenever the delegated agency authority is abused.

I am certain that millions of our citizens have encountered the months of unnecessary redtape and delay now as-

sociated with applying for a career position in the Federal Government. We doubtless lose thousands of highly qualified and competent individuals who forsake application for public service rather than undergo months of uncertainty and confusion. The reforms spelled out in S. 2640 should help to alleviate this problem.

V. MERIT PRINCIPLES AND PROHIBITED PERSONNEL PRACTICES

The civil service, thanks only to the honesty and patriotism of career Federal employees, has survived every attempt to undermine the merit system by those who have sought to use the civil service for partisan purposes.

This legislation, S. 2640, proposes to write into the statute the merit principles upon which our civil service is based. In addition, the bill would establish statutorily a set of prohibited personnel practices and would charge the Merit Systems Protection Board and the special counsel with enforcing the merit principles and the prohibited personnel practices. There would be a clear mandate from Congress that such violations are not to be tolerated in the future, and employees who are the victims of political manipulation will have statutory protection.

The codification of the merit principles is a long-needed step which I wholeheartedly endorse.

VI. PERFORMANCE APPRAISALS

Current law is inadequate to allow meaningful appraisals of the work of each employee. Under the current "outstanding," "satisfactory," and "unsatisfactory" scale of performance ratings, the reality is that over 90 percent of the ratings are grouped into the "satisfactory" category.

The current system renders performance appraisals almost meaningless, and certainly useless, in determining who should be dismissed for poor performance and who should be given raises for excellent performance. When nearly everyone is grouped together, there is no way to distinguish the marginal performers from the competent and motivated workers.

Further, under the current system, managers have incentives to rate all of their employees "satisfactory," the employee may appeal the rating, oftentimes tying up the supervisor in months of paperwork and proceedings. It is, quite honestly, simply much easier to rate everybody the same and get on with your work.

The performance appraisal problem is even further complicated by the effect which the "satisfactory" ratings have on a manager who attempts to discipline or fire an employee for incompetence. Most employees need only to point to their years of "satisfactory" ratings to contend that it is the manager, not the employee, who is the incompetent.

The bill gives authority to the agencies to develop better performance appraisal systems, with ratings being tied directly to job performance. In addition, the bill requires that performance evaluation be used as a basis for all decisions about rewarding, promoting, and retaining Federal employees.

VII. MERIT PAY

The Federal Government needs to move away from the concept that employees' pay should be raised each year simply because the employee is still on the payroll. Too often in the past, a large number of Federal employees have almost automatically received such "longevity" pay increases that were not tied to better performance or to an increase in responsibilities.

This legislation recognizes that Federal employees should be given pay increases on the basis of merit. Merit pay would be phased in an experiment with GS–13 to 15 and senior executive service employees. Limits would be placed on the number of employees each year who could be given merit increases, so that agency heads would be forced to make the tough decisions about which employees' performances should be rewarded and which should not be.

Under the bill, meaningful performance appraisals would be required, with an employee's pay tied to the result of the appraisal.

VIII. PROCEDURES FOR DISMISSALS AND APPEALS

One of the most widely-held impressions is that when a citizen enters the Civil Service, he receives, in effect, lifetime tenure and cannot be dismissed except under the most extraordinary circumstances. This impression feeds the public's perception of Federal employees as marginal workers who do enough each day to get by but who have no incentive to work hard.

Anyone who has observed the Civil Service knows that the overwhelming majority of Federal employees are hardworking and dedicated and do not fit the popular stereotype. However, it is true that the lengthy process for dismissing a Federal employee has meant in the past that many marginal workers were simply kept on the public payroll because it was not worth the trouble to the supervisor to fire such employees.

In this legislation, the procedure for dismissing an employee, and for the employee's appeals, are streamlined; protection is afforded employees from being arbitrarily dismissed, but employees who are incompetent cannot tie up the Federal personnel system in months of delay, paperwork, and unfounded appeals.

S. 2640 eliminates unnecessary layers of appeal and for the first time specifies the standards to be used by the adjudicatory agency in determining whether an adverse action should be upheld. Employees in collective bargaining units are also given the opportunity to choose, as an alternative to the statutory appeals route, mandatory arbitration of adverse action appeals.

I strongly support the new procedures for dismissals and appeals and believe that they will be helpful in countering the public's misconception that lazy Federal employees can never be fired for incompetence.

IX. RESEARCH AND DEMONSTRATION PROJECTS

One of the main reasons we are dealing with comprehensive civil service reform legislation today is that the Federal Government has been too slow to recognize, test, and implement new techniques in public administration. There should not, however, be another 95-year period before the Government alters its civil service system again.

This legislation recognizes that the Office of Personnel Management should be encouraged to experiment, wherever feasible, with new and better ways of managing the Government's human resources. Improved administration benefits the public and improves employee morale.

Title VI of the bill embodies the intent of Congress that continuing review with proper safeguards, of personnel techniques and systems is a vital aspect of civil service reform.

X. LABOR-MANAGEMENT RELATIONS

Since Federal employees were not included in the coverage of the National Labor Relations Act, it has been the goal of many employees and some in Congress to recognize the positive results of collective bargaining and extend such benefits to the Federal sector. Although some employees in certain agencies have statutory collective bargaining rights, no such right exists for the vast majority of Federal employees.

Currently, Federal labor relations are governed by Executive Order 11491, as amended. The Executive order establishes the right of Federal employees to belong to unions and establishes procedures for the recognition of bargaining units. But the Federal labor relations program continues to differ in substantive ways from that of the private sector.

For one, Federal employees are not allowed to strike. Also, exclusive representatives of Federal employees may not bargain over pay or fringe benefits. Further, there is no agency shop in the Federal Government; no employee must join or pay dues to a union in order to be a member of a bargaining unit.

This legislation does not in any way alter the unique role of public employees as it is applied to labor-management relations. The legislation continues to recognize that there must be certain differences between unions in the private sector and unions in the Federal sector.

However, S. 2640 does take the important step of establishing congressional control over the Federal labor relations program by essentially codifying the current Executive Order 11491. The bill addresses the fundamental reality that today's Federal work force is a highly unionized work force, and that there should be adequate mechanisms in the law to allow the Goverment to work cooperatively with employee representatives toward better productivity and improved employee morale.

To that end, the legislation, combined with Reorganization Plan No. 2 of 1978, establishes an independent Federal Labor Relations Authority, in which are consolidated the functions of the current Federal Labor Relations Council and the Assistant Secretary of Labor for Labor-Management Relations.

The FLRA will administer the Federal labor relations program, make policy decisions, supervise elections for exclusive representatives, hear and decide complaints of unfair labor practices, and oversee the machinery for the resolution of adverse action appeals through the arbitration process. There will be a gen-

eral counsel in the FLRA to investigate and bring before the FLRA complaints of unfair labor practices.

The FLRA is far preferable to the current labor relations structure in the Government, which is comprised totally of management officials. The independent nature of the FLRA will promote effective labor-management relations in the Federal sector.

CONCLUSION

Mr. President, to conclude my opening remarks on this legislation, I wish to praise the distinguished chairman of the Committee on Governmental Affairs, Senator RIBICOFF, for his outstanding work in moving this bill through committee. This legislation is representative of his fair and judicious approach to legislation in general, and, specifically, to matters affecting Federal personnel policies and procedures.

I know that Senator RIBICOFF is troubled, as I am, by the fact that many outstanding civil servants are frustrated in their attempts to serve the public in a professional and responsive manner. Over the years, the accumulation of laws and regulations, coupled with added layers of controls and procedures that were designed to remedy problems as they developed within the civil service system, have unfortunately become major obstacles to Government productivity and a shield for nonperformance.

If Congress fails in its duty to reform these outdated laws and procedures, we shall continue to see ineffective management, violations of merit principles and squandering of taxpayers' dollars.

This legislation is an historic step in returning merit to the merit system and restoring faith in the millions of men and women who serve the public at the Federal level.

Mr. JAVITS. Mr. President, last year when President Carter spoke with members of the Governmental Affairs Committee about his proposal to reform the Federal Civil Service, I was particularly impressed with the breadth and reach of his ideas. I was equally impressed with the serious substantive and political difficulties inherent in any such proposal precisely because they represented a fundamental reappraisal of a nearly 100-year old civil service system.

The bill before the Senate today is the product of a truly extraordinary effort to reach compromise and balance important interests. Those balances and compromises have been achieved, however, without detracting from the ambitious goals of the initial legislation. It is a strong bill which will strengthen and further promote a competent, nonpartisan civil service based upon the principle of merit.

S. 2640, in bringing about needed reforms, will improve the responsiveness and effectiveness of the Federal Government while assuring that public servants will be rewarded for merit and protected from bias, bureaucratic insensitivity, and political favoritism.

The bill will do that while giving greater authority to managers and supervisors and greater incentives to civil servants to achieve better performance. I wish to emphasize, however, that the necessary reforms which we present to the Senate today in S. 2640, should in no way call into question the essential fact that the overwhelming majority of Federal civil servants are dedicated, competent and well-motivated men and women.

Mr. President, Chairman RIBICOFF and Senator PERCY have managed this bill through many months of controversy and hard work as the committee sought to develop and resolve so many important and complex issues. They were joined by the extraordinarily talented Chairman of the Civil Service Commission, Alan Campbell, a constituent of mine and a distinguished former dean of the Maxwell School of Public Affairs at Syracuse University. I wish to commend the fine efforts of them and others on the committee and in the executive branch who contributed significantly to S. 2640.

In my judgment, the bill presents a comprehensive approach to reform of the civil service system. There are several provisions which I believe are particularly important:

First, I support separating the Civil Service Commission into a Merit Systems Protection Board and an Office of Personnel Management. There is no question that a serious conflict has existed in the Civil Service Commission's responsibilities, that its personnel management and policing roles are fundamentally incompatible and should be performed by two different offices. The independent Merit Systems Protection Board will be a strong merit "watchdog" and an employee protector, which is long overdue.

Second, the establishment of an Office of OPM should go a long way toward increasing flexibility in all levels of Government management. Currently, all personnel operations and actions are centralized in the CSC. This centralization is often the cause of delays in hiring, creates complex administrative procedures and excessive costs. The bill would authorize the President to delegate to the Director of OPM, who in turn would be permitted to delegate to agency heads, all personnel functions presently conducted solely within the CSC.

The bill also provides for new systems of appraising employee performance that will make it possible for agencies to do a better job of recognizing and rewarding good employees and of identifying and aiding those who are not performing at the level required. The bill further requires that these performance evaluations be used as a basis for all decisions about rewarding, promoting, and retaining Federal employees. At the same time, the bill improves employees rights in the area of adverse actions and appeals.

Most importantly, the bill provides a mechanism by which whistleblowers, those employees who disclose illegality in the Government, are fully protected from reprisals. The Special Counsel may petition the MSPB to suspend retaliatory actions against whistleblowers, and disciplinary action against violators of whistleblowers' rights also may be initiated by the Special Counsel.

I am particularly pleased that the bill creates a Senior Executive Service which is designed to create increased advancement opportunities to career executives. Career appointments will be made strictly on the basis of merit with most senior positions in grades GS16–Executive Level IV assigned to the SES. All too often I have seen talented people leave the Government when they have reached the top of the pay scale. I believe that the potential for bonuses and awards contained in the bill will not only help to keep civil servants but also to attract creative and experienced people from the private sector.

Third, I am pleased that the bill would create a new Federal Labor Relations Authority. Consolidating responsibility in FLRA should eliminate what is perceived by Federal employee unions and others as a conflict of interest in the existing Council. Its members consist of the Chairman of the Civil Service Commission, the Director of the Office of Management and Budget, and the Secretary of Labor—policymakers who are responsible primarily as top managers in the incumbent administration. S. 2640 will assure impartial adjudication of labor-management cases by providing for a new Board whose members are selected independently—nominated by the President and confirmed by the Senate—rather than by virtue of their service as Federal managers.

Establishment of the FLRA also will eliminate the existing fragmentation of authority between the Assistant Secretary of Labor for Labor-Management Relations and the Federal Labor Relations Council. The FLRA will have comprehensive jurisdiction in Federal labor-management relations. Merging the responsibility into a single agency will eliminate the need for continuous coordination between two separate agencies with differing and at least potentially conflicting mandates. This change should result in more effective policymaking and administration in this area of vital importance to both Federal employees and Federal managers, as well as the public at large.

S. 2640 also provides explicit statutory responsibilities for FLRA. The part-time Federal Labor Relations Council was established by Executive order. With approval of S. 2640, the intent of Congress regarding the functions and operations of Federal labor-management relations will be clearly established.

Mr. President, S. 2640 is indeed designed to promote the restoration of public faith in the effectiveness and productivity of our Government. It is designed to enhance public service and to make it a more challenging and attractive career choice for those currently in Federal employment and the thousands of others who will follow in the years ahead.

It is designed to give to the President and the heads of departments an opportunity to exercise greater leadership in the carrying out of Executive policy without endangering or compromising the rights of employees.

This legislation will achieve these basic objectives. It is my deep conviction that these reforms will serve to reinvigorate Federal service and bring about significant improvements in the delivery of

Federal services to the people of this country. I hope that the Senate will act expeditiously and favorably.

UP AMENDMENT NO. 1766

(Purpose: To strengthen procedural protections relating to preference eligibility for disabled veterans and for other purposes)

Mr. CRANSTON. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON) proposes an unprinted amendment numbered 1766.

Mr. CRANSTON. 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 page 198, after line 25, insert the following new sections:

DEFINITIONS RELATING TO PREFERENCE ELIGIBLES

SEC. 305. (a) Section 2108 of title 5, United States Code, is amended by—

(1) amending paragraph (1) by—

(A) inserting "who is a veteran as defined in section 101(2) of title 38, United States Code, and" after "individual"; and

(B) striking out all below clause (B);

(2) amending paragraph (2) by—

(A) striking out all between "individual" and "and has" and inserting in lieu thereof "who is a veteran as defined in section 101(2) of title 38, United States Code, or who has performed active military, naval, or air service as defined in section 101(24) of such title 38";

(B) striking out the comma and inserting in lieu thereof "or" after "compensation";

(C) striking out "benefits, or pension" and inserting in lieu thereof "benefits"; and

(D) striking out "and" at the end thereof;

(3) amending paragraph (3) by—

(A) inserting a comma and "except as provided in paragraph (4) of this section," after "means";

(B) striking out "(A)" the second place it appears in clause (A);

(C) amending clause (B) to read as follows:

"(B) the unmarried widow or widower of a veteran as defined by paragraph (1) of this section, other than a widow or widower described in paragraph (3)(D) of this section;";

(D) amending clause (3)(D) to read as follows:

"(D) the unmarried widow or widower of a veteran as defined by paragraph (1) of this section who lost his or her life under honorable conditions while serving in the armed forces or who died as the result of a service-connected disability or disabilities or who, at the time of his or her death, when such death was not as a result of the willful misconduct of such veteran or such veteran's spouse, had a service-connected disability or disabilities rated as total;";

(E) striking out "(A)" in clause (F); and

(F) striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(4) adding at the end thereof the following new paragraphs:

"(4) except for purposes of chapter 75 of this title, 'preference eligible' does not include a retired member of the armed forces unless—

"(A) the individual is a disabled veteran; or

"(B) the individual retired below the rank of major or its equivalent; and

"(5) 'retired member of the armed forces' means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as such a member.".

(b) The amendments made to title 5, United States Code, by clauses (3)(A) and (4) of subsection (a) of this section shall take effect on October 1, 1980.

NONCOMPETITIVE APPOINTMENTS OF CERTAIN DISABLED VETERANS

SEC. 306. (a)(1) Chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 3112. Disabled veterans; noncompetitive appointment

"Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a service-connected disability rated at 30 percent or more on the basis of which such veteran is receiving compensation or disability retirement benefits because of a public statute administered by the Veterans' Administration or a military department.".

(2) The Director of the Office of Personnel Management shall include in the reports required by section 2014(d) of title 38, United States Code, the same type of information regarding the use of the authority provided in section 3112 of title 5, United States Code (as added by paragraph (1) of this subsection), as is required by such section 2014 with respect to the use of the authority to make veterans readjustment appointments.

(b) The analysis of chapter 31 of title 5, United States Code, is amended by adding at the end thereof the following new item:

"3112. Disabled veterans; noncompetitive appointment.".

EXAMINATION, CERTIFICATION, AND APPOINTMENT OF PREFERENCE ELIGIBLES

SEC. 307. (a)(1) Section 3305 of title 5, United States Code, is amended to read as follows:

"§ 3305. Competitive service; preference eligibles; applications

"On the application of a preference eligible, a competitive examination shall be held for any position for which there is an appropriate list of eligibles.".

(2) The item relating to section 3305 in the analysis of chapter 33 of title 5, United States Code, is amended to read as follows:

"3305. Competitive service; preference eligibles; applications.".

(b)(1) Section 3309 of title 5, United States Code, is amended to read as follows:

"§ 3309. Preference eligibles; examinations; additional credit for

"(a) A preference eligible who qualifies in an examination for entrance into the competitive service is entitled to additional points above the individual's earned rating, as follows:

"(1) a preference eligible under section 2108(3)(A) or (B) of this title—5 points; and

"(2) a preference eligible under section 2108(3)(C)–(G) of this title—10 points.

"(b) A preference eligible under section 2108(3)(C) of this title who has a service-connected disability rated at 10 percent or more and who has qualified in an examination for entrance into the competitive service shall be placed at the head of the list of eligibles, except that, in the case of scientific and professional positions in GS–9 or higher, such eligible shall be placed on the list of eligibles in the order of the eligible's rating, including points added under paragraph (2) of subsection (a) of this section. As to all competitive positions, the names of preference eligibles shall be entered ahead of the names of those who are not preference eligibles and who have the same rating.

"(c) If other rating systems are used, preference eligibles are entitled to comparable preference.".

(2) The item relating to section 3309 in the analysis of chapter 33 of title 5, United States Code, is amended to read as follows:

"3309. Preference eligibles; examinations; additional credit for.".

(c) Section 3312 of title 5, United States Code, is amended by—

(1) inserting "(a)" before "In", and striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(2) striking out "Commission" in clause (2) and inserting in lieu thereof "Office of Personnel Management"; and

(3) adding after subsection (a) (as designated by clause (1) of this subsection) the following new subsection:

"(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of Personnel Management of such determination and, at the same time, such agency shall notify the preference eligible of the reasons for such determination and of the right to respond, within 15 days of the date of such notification, to the Office of Personnel Management. The Office of Personnel Management shall require a demonstration by the appointing authority that such notification was timely sent to the preference eligible's last known address and shall, prior to the selection of any other person for the position in question, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office of Personnel Management has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible in question. The appointing authority shall comply with the findings of the Office of Personnel Management. The functions of the Office of Personnel Management under this subsection shall not be delegated to any other department, agency, or instrumentality.".

(d) Section 3314 of title 5, United States Code, is amended by striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management", and by striking out "named by section 3313" and inserting in lieu thereof "established by section 3309".

(e) Section 3315 of title 5, United States Code, is amended by—

(1) striking out in the first sentence of subsection (a) "named by section 3313" and inserting in lieu thereof "established by section 3309";

(2) striking out in the second sentence of subsection (a) "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management"; and

(3) striking out in subsection (b) "Commission" and inserting in lieu thereof "Office of Personnel Management".

(f) Section 3318(b) of title 5, United States Code, is amended to read as follows:

"(b) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office of Personnel Management for passing over the preference eligible and, at the same time, such authority shall notify a preference eligible under section 2108(3)(C) (hereinafter in this section called "a disabled preference eligible") of the proposed passover and the reasons therefor and of the right to respond to such reasons, within 15 days of the date of such notification, to the Office of Personnel Management. The Office of Personnel

Management shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passover of the preference eligible. The Office of Personnel Management shall require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address and shall, prior to the selection of any other person for the position in question, determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible. When the Office of Personnel Management has completed its review of the proposed passover, it shall send its findings to the appointing authority and the disabled preference eligible in question, if any. The appointing authority shall comply with the findings of the Office of Personnel Management. A preference eligible under section 2108(3)(A), (B), or (D)-(G), or such preference eligible's representative, shall be entitled, on request, to a copy of (1) the reasons submitted by the appointing authority in support of the proposed passover, and (2) the findings of the Office of Personnel Management. The functions of the Office of Personnel Management under this subsection shall not be delegated to any other department, agency, or instrumentality.".

(g) Chapter 33 of title 5, United States Code, is amended by—

(1) repealing section 3313; and

(2) amending the analysis therefor by striking out the item relating to such section 3313.

RETENTION PREFERENCE

SEC. 308. (a) Section 3502 of title 5, United States Code, is amended by striking out subsection (b) and inserting in lieu thereof the following new subsections:

"(b) A preference eligible under section 2108(3)(C) of this title who has a service-connected disability rated at 10 percent or more and whose performance meets a standard of adequacy under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

"(c) An employee who is entitled to retention preference and whose performance meets a standard of adequacy under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.".

(b) Section 3503 of title 5, United States Code, is amended by striking out in subsections (a) and (b) "each preference eligible employed" and inserting in lieu thereof "each competing employee" both places it appears.

(c) Section 3504 of title 5, United States Code, is amended by—

(1) inserting "(a)" before "In" and striking out "Civil Service Commission" and inserting in lieu thereof "Office of Personnel Management";

(2) striking out "Commission" in clause (2) and inserting in lieu thereof "Office of Personnel Management"; and

(3) adding after subsection (a) (as designated by clause (1) of this subsection) the following new subsection:

"(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of Personnel Management of such determination and, at the same time, such agency shall notify the preference eligible of the reasons for such determination and of the right to respond, within 15 days of the date of such notification, to the Office of Personnel Management. The Office of Personnel Management shall require a demonstration by the appointing authority that such notification was timely sent to the preference eligible's last known address and shall, prior to the selection of any other person for the position in question, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office of Personnel Management has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible in question. The appointing authority shall comply with the findings of the Office of Personnel Management. The functions of the Office of Personnel Management under this subsection shall not be delegated to any other department, agency, or instrumentality.".

On page 261, line 4, strike out "or (B)" and insert in lieu thereof "(C)", and insert "(B) diminish in any way rights, procedures, and remedies available to preference eligibles under chapters 13, 21, 31, 33, 35, and 75 of this title, or" after "title,".

Mr. CRANSTON. Mr. President, the basic purpose of these amendments before us is to strengthen certain provisions in title 5, United States Code, relating to disabled preference eligibles.

As chairman of the Committee on Veterans' Affairs, I am very pleased that the Committee on Governmental Affairs, in connection with its consideration of the "Civil Service Reform Act," took action to maintain existing law with respect to veterans' preference. However, Mr. President, I have found certain aspects of the present law to be inadequate in protecting the rights of disabled preference eligibles—generally, veterans with service-connected disabilities. The main purpose of my amendments is to remedy that inadequacy.

The two areas of primary concern for disabled veterans which are addressed in these amendments are the waivers of physical requirements for both initial hiring and for reduction in force—RIF—procedures, and the passing over of a preference eligible to appoint a non-preference eligible. In each of these instances, the amendment would require the appointing authority to notify the disabled preference eligible of the reasons why such preference eligible was found unqualified for the position for which he or she applied. The disabled preference eligible would then have 15 days to respond to these findings. The Office of Personnel Management would make a decision on the appointing authority's findings, taking into account the response made by the disabled preference eligible, if any. Until a final decision is reached by OPM, the position in question would have to be held open. These authorities could not be delegated by OPM to any appointing authority.

Mr. President, the amendments would also give the Office of Personnel Management the authority to make noncompetitive appointments within the Federal civil service for any veteran who has a service-connected disability rated at 30 percent or more. This provision is derived from an administration proposal.

Further, the amendments provide that 10-point preference eligibles would have retention rights over 5-point preference eligibles. Veterans who were disabled during active duty for training would also be entitled to 10-point preference.

Other changes made in current law by my amendments, Mr. President, would provide—as proposed by the administration—for the elimination of veterans' preference for military personnel who retire after 20 years or more of service at field grade rank or above. Also, under the amendments, regardless of whether or not a competitive exam is closed, all preference eligibles would be entitled to take such an exam as long as a list of eligibles exists. Moreover, Mr. President, all preference rights, procedures, and remedies would be made applicable in demonstration projects conducted by the Office of Personnel Management as authorized by the amendments made in title VI of the reported bill.

Mr. President, these are the primary issues addressed in my amendments. I ask unanimous consent that a full explanation of the amendments and an analysis of changes that would be made in existing law be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. RIBICOFF. Mr. President, the amendment being offered by the distinguished Senator from California is a constructive one. It addresses a number of concerns raised by veterans organizations.

The amendment is acceptable to the manager of the bill.

Mr. PERCY. As far as the Senator from Illinois knows, there is no objection to the amendment on this side. Certainly, on behalf of the minority, we accept the amendment.

Mr. STEVENS. Mr. President, I hope my colleague will not do that too quickly.

Mr. PERCY. Mr. President, I am not aware of any objection, but we would certainly be happy to hear from the Senator from Alaska.

Mr. STEVENS. I do have a couple of questions of the Senator from California.

Does this mean that if a person was a pilot in World War II, a major, entered civil service, has never used civil service in any way so far, and faces a reduction in force, after passage of this bill he, for the first time, cannot call on his veteran's preference rights? It seems to me to be very sweeping, I will say to my friend from California.

Mr. CRANSTON. If a person such as you described was retired regularly after 20 years or more of service he would have until October 1, 1980, to take advantage of the present opportunities he has under the preference provisions of existing law.

Mr. STEVENS. That does not answer my question about those who were in service and who had 20 years. If a person entered the service in 1950, put in 20 years of service by 1970, went into the civil service in 1971 by competitive examination, and became a career civil servant, he has a preference now in terms of a RIF. He has never yet exercised any of the preference that was given to him from his service in World War II. Is this going to eliminate this?

Mr. CRANSTON. If the Senator will

yield, there is no RIF protection for those people under present law. The person such as you describe would be able to use the entry preference opportunities he now has—as many times as he is able—until October 1, 1980. But he presently has no RIF protection at all under title 5.

Mr. STEVENS. Then this is not taking away any of the existing or contractual rights of those veterans who entered in the past? All are prospective considerations as far as veterans preference is concerned? That is my understanding. Maybe the Senator from Maryland can correct me but I understood our understanding was that the application would be prospective and not retroactive. If the Senator is saying that anyone who enters the service——

Mr. CRANSTON. That is not exactly the effect of this amendment. He would have the preference entry opportunities until October 1, 1980.

Mr. STEVENS. What about his other veterans preference rights? Does this deal only with entrance preference?

Mr. CRANSTON. This deals only with entry. It does not affect any other rights he may have now.

Mr. STEVENS. And it is only those who enter after 20 years of service?

Mr. CRANSTON. That is correct, those who then retire and are at the field grade or above.

Mr. STEVENS. But you obtain field grade rather rapidly in wartime. Those people who had field grade during the Korean war or the Vietnam conflict and did not serve 20 years have the same rights as anyone else; is that correct?

Mr. CRANSTON. That is correct.

Mr. STEVENS. This means those who stayed in and made a career out of the military——

Mr. CRANSTON. Only those who retired would be affected.

Mr. STEVENS. Only those retired after 20 years?

Mr. CRANSTON. Right. Or more.

Mr. STEVENS. I thank the Senator.

I do not object.

Mr. CRANSTON. Mr. President, I have worked very closely with the distinguished chairman of the Committee on Governmental Affairs (Mr. RIBICOFF) and its able ranking minority member (Mr. PERCY), as well as the Civil Service Commission, on these amendments. The administration has indicated that it supports all of the changes made in existing law by these amendments, will support them through conference and does not oppose any of the other provisions in the amendment.

Mr. President, there is one other veterans item I would like to comment on. I note that the Senior Executive Service, to be established under title IV of the reported bill, would include certain top-level physicians in the VA's Department of Medicine and Surgery. This could result in a substantial threat to the quality of health care service to the Nation's veterans by impairing the attractiveness of VA service to such physicians and the effective management of such physicians by the VA. In light of these considerations, I have been assured by the Civil Service Commission both that they fully understand the unique nature of the special title 38 Department of Medicine and Surgery pay and personnel system and that, in view of this, if the Administrator of Veterans' Affairs were to request the President to grant a waiver—as permitted by the provision in the bill—of the inclusion of such DM & S physicians in the Executive Service Corps, that request will be given sympathetic consideration by the Civil Service Commission or its successor—the Office of Personnel Management—in making its recommendation to the President.

Mr. President, I ask unanimous consent that these amendments be considered en bloc and urge the Senate to adopt them.

The PRESIDING OFFICER (Mr. MOYNIHAN). The question is on agreeing to the amendments.

The amendments were agreed to.

EXHIBIT 1

EXPLANATION OF CRANSTON VETERANS AMENDMENT NO. 1766 TO S. 2640

The proposed amendment No. 1766 (actually two amendments) would add four additional sections to title III of the Civil Service reform bill, S. 2640, as reported by the Senate Governmental Affairs Committee, and amend new section 4703 of title VI of the bill.

New section 305 would amend current section 2108 of title 5, the definitional section dealing with veterans and eligibility for veterans preference. The clauses of this new section provide as follows:

Clause (1) would amend the definition of "veteran" in current section 2108(1) to incorporate the basic definition used in title 38 for purposes of eligibility to all VA benefits. The effect of the change would be to provide veterans preference to any veteran who received a discharge under other than honorable conditions but who subsequently received a favorable "character of discharge" determination from the VA holding that such discharge was under "conditions other than dishonorable." In this regard, it should be noted that all veterans who received upgraded discharges under the Carter or Ford special discharge review programs but the circumstances of whose discharges were, pursuant to P.L. 95–126, later determined by a naval or military discharge review board not to merit VA benefits, are entitled to preference under title 5. The incorporation of the title 38 definition would, with respect to all future preference eligibility determinations, render the VA the definitive interpreter of the meaning of "veteran" for this title 5 purpose and arbiter of whether any individual with a discharge under other than honorable conditions was discharged under "conditions other than dishonorable."

Clause (2) would amend the definition of "disabled veteran" in current section 2108(2) to (a) incorporate, as would clause (1) of this section, the basic definition of "veteran" used in title 38 for purposes of eligibility to all VA benefits, so as to provide veterans preference to any disabled veteran who received a discharge under other than honorable conditions, but who subsequently received a favorable "character of discharge" determination from the VA holding that such discharge was under "conditions other than dishonorable"; (b) include in that definition those individuals who suffered a service-connected disability while serving on active duty for training (such individuals are eligible for VA benefits); and (c) remove those who merely receive a non-service-connected VA pension from the category of "disabled veteran." The definitions in clauses (22) and (23) of section 101 of title 38 are incorporated by reference to clause (24).

Clause (3) would amend the definition of "preference eligible" in current section 2108 (3) (D) to subdivide the class in current law of "unmarried widow or widower of a veteran" so as to create a five-point preference group of such unmarried surviving spouses of veterans who died of non-service-connected causes and a second ten-point preference group that includes unmarried surviving spouses of those veterans who died either on active duty or of service-connected causes, or who were rated as 100-percent service-connected disabled at the time of their death.

Clause (4) would amend the definition of "preference eligible" in current section 2108 (3) by adding two new paragraphs designed to remove, as proposed by the Administration, individuals who retired from military service at the rank of major (or its equivalent) or above from eligibility for veterans preference unless such a person is a disabled veteran.

New section 306 would amend chapter 31 of title 5, to add a new section 3112 which authorizes noncompetitive appointments of disabled veterans with a service-connected disability rated by the VA or a military department at 30 percent or greater and for which the veteran is receiving compensation or disability retirement benefits from the VA or a military department. This provision is modeled on the Administration's initial proposal, but it is different in the degree of the service-connected disability required (30 percent versus 50 percent) and in its not including as eligible those who are enrolled in or who have successfully completed a job-related training program under chapter 31 of title 38. The Administration supports this modification.

New section 307 would amend various sections of chapter 33 of title 5, Examination, Selection and Appointment, relating to veterans preference.

Subsection (a) would amend current section 3305 to require that a competitive examination be given to a preference eligible, upon application by such eligible, for any position for which there is a list of eligibles. Current law provides this right only to 10-point preference eligibles and permits the reopening of an examination for any position to which an appointment has been made in the previous three years—a benefit of questionable value since, in most cases, the job would already be filled.

Subsection (b) would amend current section 3309 to bring together in one section provisions relating to the awarding of preference points and to the treatment of preference eligibles, including the placement of service-connected disabled veterans with a 10-percent or greater rating at the head of a list of eligibles. The new section 3309 would also include in subsection (b) a requirement that a comparable preference system be applied for preference eligibles if other rating systems are used.

Subsection (c) would amend current section 3312 to provide new protections for disabled veterans when they are denied a job on the basis of inability to fulfill the physical requirements of the position. These protections include a notice requirement, a requirement that the position not be filled until the disabled veteran has had the opportunity, within 15 days, to appeal the denial and have the appeal decided by the Office of Personnel Management, and a prohibition on the delegation of this responsibility by the Office of Personnel Management.

Subsection (d) would amend current section 3314 to make conforming changes to reflect the amendments which would be made to current section 3309 by subsections (b) and (c) of the new bill section.

Subsection (e) would make conforming amendments to current section 3315 which would be necessitated by the amendments which would be made by subsections (b) and (c) of the new bill section.

Subsection (f) would amend current section 3318 to provide new protections for disabled veterans (as redefined by new section 305(2) of the bill) when an agency proposes passovers of such veterans. The protections include a notice requirement, a requirement that the job not be filled until the disabled veteran has had the opportunity, within 15 days, to appeal the proposed passover and have the appeal decided by the Office of Personnel Management, and a prohibition on the delegation of this responsibility by the Office of Personnel Management.

Subsection (g) would repeal current section 3313, the content of which was placed in the new section 3309 by subsection (b) of the new bill section.

Subsection (h) would make conforming changes to the analysis for chapter 33 necessitated by the amendments which would be made by subsections (a) and (b) of the new bill section.

New section 308 would make amendments to chapter 35, Retention Preference, Restoration and Reemployment, to strengthen retention rights, especially for disabled veterans.

Subsection (a) would amend current section 3502 by adding two new subsections as follows:

New subsection (b) would provide that a service-connected disabled veteran whose performance meets a standard of adequacy under an appraisal system under chapter 43 shall be retained in preference to other preference eligibles. This is an entirely new protection.

New subsection (c) would generally codify existing practice under current subsection (b) by providing that a preference eligible whose performance meets a standard of adequacy under an appraisal system under chapter 43 shall be retained in preference to other competing employees.

Subsection (b) would substitute the phrase "each competing employee" for "each preference eligible employed" in each of the two subsections of current section 3503, "Transfer of functions". This is an Administration requested change designed to reflect actual practice when a function is transferred from one agency to another or one agency replaces another.

Subsection (c) woud amend current section 3504 to provide other new protections for disabled veterans during reduction-in-force situations. The new protections—identical to those that would obtain under new section 3312 (as it would be added by subsection (c) of new bill section 307) with respect to appointments would apply if an agency determines that a disabled veteran is unsuitable for retention on the basis of his or her ability to fulfill the physical requirements of a position. The protections include a notice requirement, a requirement that the position in question not be filled until the disabled veteran has had the opportunity, within 15 days, to appeal the decision and have the appeal decided by the Office of Personnel Management, and a prohibition on the delegation of this responsibility by the Office of Personnel Management.

The amendment to title VI of the bill would amend the proposed new section 4703 of title 5.

New section 4703 would provide that no demonstration project conducted by the Office of Personnel Management could diminish the rights, procedures or remedies available to preference eligibles under other specified chapters in title 5.

CHANGES IN EXISTING LAW MADE BY AMENDMENT NO. 1766 TO S. 2640 AS REPORTED

Changes in existing law made by the amendment are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

Subpart A—General Provisions

Chapter 21—DEFINITIONS

* * * * *

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

(1) "veteran" means an individual *who is a veteran as defined in section 101(2) of title 38, United States Code, and* who—

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955; or

(B) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred after January 31, 1955, and before the date of the enactment of the Veterans' Education and Employment Assistance Act of 1976, not including service under section 511(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

[and who has been separated from the armed forces under honorable conditions;]

(2) "disabled veteran" means an individual [who has served on active duty in the armed forces, has been separated therefrom under honorable conditions,] *who is a veteran as defined in section 101(2) of title 38, United States Code, or who has performed active military, naval, or air service as defined in section 101(24) of such title 38* and has established the present existence of a service-connected disability or is receiving compensation[,] *or* disability retirement benefits [, or pension] because of a public statute administered by the Veterans' Administration or a military department; [and]

(3) "preference eligible" means, *except as provided in paragraph (4) of this section,* [—]

(A) a veteran as defined by paragraph (1) [(A)] of this section;

[(B) a veteran as defined by paragraph (1)(B) of this section;]

(B) the unmarried widow or widower of a veteran as defined by paragraph (1) of this section, other than a widow or widower described in paragraph (3)(D) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)[(A)] of this [section;] *section who lost his or her life under honorable conditions while serving in the armed forces or who died as the result of a service-connected disability or disabilities or who, at the time of his or her death, when such death was not as a result of the willful misconduct of such veteran or such veteran's spouse, had a service-connected disability or disabilities rated as total;*

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)[(A)] of this section, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(G) the mother of a service-connected permanently and totally disabled veteran, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed[.]*;*

(4) except for purposes of chapter 75 of this title, "preference eligible" does not include a retired member of the armed forces unless—

(A) the individual is a disabled veteran; or

(B) the individual retired below the rank of major or its equivalent; and

(5) "retired member of the armed forces" means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as such a member.

* * * * *

Subpart B—Employment and Retention

Chapter 31—AUTHORITY FOR EMPLOYMENT

Sec.

3101. General authority to employ.
3102. Employment of readers for blind employees.
3103. Employment at seat of Government only for services rendered.
3104. Employment of specially qualified scientific and professional personnel.
3105. Appointment of hearing examiners.
3106. Employment of attorneys; restrictions.
3107. Employment of publicity experts; restrictions.
3108. Employment of detective agencies; restrictions.
3109. Employment of experts and consultants; temporary or intermittent.
3110. Employment of relatives; restrictions.

* * * * *

3112. Disabled veterans; noncompetitive appointment.

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§ 3112. Disabled veterans; noncompetitive appointment

Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a service-connected disability rated at 30 percent or more on the basis of which such veteran is receiving compensation or disability retirement benefits because of a public statute administered by the Veterans' Administration or a military department.

Chapter 33—EXAMINATION, SELECTION, AND PLACEMENT

Subchapter I—Examination, Certification, and Appointment

SEC.

3301. Civil service; generally.
3302. Competitive service; rules.
3303. Competitive service; recommendations of Senators or Representatives.
3304. Competitive service; examinations.
3304a. Competitive service; career appointment after 3 years' temporary service.
3305. Competitive service; [examinations; when held.] *preference eligibles; applications.*
3306. Competitive service; departmental service; apportionment.
3307. Competitive service; maximum-age entrance requirements; exceptions.
3308. Competitive service; examinations; educational requirements prohibited; exceptions.
3309. Preference eligibles; examinations; additional [points] *credit* for.

3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians.
3311. Preference eligibles; examinations; crediting experience.
3312. Preference eligibles; physical qualifications; waiver.
[3313. Competitive service; registers of eligibles.]
3314. Registers; preference eligibles who resigned.
3315. Registers; preference eligibles furloughed or separated.
3315a. Registers; individuals receiving compensation for work injuries.
3316. Preference eligibles; reinstatement.
3317. Competitive service; certification from registers.
3318. Competitive service; selection from certificates.
3319. Competitive service; selection; members of family restriction.
3320. Excepted service; government of the District of Columbia; selection.
3321. Competitive service; probation; period of.
3322. Competitive service; temporary appointments after age 70.
3323. Automatic separations; reappointment; reemployment of annuitants.
3324. Appointments at GS–16, 17, and 18.
3325. Appointments to scientific and professional positions.
3326. Appointments of retired members of the armed forces to positions in the Department of Defense.
3327. [Repealed.]

* * * * *

§ 3305. Competitive service; [examinations; when held] *preference eligibles; applications*

[(a) The Civil Service Commission shall hold examinations for the competitive service at least twice a year in each State and territory or possession of the United States where there are individuals to be examined.

[(b) The Commission shall hold an examination for a position to which an appointment has been made within the preceding 3 years, on the application of an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title. The examination shall be held during the quarter following the application.

On the application of a preference eligible, a competitive examination shall be held for any position for which there is an appropriate list of eligibles.

* * * * *

§ 3309. Preference eligibles; examinations; additional [points] *credit* for

[A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

[(1) a preference eligible under section 2108(3)(C)–(G) of this title—10 points; and

[(2) a preference eligible under section 2108(3)(A) of this title—5 points.]

(a) A preference eligible who qualifies in an examination for entrance into the competitive service is entitled to additional points above the individual's earned rating, as follows:

(1) a preference eligible under section 2108(3)(A) or (B) of this title—5 points; and

(2) a preference eligible under section 2108(3)(C)–(G) of this title—10 points.

(b) A preference eligible under section 2108(3)(C) of this title who has a service-connected disability rated at 10 percent or more and who has qualified in an examination for entrance into the competitive service shall be placed at the head of the list of eligibles, except that, in the case of scientific and professional positions in GS–9 or higher, such eligible shall be placed on the list of eligibles in the order of the eligible's rating, including points added under paragraph (2) of subsection (a) of this section. As to all competitive positions, the names of preference eligibles shall be entered ahead of the names of those who are not preference eligibles and who have the same rating.

(c) If other rating systems are used, preference eligibles are entitled to comparable preference.

* * * * *

§ 3312. Preference eligibles; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the [Civil Service Commission] *Office of Personnel Management* or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the [Commission] *Office of Personnel Management* or other examining agency after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of Personnel Management of such determination and, at the same time, such agency shall notify the preference eligible of the reasons for such determination and of the right to respond, within 15 days of the date of such notification, to the Office of Personnel Management. The Office of Personnel Management shall require a demonstration by the appointing authority that such notification was timely sent to the preference eligible's last known address and shall, prior to the selection of any other person for the position in question, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office of Personnel Management has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible in question. The appointing authority shall comply with the findings of the Office of Personnel Management. The functions of the Office of Personnel Management under this subsection shall not be delegated to any other department, agency, or instrumentality.

[§ 3313. Competitive service; registers of eligibles

[The names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles in the following order—

[(1) for scientific and professional positions in GS–9 or higher, in the order of their ratings, including points added under section 3309 of this title; and

[(2) for all other positions—

[(A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in order of their ratings, including points added under section 3309 of this title; and

[(B) remaining applicants, in the order of their ratings, including points added under section 3309 of this title.

[The names of preference eligibles shall be entered ahead of others having the same rating.]

§ 3314. Registers; preference eligibles who resigned

A preference eligible who resigns, on request to the [Civil Service Commission,] *Office of Personnel Management*, is entitled to have his name placed again on all registers for which he may have been qualified, in the order [named by section 3313] *established by section 3309* of this title.

§ 3315. Registers; preference eligibles furloughed or separated

(a) A preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists for every position for which his qualifications have been established, in the order [named by section 3313] *established by section 3309* of this title. This subsection applies to registers and employment lists maintained by the [Civil Service Commission,] *Office of Personnel Management*, an Executive agency, or the government of the District of Columbia.

(b) The [Commission] *Office of Personnel Management* may declare a preference eligible who has been separated or furloughed without pay under section 7512 of this title to be entitled to the benefits of subsection (a) of this section.

* * * * *

§ 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Civil Service Commission for proper and adequate reason under regulations prescribed by the Commission.

[(b) An appointing authority who passes over a preference eligible on a certificate and selects an individual who is not a preference eligible shall file written reasons with the Commission for passing over the preference eligible. The Commission shall make these reasons a part of the record of the preference eligible. The Commission may require the submission of more detailed information in support of the passing over of the preference eligible. The Commission shall determine the sufficiency or insufficiency of the reasons submitted and shall send its findings to the appointing authority. The appointing authority shall comply with the findings of the Commission. The preference eligible or his representative, on request, is entitled to a copy of—

[(1) the reasons submitted by the appointing authority; and

[(2) the findings of the Commission.]

(b) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office of Personnel Management for passing over the preference eligible and, at the same time, such authority shall notify a preference eligible under section 2108(3)(C) (hereinafter in this section called "a disabled preference eligible") of the proposed passover and the reasons therefor and of the right to respond to such reasons, within 15 days of the date of such notification, to the Office of Personnel Management. The Office of Personnel Management shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passover of the preference eligible. The Office of Personnel Management shall require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address and shall, prior to the selection of any other person for the position in question, determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response

received from the preference eligible. When the Office of Personnel Management has completed its review of the proposed passover, it shall send its findings to the appointing authority and the disabled preference eligible in question, if any. The appointing authority shall comply with the findings of the Office of Personnel Management. A preference eligible under section 2108(3) (A), (B), or (D)–(G), or such preference eligible's representative, shall be entitled, on request, to a copy of (1) the reasons submitted by the appointing authority in support of the proposed passover, and (2) the findings of the Office of Personnel Management. The functions of the Office of Personnel Management under this subsection shall not be delegated to any other department, agency, or instrumentality.

(c) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3) (C)–(G) of this title.

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Chapter 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

Subchapter I—Retention Preference

* * * * *

§ 3502. Order of retention

(a) The Civil Service Commission shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a) (3) of this title;

(3) length of service; and

(4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in the active service in the armed forces if he is included under section 3501(a) (3) (A), (B), or (C) of this title; and

(C) who is an employee in or under the Department of Agriculture is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.

[(b) A preference eligible employee whose efficiency or performance rating is "good" or "satisfactory" or better than "good" or "satisfactory" is entitled to be retained in preference to other competing employees. A preference eligible employee whose efficiency or performance rating is below "good" or "satisfactory" is entitled to be retained in preference to competing nonpreference employees who have equal or lower efficiency or performance ratings.]

(b) A preference eligible under section 2108(3) (C) of this title who has a service-connected disability rate at 10 percent or more and whose performance meets a standard of adequacy under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance meets a standard of adequacy under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

§ 3503. Transfer of functions

(a) When a function is transferred from one agency to another, each [preference eligible employed] *competing employee* in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each [preference eligible employed] *competing employee* in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

§ 3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the [Civil Service Commission] *Office of Personnel Management* or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the [Commission] *Office of Personnel Management* or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3) (C) is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of Personnel Management of such determination and, at the same time, such agency shall notify the preference eligible of the reasons for such determination and of the right to respond, within 15 days of the date of such notification, to the Office of Personnel Management. The Office of Personnel Management shall require a demonstration by the appointing authority that such notification was timely sent to the preference eligible's last known address and shall, prior to the selection of any other person for the position in question, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office of Personnel Management has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible in question. The appointing authority shall comply with the findings of the Office of Personnel Management. The functions of the Office of Personnel Management under this subsection shall not be delegated to any other department, agency, or instrumentality.

* * * * *

UP AMENDMENT NO. 1767

(Purpose: To authorize the employment of reading assistants for blind employees and interpreters for deaf employees and for other purposes)

Mr. CRANSTON. Mr. President, I now send to the desk the second amendment and ask for its immediate consideration. This will take just a moment, I assure the Senator from Maryland.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from California (Mr. CRANSTON), for himself, Mr. WILLIAMS, Mr. JAVITS, Mr. RANDOLPH, and Mr. STAFFORD, proposes an unprinted amendment numbered 1767.

On page 196, between lines 7 and 8, insert the following new subsections:

(c) Chapter 31 of title 5, United States Code, is further amended by—

(1) amending section 3102 by—

(A) redesignating clause (4) of subsection (a) as clause (5) and striking out "and" at the end of clause (3) and inserting below such clause the following new clause (4):

"(4) 'deaf employee' means an individual employed by an agency who establishes, to the satisfaction of the appropriate authority of the agency concerned under regulations of the head of that agency, that he or she has a hearing impairment, either permanent or temporary, so severe or disabling that the employment of an interpreting assistant or assistants for the employee is necessary or desirable to enable such employee to perform their work.";

(B) amending subsection (b) by (i) inserting "and interpreting assistant or assistants for a deaf employee" after "or assistants for a blind employee", and (ii) amending the last sentence to read as follows:

"A reading assistant or an interpreting assistant, other than the one employed or assigned under subsection (d) of this section, may receive pay for their services by and from the blind or deaf employee or a nonprofit organization, without regard to section 209 of title 18."

(C) amending subsection (c) by inserting "or deaf" after "blind"; and

(D) inserting at the end thereof the following new subsection:

"(d) The head of each agency may also employ or assign, subject to section 209 of title 18 and to the provisions of this title governing appointment and chapter 51 and subchapter VIII of chapter 53 of this title governing classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.";

(2) amending the analysis of chapter 31 by striking out the item relating to section 3102 and inserting in lieu thereof the following:

"3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees."; and

(3) amending the caption of section 3102 to read as follows:

"§ 3102. Employment of reading assistants for blind employees and interpreting assistants for deaf employees".

(d) Section 410(b)(1) of title 39, United States Code, is amended by inserting after "conduct of employees)" a comma and "3102 (employment of reading assistants for blind employees and interpreting assistants for deaf employees),".

On page 196, line 8, strike out (c) and insert in lieu thereof (e).

On page 197, line 9, strike out (d) and insert in lieu thereof (f).

On page 197, line 11, strike out (e) and insert in lieu thereof (g).

Mr. CRANSTON. Mr. President, joining me in offering this amendment are Senators WILLIAMS, JAVITS, RANDOLPH, and, I believe, STAFFORD. It is a simple amendment which has been worked out with the Civil Service Commission and the Committee on Governmental Affairs. The amendment, in part, clarifies a matter concerning the assignment of employees to be readers for blind employees. A recent decision by the General Accounting Office with respect to providing readers and interpreters for blind and deaf employees in training courses under the Government Employ-

ees' Training Act raised doubts as to the Federal Government's authority to hire or assign readers other than in connection with such training. The amendment we propose would clarify this by providing specific authority for the employment and assignment of readers for the blind. The proposed amendment would also expand current law to provide specific authority for the employment or assignment of interpreters for the deaf and, in addition, would specifically apply such authorizations to the Postal Service.

Mr. President, the administration agrees with the need for this amendment and favors its enactment. In this regard, I understand that Jule Sugarman, Vice Chairman of the Civil Service Commission, has, today, written to Senator RIBICOFF to this effect.

Mr. President, section 501 of the Rehabilitation Act of 1973 requires each department, agency, and instrumentality of the Federal Government—including the Postal Service and Postal Rate Commission—to submit to the Civil Service Commission an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Each year, the submitted plan is required to be updated by the submitting department, agency, or instrumentality and reviewed by the Civil Service Commission. The Commission, after such review, may approve the plan if it contains sufficient assurances, procedures, and commitments to assure adequate hiring, placement, and advancement opportunities for handicapped individuals within the submitting department, agency, or instrumentality.

In addition, Mr. President, section 7153 of title 5, United States Code, authorizes the President to prescribe rules which "shall prohibit, as nearly as conditions of good administration warrant, discrimination because of physical handicap in an Executive agency or in the competitive service with respect to a position the duties of which, in the opinion of the Civil Service Commission, can be performed efficiently by an individual with a physical handicap, except that the employment may not endanger the health or safety of the individual or others."

Mr. President, Congress has enunciated clearly our general goal that the Federal Government be a leader and an example with respect to the employment of handicapped individuals. At the time of passage of section 501 as part of the Rehabilitation Act of 1973, I stressed that the Federal Government should be "an equal opportunity employer." The amendment we are submitting today would assist us in reaching that goal with respect to handicapped individuals.

Currently, section 3102 of title 5, United States Code—initially enacted in Public Law 87–614—provides authority for the head of each agency to employ nonpaid readers for blind employees of the Federal Government without regard to provisions governing appointments in the competitive service. Contrary to the general prohibition against receiving salary from sources other than the Federal Government, subsection (b) of the section provides specifically that the reading assistant may be paid for his or her reading assistance services by the blind employee or a nonprofit organization. At the time of passage of Public Law 87–614, it was envisioned that readers would also serve on a voluntary basis. No comparable provision was included regarding the use of nonpaid employees as interpreters for deaf employees.

Mr. President, the limitation of section 3102 to "nonpaid employees" has restricted the ability of some Federal agencies to meet their section 501 obligations. As a result, during the past few months, a number of departments and agencies have written to the Commission with respect to readers. In this regard, I would like to insert in the RECORD a recent letter from the Honorable Elsa A. Porter, Assistant Secretary for Administration at the Department of Commerce, to the Honorable Alan Campbell, Chairman of the U.S. Civil Service Commission.

Mr. President, I ask unanimous consent that the text of 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:

U.S. DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR ADMINISTRATION,
Washington, D.C., May 13, 1978.

Hon. ALAN K. CAMPBELL,
Chairman,
U.S. Civil Service Commission,
Washington, D.C.

DEAR CHAIRMAN CAMPBELL: As we implement the new appeals system for handicapped employees and applicants, my attention has been brought to the growing problem of providing readers for blind employees. At present agencies are authorized to assign regular employees the duty of reading on a part-time or as-needed basis or to appoint readers without compensation. Under the latter authorization, reading services are obtained either through unpaid volunteers or by individuals paid directly by the blind employees. None of these approaches is completely satisfactory, and I therefore propose that the Civil Service Commission initiate appropriate action to provide agencies the option of employing paid readers on a full-time, part-time, or when actually employed basis when justified by the employee's need and job functions. I see no real difference between providing paid reading assistance for the blind and providing secretarial or clerical assistance for any other employee.

The option I ask the Commission to consider could appropriately be accomplished through the establishment of a new Schedule A appointing authority. The existing mechanism for providing reading assistance would remain in effect and would be the preferred means of providing the assistance needed. The new authority would merely provide agencies with greater flexibility to meet the needs of their employees.

While I appreciate the traditional means of providing reading services, I feel they are inadequate to meet the needs of today and will greatly restrict our ability to respond to the challenges of tomorrow. The inadequacy of these means began to grow apparent with the advent of the Rehabilitation Act of 1973 (P.L. 93–112). Section 501 of the Act, as you know, requires Federal agencies to develop affirmative action plans for the hiring, placement, and advancement of handicapped persons. One result has been the expansion of employment opportunities for professionally trained blind persons. As one small example, this Department hired two blind attorneys. For them, immediate access to the written word is critical to the accomplishment of their duties.

Both employees, however, have faced constant problems obtaining the reading assistance they require. Their plight is shared by other blind employees in the Department and, I am certain, by visually impaired employees throughout the Federal government.

Do we not place an unfair burden on the blind by our inability to guarantee competent reading service when needed? Dependence on volunteers creates an aura of uncertainty both as to their availability when required and their familiarity with the kind of material they are reading. Readers of technical materials, for example, should ideally be somewhat knowledgeable about the subject matter in which they are reading in order to make it comprehensible to the blind. We cannot always be certain volunteers will have the proper backgrounds for this.

The competence of the reader is a minor problem compared to the difficulty of scheduling reading periods. Volunteers are not automatically available when needed, and agency employees likewise do not always find it easy to juggle their other work assignments in order to read to the blind at the time the service is necessary. It has been reported that on many occasions volunteers and/or agency employees have been available only when no reading was required and unavailable when it was. Conceivably, the unavailability of competent, timely reading assistance could adversely affect a blind employee's work performance to the extent that career advancement could not be justified. At the least this would appear to violate the requirements of Section 501 of the Rehabilitation Act. At most it might be grounds for a complaint under the new regulations.

The general policy of the Federal government is to become a model employer of handicapped individuals. This is specifically stated in Section 713.703 of the new Subpart G ("Prohibition Against Discrimination Because of a Physical or Mental Handicap") of the Commission's equal opportunity regulations. If agencies are to carry out this policy with respect to the blind, there must be greater flexibility than now possessed to meet and deal with the reading needs of the employees.

Section 713.704 of Subpart G discusses the topic of reasonable accommodations. The Section states in part:

(a) An agency shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include . . . the provision of readers and interpreters, and other similar actions.

Item (c) provides guidance on determining whether a proposed accommodation would impose an undue hardship on the operation of the agency's programs. I feel that under whatever criteria are used, the authority I am proposing for giving agencies greater flexibility to meet the reading needs of the blind can only be seen as a means of carrying out the Commission's expressed policy with respect to the Federal government's role as a model employer and to the principle of reasonable accommodation.

On a peripheral note, I see evidence of increasing court-ordered accommodations for the handicapped. One precedent-setting decision was handed down last July when a Federal judge ordered Converse College in

South Carolina to pay for an interpreter for a deaf student. The judge ruled that the college's refusal to pay for interpreter services violated the regulations under Section 504 of the Rehabilitation Act. That Section states that no otherwise qualified handicapped individual shall, because of his handicap, be subjected to discrimination under any program receiving Federal financial assistance.

Section 504 does not address itself to the employment practice of Federal agencies, but Section 501, with its requirement for affirmative action to broaden employment and advancement opportunities for the handicapped, does. That section, together with the Commission's new regulations on prohibition of discrimination because of handicaps, the requirement to provide reasonable accommodation, and new court rulings, certainly justify the establishment of an appointing authority for reading assistants to the blind.

I fully recognize the great strides which are already being made to help the sightless. Use of special equipment like the Optacon and talking calculators is increasing, and new devices are under development. Braille materials, tapes and cassettes are appearing on a growing variety of topics. At the same time the blind are broading their own horizons and preparing themselves to enter new occupational fields.

The authority I propose is not seen as a panacea. Problems in fully accommodating all the needs of the blind will remain. The authority will at least assure agencies another means to be more directly involved in providing a needed service.

I hope the Commission will give prompt and thorough consideration to my proposal and look forward to your response.

Sincerely,

ELSA A. PORTER,
Assistant Secretary for Administration.

Mr. CRANSTON. Mr. President, Assistant Secretary Porter's letter graphically illustrates the limitations of section 3102. It is these limitations which the amendment we are submitting is designed to overcome, both with respect to the employment of blind individuals as well as deaf individuals.

Mr. President, in March of this year, the Civil Service Commission issued final regulations setting up procedures for processing complaints of discrimination based on physical or mental handicap (5 C.F.R. 713(G)). Included as part of those regulations are provisions that require agencies to make reasonable accommodations to the known physical or mental limitations of a qualified handicapped applicant or employee, unless the agency can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation may include, but is not limited to, making facilities readily accessible to and usable by handicapped persons, job restructuring, part-time or modified work schedules, acquisition or modification of examinations, the provision of readers and interpreters, and other similar actions. The Commission's regulations on reasonable accommodations were based on the regulations issued by the Department of Labor for Federal contractors under section 503 of the Rehabilitation Act of 1973 and by the Department of HEW for Federal grant recipients under section 504 of the act.

Mr. President, the Federal Government must do no less than what it expects from the private sector with respect to affirmative action efforts in the employment of handicapped individuals.

Mr. President, our amendment would provide much-needed flexibility—a flexibility that should assist the Federal Government in the hiring and advancement of individuals handicapped by reason of sight or sound impairment. The amendment would not supplant existing authority; rather it would augment existing authority. It is a necessary step to assist us in meeting our responsibilities of promoting exemplary equal employment opportunity. I urge my colleagues to support it.

Mr. President, I ask unanimous consent that a short summary of the amendment, an analysis of changes which would be made by it in title 5, and the August 24 letter from the Civil Service Commission be printed in the RECORD at this point.

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

SUMMARY AND ANALYSIS OF UNPRINTED AMENDMENT NO. 1767 REGARDING READERS FOR BLIND AND INTERPRETERS FOR DEAF EMPLOYEES

SUMMARY

The amendments would add to S. 2640 as reported new subsections (c) and (d) to section 301 to amend section 3102 of title 5, United States Code, and section 410 of title 39, United States Code, to:

(1) authorize the head of each agency to employ interpreting assistants to serve without Federal pay to assist any deaf employee (as defined in section 3102, as amended) of such agency in carrying out his or her job, and to permit such an interpreter to receive pay from the deaf individual or a nonprofit organization for such services;

(2) make specific that the assignment or employment of a paid employee as a reader for a blind or interpreter for a deaf employee does not constitute the provision of appropriate clerical or secretarial support for such employee;

(3) authorize agency heads to employ or assign as paid Federal employees readers for blind and interpreters for deaf employees; and

(4) make specific the application of the section 3102 authorities to the U.S. Postal Service.

ANALYSIS OF CHANGES MADE IN CURRENT LAW

Section 3102 would be amended by redesignating the caption to read as follows: "Employment of reading assistants for blind employees and interpreting assistants for deaf employees".

Subsection (a) would be amended by adding a new definition of deaf employee: An individual employed by an agency who satisfactorily establishes that he or she has a hearing impairment, either permanent or temporary or so severe or disabling that the employment of an interpreting assistant or assistants for such employee is necessary or desirable to enable such employee to perform his or her work.

Subsection (b) would be amended to include an interpreting assistant (or assistants) for a deaf employee as among those nonpaid employees whom the head of each agency is currently authorized to employ without regard to the competitive service and chapters 51 (relating to pay and allowances) and 53 (relating to pay rates and systems) provisions of title 5. In addition, subsection (b) would be amended to make specific that a reading or interpreting assistant (or assistants)—except for those employed or assigned under subsection (d) of section 3102 as amended—may be paid for their services by the blind or deaf employee or by a nonprofit organization without regard to section 209 of title 18 (relating to limitation on salaries of Federal Government employees being payable only by the United States).

Subsection (c) would be amended by making specific that the assignment or employment of a reading or interpreting assistant or assistants under section 3102 may not be held or considered to prevent or limit the assignment to the blind or deaf employee of appropriate clerical or secretarial assistance.

Section 3102 would be further amended by the insertion of a new subsection (d) authorizing the head of each agency to employ or assign, subject to section 209 of title 18 and chapter 51 and subchapter VIII of chapter 53 of this title relating to classification and pay, such reading assistants for blind employees and such interpreting assistants for deaf employees as may be necessary to enable such employees to perform their work.

The analysis of chapter 31 would be amended by redesignating the item relating to section 3102 to conform with the redesignated section heading.

Section 410(b)(1) of title 39 (relating to the specific applicability of certain statutory provisions to the Postal Service) would be amended to include section 3102 among the section so made applicable.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., August 24, 1978.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that Senator Cranston and others are proposing to introduce an amendment to section 3102 of title 5, United States Code, which essentially authorizes the employment of reading assistants for blind employees and interpreters for deaf employees.

In our view, the authorization to provide for these services is needed very much. Federal employers are required by law to exercise affirmative action in the hiring, placement, and advancement of handicapped persons. For the successful employment of blind and deaf persons, two of the most important accommodations are readers and interpreters. We have stated for some time that such services are allowable on an "as required basis" by other Federal employees, but experience shows that these services are often inadequate.

The real need is to convince managers that these are legitimate services and refusal to employ or promote deaf or blind individuals cannot be based upon a need for "extra" services. Senator Cranston's proposed amendment will be very helpful in overcoming these barriers and in assuring that the payment of these services is indeed legal. For these reasons, the Administration favors the amendment.

Sincerely yours,

JULE M. SUGARMAN,
Vice Chairman.

Mr. CRANSTON. Mr. President, the amendment is noncontroversial and I hope that it is acceptable to the floor managers of the pending measure.

● Mr. RANDOLPH. Mr. President, I am pleased to be a cosponsor of the amendment introduced by my good friend from California, Mr. CRANSTON. This amendment will aid blind Government employees and deaf Government employees by authorizing the employment of reading assistants and interpreting assistants, by authorizing the assignment of paid employees as reading or inter-

preting assistants, by authorizing the head of an agency to employ interpreting assistants to serve without pay, and by applying the provisions of section 3102 of the Civil Service Act to the Postal Department.

This amendment is similar to a bill I introduced in the 94th Congress, S. 1607. It was and is my strong conviction that it is time for the Government to realistically assist blind and deaf Federal employees so that they may have the same employment opportunities as other Americans. It is my feeling that this amendment will facilitate the employment of and advancement in employment of blind and deaf individuals in Federal service.

This amendment provides a flexible approach to meeting the reading and interpreting needs of blind individuals and deaf individuals. It must be remembered, however, that blind and deaf Americans have demonstrated that they have much to contribute, and there is no justification for requiring them to pay for their own reading assistants and interpreters. When S. 1607 was introduced, I emphasized that blind individuals and deaf individuals should not have to use their own funds, as is sometimes the case in Federal employment, to pay for reading assistants and interpreting assistants. Under this amendment, an agency will have available a variety of options for providing reading assistants and interpreting assistants to the blind employee and deaf employee, which will in no way require the blind or deaf individual to use his or her funds.

It is my feeling that it is important for the blind or deaf individual to be able to select an assistant with whom he or she can work most effectively. A blind or deaf individual's opportunity to select his or her reader or interpreter can contribute to a compatible working relationship and efficiency. While this amendment does not speak specifically on this point, the flexibility allows for the establishment of a policy regarding selection of reading assistants or interpreting assistants by the blind or deaf employee.

Mr. President, blind individuals and deaf individuals have much to contribute and will contribute even more if they are provided with the appropriate opportunities. This amendment will assist in the provision of those opportunities.●

Mr. RIBICOFF. Mr. President, the amendment of the distinguished Senator from California is acceptable to the manager of the bill.

Mr. PERCY. Mr. President, the amendment just offered by my distinguished colleague from California is, once again, a sound idea. It is acceptable. I know of no objection on this side.

Mr. CRANSTON. I thank the Senator very much.

I have now heard from Senator STAFFORD, and I ask unanimous consent that Senator STAFFORD may be added as a cosponsor and shown as such.

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

The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. CRANSTON. Mr. President, I wish to express my thanks and appreciation to all the Senators and all those who helped us work this out. I also express by deep appreciation for the tremendous work Senator RIBICOFF and Senator PERCY have done in developing this bill. I think it will lead us to a more manageable, more responsible and responsive Federal Government, and I truly thank both of them for the work they and the other Senators have done.

I thank the Senator from Maryland for yielding to me.

Mr. MATHIAS. Mr. President, now that the Senate has undertaken consideration of S. 2640, the civil service reform bill, I wish to take this opportunity to commend my distinguished colleagues, the Senator from Connecticut (Mr. RIBICOFF), the chairman of the Governmental Affairs Committee and the Senator from Illinois (Mr. PERCY), the committee's ranking minority member for the serious and responsible work they have done on this important and essential legislation. The members of this committee labored long and for many hours to debate the issues and hear 12 days of testimony from 86 individuals representing 55 organizations.

That is just to give the Members of the Senate some concept of the scope of this work.

Mr. President, I have expressed some very strong views about this bill and its accompanying reorganization plan. While the committee has made major and substantial improvements in the bill, I think there is general agreement that there are several modifications that can and must be made on the floor.

The word "reform" always has a pleasing appeal. When it is associated with a project, there is a natural assumption that the project must be desirable and ought to be supported.

But good words like "reform" can be associated with programs which, though well motivated, are not carefully thought out.

This can have unfortunate results. Any real reform can be defeated. So even programs that are called reforms ought to be carefully examined. This is what we must do with this so-called civil service reform.

We have to be sure that the rough edges are smoothed off. We do not want to go back to the spoils system that existed in the days before civil service was instituted. We do not want to go back to raw political control of the Government, with Government employee upheavals at every election. We must keep these factors in mind while we are deciding how to reform the civil service.

When the committee first met to hear witnesses on the bill I expressed grave concerns that if the provisions of the bill were enacted there would be unbridled and unchecked discretion to politicize the civil service. The President had simply fallen short of his goal to provide Federal managers more discretion and flexibility in personnel management while at the same time assuring a civil service based on merit principles. I spoke specifically about the sweeping authority granted to the Director of the Office of Personnel Management. This Director would have the authority to make personnel policy for the Federal Government. There existed possibilities for manipulating the civil service for "personal or political favoritism" for personnel policy would be made by a single administrator serving at the pleasure of the President. I also pointed out that the bill neglected to give the public any opportunity to scrutinize the policymaking sessions of the OPM. Additionally, the proposed bill completely changed the examination system for Federal employees. It delegated authority to individual agencies rather than keeping that function with the Civil Service Commission. This meant a return to the pre-1965 era of civil service which was shot through with abuse, favoritism, delay, agency pressures and varying quality standards. Finally, the bill created a Senior Executive Service. This was first proposed by the second Hoover Commission back in 1955. The executives who will be included in this group have proven historically that they are the glue that holds the Government together during times of political transition or turmoil when the confidence of the American people in their Government must remain unshaken. Yet this bill granted authority to Presidential appointees to reassign, transfer, promote, and demote almost all top career executives and replace them with political or career appointees more to their liking.

Mr. President, the original proposal failed to recognize that Federal employees are, for the most part, dedicated, loyal men and women who work hard at their jobs. They want to be successful in their careers of public service. Very often they joined the civil service because of patriotic motives and deserve respect and dignity and security in their jobs.

The President's bill called for drastic firing capabilities. But we cannot be overzealous with our attempts to get rid of the deadwood. The President has said that in 1976, only 226 employees had been fired for incompetence and inefficiency. The President's figures were slightly in error. In fact, some 17,000 employees had been fired for cause in 1976. This indicates that the situation was not quite as bad as the President perceived it to be. Therefore, I do not think that the remedy should be quite as drastic as the President proposes. And this is one example—only one—of why we have to look carefully at the administration's civil service reform bill.

I concluded that the President's legislation could be salvaged, but only through amendments. So when the committee met to consider amendments to the bill, I sought to have several changes adopted. Senator STEVENS and I proposed modifications in the structure of the Office of Personnel Management that would provide bipartisan leadership. The changes would also limit the authority of this central personnel agency to conduct demonstration projects. The administration's bill granted authority to the OPM to conduct these projects for almost 5 years for upward of a quarter to a half million people, while setting

aside all civil service laws and important merit principles. Alterations in the examining process were suggested. Insuring the independence of the Merit Systems Protection Board and the Special Counsel was another goal. Lastly, these amendments called for important modifications regarding the burden of proof in adverse action cases against employees, providing basic protections to members of the Senior Executive Service and drastically curtailing opportunities for politicizing the Service.

These proposals met with mixed success, and as a result Senator STEVENS and I submitted Minority Views to the committee's report on this bill. Those views reiterated each of our concerns expressed during committee deliberations.

The distinguished chairman of the committee, Senator RIBICOFF offered several weeks ago to have his staff negotiate with Senator STEVENS' staff and my own to attempt to reach agreement on many of these issues. Senator PERCY's staff also participated in these talks. These sessions proved to be quite fruitful, for today I am pleased to report that Senators RIBICOFF, PERCY, STEVENS, and I have reached agreement to offer a joint amendment coordinated with the administration, that we believe adequately addresses most of the issues raised in the minority report. I assume that we will undertake consideration of this amendment later during the debate on this measure. There are other concerns that have not been addressed, however. The Senate must endeavor to make this a true "reform" package, smoothing its rough edges, while striking the proper balance between protection of merit principles and management flexibility.

AMENDMENT NO. 3533

(Purpose: Improving the protections afforded Federal employees)

Mr. MATHIAS. Mr. President, I call up amendment No. 3533.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Maryland (Mr. MATHIAS), for himself, Mr. STEVENS, Mr. RIBICOFF, and Mr. PERCY, proposes an amendment numbered 3533.

Mr. MATHIAS. 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 page 152, line 6, strike out the end period and insert in lieu thereof a semicolon and "and".

On page 152, between lines 6 and 7, insert the following:

"(D) review, as provided in paragraph (6), rules and regulations of the Office of Personnel Management.".

On page 154, between lines 19 and 20, insert the following:

"(6)(A) At any time after the effective date of any rule or regulation issued by the Office of Personnel Management pursuant to section 1103(b) of this title, the Board shall review such rule or regulation upon—

"(i) its own motion;

"(ii) the petition of any interested person if the Board, in its sole discretion, grants such petition after consideration of it; or

"(iii) the filing of a written complaint by the Special Counsel.

"(B) In reviewing any rule or regulation pursuant to this paragraph the Board shall declare such rule or regulation invalid, in whole or in part, if it determines that—

"(i) such rule or regulation would, on its face, violate section 2302 of this title, including the prohibition against violating the merit system principles, if implemented by an agency, or

"(ii) such rule or regulation, as it has been implemented by agencies through personnel actions taken, or policies adopted in conformity therewith, violates section 2302 of this title, including such principles.

"(C) The Director of the Office of Personnel Management, and any agency implementing the rule or regulation under review in any proceeding conducted pursuant to this paragraph, shall have the right to participate in such proceeding. Any proceeding conducted by the Board pursuant to this paragraph shall be limited to determining the validity of the rule or regulation under review. The Board shall prohibit future agency compliance with any rule it determines to be invalid.".

On page 145, line 21, strike out "(b)" and insert in lieu thereof "(b)(1)".

On page 145, after line 25, insert the following:

"(2) If notice of a rule or regulation proposed by the Director is required by section 553 of this title, the Director shall insure that—

"(A) the proposed rule or regulation is posted in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

"(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.".

On page 206, line 12, after "positions", insert "; number of career reserved positions".

On page 208, between lines 20 and 21, insert the following:

"(h)(1) Not later than one hundred and twenty days after the date of the enactment of the Civil Service Reform Act of 1978, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director of the Office of Personnel Management shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 412 of such Act, that are to be career reserved positions. Except as provided in paragraph (2), the number of positions required by this subsection to be career reserved positions shall not be less than the number of positions which, prior to such date of enactment, were authorized to be filled only through competitive civil service appointment.

"(2) The Director of the Office of Personnel Management may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) only if he determines it necessary to designate as a general position a position (other than a position described in the last sentence of section 3132(b) of this title) which—

"(A) involves policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

"(B) involves significant participation in the major political policies of the President; or

"(C) requires the executive to serve as a personal assistant of, or adviser to, a Presidential appointee or other key political figure.

The Director shall provide a full explanation for his determination in each case.

On page 212, between lines 1 and 2, in the item relating to section 3133, after "positions", insert "; number of career reserved positions".

On page 226, between lines 14 and 15, insert the following:

"(1) permit the accurate evaluation of job performance on the basis of criteria which are related to the position in question and specify the critical elements of the position;".

On page 226, line 15, strike out "(1)" and insert in lieu thereof "(2)".

On page 226, line 17, strike out "(2)" and insert in lieu thereof "(3)".

On page 226, line 19, strike out "(3)" and insert in lieu thereof "(4)".

On page 227, line 18, insert before "Upon" the following new sentence: "The Office of Personnel Management shall review each performance appraisal system developed by any agency under this section, and determine whether the performance appraisal system meets the requirements of this subchapter.".

On page 227, between lines 22 and 23, insert the following new subsection:

"(d) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this section to determine the extent to which such system meets the requirements of this subchapter and shall periodically report its findings to the Office of Personnel Management and to Congress.

On page 201, strike out line 23, and insert in lieu thereof "prohibited personnel practices;".

On page 202, line 3, strike out "and".

On page 202, between lines 6 and 7, insert the following new paragraphs:

"(14) utilize career executives to fill positions in the Senior Executive Service to the greatest extent practicable consistent with the effective and efficient implementation of agency policies and responsibilities; and

"(15) provide for a professional management system that is guided by the public interest and free from improper political interference.".

On page 205, line 7, after the end period, insert the following new sentence: "Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position, except a position in the Executive Office of the President, which—

"(1) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

"(2) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required by law, or was required under the provisions of section 2102 of this title, to be in the competitive service, shall be designated as a career reserved position, if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.".

On page 146, line 21, after "service", insert ", except that the Director may not delegate open competitive examination authority with respect to positions whose requirements are common to agencies in the Federal Government other than in exceptional cases where the interests of economy and efficiency require it, and where such delegation will not weaken the application of the merit system principles.".

On page 307, beginning with line 18, strike out all through page 308, line 2, and insert the following:

"(i) Allocation of the costs of the arbitrator shall be governed by the collective-bargaining agreement. The collective-bargaining agreement may require payment by the agency which is a losing party to a proceeding before the arbitrator of reasonable at-

torney fees incurred by an employee who is the prevailing party if the arbitrator determines that payment is warranted on the grounds that the agency's action was taken in bad faith. If an employee is the prevailing party and the arbitrator's decision is based on a finding of discrimination prohibited by any law referred to in section 7701(h) of this title, attorney fees also may be awarded and shall be governed by the standards applicable under the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–5(k)).".

On page 308, line 13, after "section." insert the following: "The Authority may award attorney fees to an employee who is the prevailing party to an exception filed under this subsection, but only if it determines that payment by the agency is warranted on the grounds that the agency's action was taken in bad faith.".

On page 286, between lines 3 and 4, insert the following:

"§ 7205. Personnel Policy Advisory Committee

"(a) There is established, subject to the provisions of the Federal Advisory Committee Act, the Personnel Policy Advisory Committee (hereinafter in this section referred to as the 'Committee') which shall be composed of—

"(1) the Director of the Office of Personnel Management who shall serve as Chairman of the Committee;

"(2) the Secretary of Labor or his delegate;

"(3) five members appointed by the President from among individuals serving in Executive agencies and military departments in positions not less than the positions of Assistant Secretary or their equivalents;

"(4) one member appointed by the President from the Deputy and Associate Directors of the Office of Personnel Management; and

"(5) seven members appointed by the President who shall be officers of labor organizations representing employees in the Federal Government.

Appointments made under paragraph (5) shall reflect the relative numbers of the total Federal employees which are represented by such labor organizations, or affiliates thereof, except that no more than four members shall be from one such organization or its affiliates.

"(b) It shall be the function of the Committee to provide a forum for discussion by agency management and employee representatives of Federal personnel policy and regulations which affect more than one agency, and to make recommendations with respect to such policies and regulations.

"(c)(1) The Committee shall meet at the call of the Chairman but at least once quarterly. The Chairman shall notify each member of a proposed meeting at least fourteen days before it is to be held.

"(2) The Chairman shall prepare an agenda of topics for consideration by the Committee in any meeting and shall include such agenda in the notice sent under paragraph (1).

"(3) If one-third of the members present at a meeting vote to discuss an unscheduled topic, it shall be discussed.

"(d)(1) Recommendations of the Committee may be considered by the Office of Personnel Management in the formulation of Federal personnel policies and regulations.

"(2) Copies of the transcripts of the meetings of the Committee shall be sent to the Merit Systems Protection Board and the Federal Labor Relations Authority.

"(e)(1) Except as provided in paragraph (2), members of the Committee shall receive as compensation the daily equivalent of the annual rate of basic pay in effect for grade GS–18 for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Committee.

"(2) Members of the Committee who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Committee.

"(3) While away from their homes or regular places of business in the performance of service for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of this title.".

On page 271, between lines 2 and 3, after the item relating to section 7204, insert the following new item:

"7205. Personnel Policy Advisory Committee.".

Mr. HATCH. Will the Senator yield for a unanimous-consent request?

Mr. MATHIAS. I am glad to yield.

Mr. HATCH. Mr. President, I ask unanimous consent that Kristine Iverson of my staff and Robert Hunter of the staff of the Human Resources Committee be accorded the privilege of the floor throughout the debate on this measure and any votes thereon.

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

Mr. MATHIAS. Mr. President, after this legislation had been reported by the Governmental Affairs Committee, Senator STEVENS and I made our objections known by submitting minority views to the report on the bill. Thereafter, we submitted several amendments to the legislation that reflected the serious nature of our concerns with this bill. Mr. RIBICOFF, the distinguished senior Senator from the State of Connecticut, and chairman of the Governmental Affairs Committee and Senator PERCY, the ranking minority member of the committee, agreed to begin sessions with Senator STEVENS and myself in an effort to satisfy or at least meet some of our concerns. I am pleased that these discussions have produced highly satisfactory results. After each of us had reached substantial agreement on these issues, our staffs met with representatives of the administration and reviewed with them the package that is now represented by this amendment.

Mr. President, the bill as reported by the committee does not provide sufficient checks on the policymaking powers of the Director of the Office of Personnel Management. Without some restrictions, the Director of the Office of Personnel Management, as a political appointee of the President, could issue rules which would politicize the civil service in violation of merit system principles.

This amendment provides that at any time after the effective date of any rule or regulation issued by the OPM the Board is directed to review the rule or regulation upon the filing of a written complaint by the special council. The Board in its discretion may review the regulation upon its own motion. The Board is further directed to consider the petition of any interested person, and may grant the petition in its sole discretion. The Board must declare the rule or regulation invalid if it finds that the rule or regulation, on its face, if implemented would constitute a prohibited personnel practice or violate merit system principles. The rule or regulation shall be declared invalid if, as implemented, through personnel actions taken or policies adopted in conformity therewith, violates merit system principles or constitutes a prohibited personnel practice.

Mr. President, this amendment draws a distinction between a regulation or rule prior to or after implementation. The authority given to the Board to invalidate rules or regulations prior to implementation reflects our concern that hundreds of civil servants and many agencies should not be placed in the unseemly position of acting upon a regulation or being affected thereby when it is obvious that implementation would amount to illegality. We—let me say, Mr. President, I think we must caution that this provision should never be interpreted to give a stamp of approval to any rule or regulation that the Board may not have considered.

The Board may act only after the effective date of the rule or regulation, for we feared that if the Board were required to act prior to the effective date, its silence or failure to act may be interpreted as a sign of approval or its signoff of the rule's validity under the law. Thus the Board is not limited as to when it may consider or review any rule or regulation, as long as it is after the rule's effective date.

I might further say, as a matter of legislative history, that the term "interested person" is not meant to be overly restrictive. Rather, it is designed to have the same meaning as that term is given in the context of the Administrative Procedure Act, and all the case law construing its meaning.

SENIOR EXECUTIVE SERVICE

Mr. President, there is a major danger in the provisions of the bill that create the senior executive service. Currently there are about 9,000 executive positions in the Federal service (aside from those filled by Presidential appointees). About 10 percent, or 900 of these, are designated as specific positions to be filled politically. The administration proposes to change this so that most of the 9,000 positions could be filled by political appointment, although at one time no more than 10 percent of all executive positions could be occupied by political appointees.

Once the impartiality and nonpartisanship of a career executive is no longer a requirement for filling these positions, the baser elements of human nature will flourish. Significant numbers of career people in positions in and just below the senior executive service will surely be encouraged to use their official discretion in subtle ways to serve partisan and special interests. Some unfortunately will probably succumb to the temptation in hopes of being looked on favorably as they seek entry into the senior executive service. Of course, with a career appointment, these individuals would not be part of the 10-percent limitation on the number of political appointees. They would remain career appointees—who have demonstrated their political reliability. In other words, it would be relatively easy to politicize far more than 10 percent of these positions in this service, particularly so because career execu-

tives could be reassigned and demoted without cause.

To satisfy ourselves that this scenario is not farfetched, we need only read the House Post Office and Civil Service Committee's "Final Report on Violations and Abuses of Merit Principles in Federal Employment." It reads:

Testifying in closed session before the Senate Select Committee, John Ehrlichman, Counsel to President Nixon for Domestic Policy, was asked if there was an interest to influence the career service in a partisan manner. Mr. Ehrlichman responded to Senate committee staff by saying, "It was an itch on our part to get friends in the departments rather than the people that we found there, but that was just a general ongoing desire on our part." The Committee Counsel asked if career positions as well as others were considered. "Sure . . .", was Mr. Ehrlichman's reply. The Committee Counsel asked how something such as this would be carried out, and Mr. Ehrlichman's response was, "By attrition essentially . . ."

It takes very little imagination to predict what would happen if Presidential appointees had the power to create attrition at will.

This amendment, which I am joined in by the distinguished Senator from Alaska, as well as by Senator RIBICOFF and Senator PERCY, will provide adequate safeguards against the possibilities for politically abusing the Senior Executive Service. We have proposed that within 120 days of the effective date of the Civil Service Reform Act, the Director of the Office of Personnel Management, by rule and in accordance with the rule and in accordance with the rulemaking provisions of the Administrative Procedure Act, must specify the number of positions in the Senior Executive Service that are to be career reserved positions. That number can be no less than the number of positions that can today be filled only through competitive civil service appointment. This means that the Director of the OPM will designate approximately 5,100 of the almost 9,000 positions in the Senior Executive Service that will be career reserved. The Director of the OPM is given the authority by our amendment to reduce the number of career reserved positions by designating them general positions. In order to do so, however, he must make a finding with respect to each such position he proposes to redesignate. He must find that the position: Involves policy making responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs; involves significant participation in the major political policies of the President; or requires the Executive to serve as a personal assistant of, or adviser to, a Presidential appointee or other key political figure. These criteria for designating positions as general reflect the view that any such redesignation should be considered to be motivated primarily by political considerations. These criteria that were established by Executive Order during the Eisenhower administration, and modified by the Johnson administration, provide a reasonable balance for management flexibility, protection against political and personal favoritism, and most important, the effective continuity of Government.

Mr. RIBICOFF. Mr. President, I commend the Senator from Alaska and the Senator from Maryland. They were very, very watchful watchdogs, and both the ranking minority member and myself feel that they have made a substantial contribution and have improved the bill.

We are very pleased to accept the Senator's amendment.

Mr. MATHIAS. Mr. President, the Senator from Connecticut is extremely kind and generous as he always is.

I know that the Senator from Alaska and I both share a sense of appreciation to him for his sentiments here as for his cooperation throughout the whole process.

Mr. President, I might just comment briefly on one aspect of the bill that we have not yet covered, and that is the question of competitive examinations.

The bill as it left the committee would authorize shifting from the central personnel agency to each individual agency the authority to examine applicants for jobs in that agency, and this, of course, was the practice in Civil Service prior to 1965, and those of us who were in Congress prior to 1965 will remember that there were many complaints that there was an uneven system, that there was a difference in the way applicants were being treated agency to agency, and in one part of the country to the other, and it was considered a great reform in 1965 that we centralized the system.

I personally think it would be a mistake to go back to the previous system and just one example of why it would be a mistake is included in a recent report of the Civil Service Commission which states that—

136,000 white collar jobs are overgraded.

And I think this overgrading can be traced in a great many of these cases to the fact that the agency managers pressure for the overgrading. They are pushing for this overgrading, and it is an example of what can happen when more of the recruiting activity is delegated to the agencies.

There are, of course, problems in the centralized system. The biggest one is that it takes too long to fill the jobs.

But the record seems to indicate that most of the delay is in the agencies, not in the area offices of the Commission, and steps can be taken to speed up that process and to make other improvements.

So, this amendment very briefly also prohibits the delegation of competitive examination authority for the positions common to agencies.

There may be delegation when the positions are unique to agencies or in extraordinary circumstances in the interests of economy and efficiency because, as the Senator from Alaska said, we are all interested in the most economic, the most efficient, and the most effective Government service that we can get. But I do not think we can reach that kind of a civil service if we are not very careful and very searching in the ways that we recruit people into the service.

Therefore, we suggest the prohibition of the delegation of competitive examinations be accepted under these extraordinary circumstances.

RULE POSTING REQUIREMENTS

Mr. STEVENS. Mr. President, this addition to the civil service reform bill will assure Federal workers an early notice of new rules and regulations enacted by the Office of Personnel Management. The provision requires a posting of these regulations in Federal offices maintaining copies of the Federal personnel regulations. The requirement will have the effect of advising concerned government employees at their general office location regardless of its remoteness to Washington, D.C.

This amendment is an improvement of the Administrative Procedure Act. The Procedure Act depends heavily on notification through the Federal Register. Such notification becomes less effective for the lower grades of government employees who are not accustomed to reviewing the Register regularly. This point is also valid in the smaller government installations found in many States.

This posting requirement is a straightforward attempt to notify all employees of new rules and regulations that will affect their jobs. The requirement includes notification of employee representatives. The process should promote a clear understanding of Federal regulations early in the implementation stage. Combined with new authorities of the Merit System Protection Board, adequate notification will promote merit principles and minimize questionable regulations which might result in prohibited personnel practices if implemented by the agency.

POLICY OF CAREER PLACEMENT IN THE SES

Mr. President, this amendment establishes two important principles in the administration of the Senior Executive Service.

One revision represents a policy statement advocating maximum utilization of career service employees. The reform bill authorizes a ceiling of 10 percent for the placement of political appointees. Ten percent should not become a goal of each administration. We hope the goal of placement in the Senior Executive Service will center on individual qualifications for Government service. Therefore, maximum placement of career employees will be in the best public interest.

The second change states a goal for the Senior Executive Service. I believe that statement is self-explanatory and self-supporting. The change establishes as Senior Executive Service policies: "goals for a professional management system and the necessity to assure career members protection from prohibited personnel practices."

CERTIFICATION OF APPRAISAL SYSTEMS

Mr. President, this revision to the reform bill will improve the quality of performance appraisal systems to be used in the Senior Executive Service. There can be few things of more importance to these executives than the technique of their evaluation.

The amendment will require the Office of Personnel Management to review all performance appraisal systems prior to implementation. This review will promote objective systems that will uniformly evaluate performance within the ex-

ecutive group regardless of the agency. One approving authority, the Office of Personnel Management, will assure adherence to merit principles in the development of all performance appraisal systems.

A second benefit of this amendment involves a statutory auditing role for the General Accounting Office. The GAO will perform representative audits of performance appraisal systems in the Senior Executive Service. The Comptroller General will issue reports periodically on the effectiveness of these appraisal systems.

ADVISORY COMMITTEE FOR THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

This amendment establishing an advisory committee will fulfill one of the recommendations of the Personnel Management Project of the President's reorganization plan. Senate bill 2640 confines the scope of collective bargaining to those matters which properly belong within the purview of labor-management consultation. Specifically, it excludes matters governed by the policies and regulations of the Office of Personnel Management and the Merit Systems Protection Board. And it bars consideration of issues reserved as management rights: the determination of the agency's mission, budget, organization, and work force size and structure. These restraints are fully consistent with the objectives of providing administrative efficiency and protecting the public interest.

However, it is important that neither labor nor management be excluded from the process of developing rules and policies. Unions must work under central personnel management requirements. Agencies must administer them. Most importantly, both unions and agencies possess extensive knowledge of the general and the particular aspects of the substance of central management decisions. It is important that unions and agencies be provided a formal consultative role in the policymaking process.

While the central personnel agencies have frequently consulted with unions and agencies in the past, these were ad hoc processes initiated by the personnel agencies. There is no process which insures that consultation is systematic.

This amendment will establish a regular and structured conference procedure. It provides for Presidential appointment of a fifteen-member Personnel Policy Committee. The Director of the Office of Personnel Management will chair the committee, which will also include seven members from among the heads of executive agencies and military departments and seven members selected from unions, primarily on the basis of their relative size in representing Federal employees.

The Personnel Policy Committee will meet at least once a quarter. It will be able to consider all Federal personnel policies and regulations which affect more than one agency.

Ideally, the Personnel Policy Committee will provide a forum at which management and organized labor will offer, defend, and consider recommendations on Federal personnel policies and regulations. The amendment is designed to establish harmony between, first, the desire of unions and agencies to have a meaningful and systematic role in determining central personnel agency rules; and, second, the need of the central personnel agencies to achieve the effective execution of laws and Presidential directives.

In drawing on the insight and expertise of labor and management, the proposal will improve the efficiency and preserve the authority of Federal personnel management.

PAYMENT OF ATTORNEY FEES IN ARBITRATION

Mr. President, this revision provides for attorney fees incurred by an employee who is the prevailing party in an arbitration case. This amendment will be superseded by negotiated agreements where the agency and the representative of employees have agreed to alternative terms in a contract. The intent of this amendment is to provide a standard rule on such awards that is consistent with the provisions available to the Merit Systems Protection Board.

The arbitrator shall decide the award of such payments if the Agency's action is considered to have been taken in bad faith. The award should cover reasonable attorney fees and accepted court expense items such as filing fees and the cost of transcripts. It is our intention that these awards should reflect the actual costs incurred, realizing that costs in some States would be higher than others for the same case.

The provisions of this amendment are consistent with the accepted awards authorized in the statutory process of appeals. Title VII of the civil service reform bill provides the employees working within negotiated agreements to have a choice between the statutory appeals process or the terms of the contract. This amendment corrects an inequity that exists if the employee chooses arbitration.

The amendment authorizes the Federal Labor Relations Authority to grant attorney fees in the same manner described for the arbitrator. Obviously, some arbitration decisions will be appealed to this new Authority. The intention of this revision is to provide relief equivalent to the statutory process when the employee decided on arbitration. Such fees will include those appropriate costs which had been incurred in the arbitration process.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that both the committee amendment in the nature of a substitute as amended and the amendments proposed by the Senator from Maryland, and others, be agreed to and as agreed to be considered original text for purposes of further amendment.

The PRESIDING OFFICER. Without objection, the committee amendment as amended, is agreed to.

Mr. PERCY. Mr. President, I concur that the amendment before us should be accepted as original text. This amendment which is the result of long and arduous negotiations of staffs representing Senator RIBICOFF, myself, Senators MATHIAS and STEVENS, was accepted by the administration in a meeting of four Senators with President Carter and Chairman Campbell, Chairman of the Civil Service Commission.

The purpose of the amendment is to address concerns that S. 2640 as reported from committee contain the potential for political abuse in the Federal bureaucracy.

The amendment addresses these fears while retaining the essential structure and thrust of the overall legislation. For instance, the Merit System Protection Board review procedure is drafted so as not to allow MSPB a role in policymaking, this area being reserved for OPM. It is simply a way to assure that OPM in implementing policy through regulations does not step over the line and commit prohibitive personnel actions which is the sole standard of review for striking regulations down.

The amendment is structured to allow MSPB to act any time after the effective date of the regulation, either before harm has been done, or in response to harm that has been done.

The purpose of the amendment is to assure against political manipulation of the senior executive service as well as to establish a presumption in favor of career reserve positions.

I find that the amendment which has been worked out is extraordinarily helpful and certainly incorporated as original text is acceptable to the Senator from Illinois.

Mr. LEAHY. I ask unanimous consent that David Julian of my staff have all privileges to the floor for today, during votes and debates.

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

Mr. RIBICOFF. Mr. President, I make the same request in behalf of Jim Davidson, Terry Jolly, and Andy Conlin of Senator MUSKIE's staff.

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

Mr. THURMOND. Mr. President, I ask unanimous consent that Eric Hultman of the Judiciary Committee staff be allowed on the floor during the debate and votes on S. 2640.

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

Mr. MATHIAS. Mr. President, I ask unanimous consent that Mr. Fred Williams, of the staff of the distinguished Senator from Indiana (Mr. BAYH) be accorded the privilege of the floor during this debate.

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

Mr. RIBICOFF. Mr. President, I also ask unanimous consent that George Kerr, of Senator MOYNIHAN's staff, be granted the privilege of the floor during the consideration and votes on S. 2640.

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

Mr. RIBICOFF. 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. STEVENS. 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. STEVENS. Mr. President, I would like to submit three amendments which have been discussed with the staff of the Committee on Governmental Affairs. The amendments are not complicated, and I feel they will improve some important aspects of the civil service reform bill. It is my desire to try to reach a quick decision on these revisions. Would that be acceptable to the manager of the bill at this time?

Mr. RIBICOFF. Yes, it would. I will say to the distinguished Senator from Alaska or ask are they the four amendments which have been submitted?

Mr. STEVENS. These are three amendments that we would like to treat individually, if we may.

Mr. RIBICOFF. I have no objection.

UP AMENDMENT NO. 1768

(Purpose: Providing for review of certain performance appraisal system)

Mr. STEVENS. I send the first amendment to the desk, Mr. President.

The PRESIDING OFFICER. The clerk will report.

The second assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment numbered 1768.

Mr. STEVENS. Mr. President, I ask unanimous consent to dispense with further reading of the amendment.

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

The amendment is as follows:

On page 173, line 25, before "If" insert the following: "The Office of Personnel Management shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.".

On page 174, between lines 6 and 7, insert the following:

"(c) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which such system meets the requirements of this subchapter and shall periodically report its findings to the Office of Personnel Management and to Congress.

Mr. STEVENS. This amendment deals, Mr. President, with OPM review of performance appraisal systems.

S. 2640 permits agencies to develop new performance appraisal systems for the evaluation of employees. My amendment would require the Office of Personnel Management to review all the new appraisal systems.

The provision will insure compliance with merit principles and appropriate personnel standards.

Existing performance ratings in the civil service fail to measure the relative merits of employees. The rating system is a burden that withdraws more in effort than it returns in efficiency or morale. Performance appraisals must be conducted uniformly, efficiently, and objectively. They should tell the employee what management thinks of his present contribution and his future prospects.

They should help mangement to utilize its employees more fully.

My amendment will insure central approval of all new appraisal systems. In addition, my proposal will require an audit of Federal personnel appraisal systems by the General Accounting Office. Congress would then receive periodic reports from the Comptroller General concerning the results of such an audit.

I am hopeful that the managers will accept this amendment as it is offered.

Mr. RIBICOFF. Mr. President, the amendment is acceptable to the manager and the administration as well.

Mr. PERCY. Mr. President, I would like to ask the distinguished Senator from Alaska to yield for a question. In the opening statement of the Senator from Illinois he made reference to the fact that the appraisal system in the Federal Government today just seems to be a terrible waste of time. I would throw the whole thing out kit and kaboodle. If you take 2 million people and ask for a performance evaluation of them, and year after year you get 95 percent of them just rated satisfactory, there just are not that many good people in the private sector or wherever they may be.

Does the Senator's suggested amendment in any way improve that situation or have any effect upon it so that we really have an appraisal system that will, a performance that will, really be meaningful? In a grade system inside schools you grade people against one another for performance from top to bottom many times. Is there anything in the Senator's amendment that would have any effect on that whatsoever, in view of the present system which the Senator from Illinois has criticized?

Mr. STEVENS. Mr. President, I would like to respond to the Senator from Illinois by saying that the first amendment deals with the centralization of the performance appraisal systems through a review by OPM.

My second amendment will require the establishment of objective criteria in the development of the systems.

The bill already permits the development of new performance appraisal systems. We would like to have those systems approved by OPM so that one agency is not developing a step backward while another one is developing a step forward.

The second amendment will give OPM the right to establish what are objective criteria for these performance appraisal systems.

I commented in my statement that I believe, having served in the civil service system, that the present review is a tremendous amount of paperwork which achieves very little for the management or for the employees.

We are trying to develop, and the bill instructs the agency to develop, new performance appraisal systems. But we think they ought to be coordinated. That is what this amendment will do.

The next one will set up important guidelines for the development of such systems.

Mr. PERCY. As I understand the amendment, there is an audit procedure for this policy control that is being introduced, where the Comptroller General will report periodically to Congress on the performance of the civil service and how OPM is responding to this amendment.

Mr. STEVENS. That is right. We feel the GAO ought to be able to look from outside the OPM and the civil service system, determine whether these new performance appraisal systems are working, and periodically give the committees of Congress a report on what the OPM has done to carry out the authorization to develop new performance appraisal systems. GAO will, in effect, evaluate the effectiveness of those new systems.

Mr. PERCY. The Senator from Illinois finds the amendment—in fact, all three amendments when we get to each, acceptable, and very much in the spirit of what the Senator from Illinois hoped to accomplish.

The Senator from Illinois has not worked in the civil service, but has had civil servants, while serving in the U.S. Navy, working for him, and has seen the rigidity of that system years and years ago.

The Senator from Illinois has had testimony directly given to him throughout the State of Illinois and in hearings here in Washington as to the rigidity of the system and the lack of effectiveness of performance ratings, so that the Senator commends his distinguished colleague for these amendments.

As part of the legislative history, the Senator from Illinois would request that the Comptroller General make careful audits of the so-called quality control that is now being introduced, in order to evaluate the system's fairness and general administrative suitability, so that when we look at performance appraisals of individuals, we can have them in such a way that we can take into account promotions that should be received, awards that should be received, and removals that should be made.

That is the essence of the system. But when you get a report that 95 percent of all the employees of the Federal civil service are satisfactory, where do you begin then? There simply is no real basis for that, and I commend our distinguished colleague for giving us the opportunity to point out the necessity of having a performance appraisal system for employees that is far more effective than we have under our present civil service system.

Mr. STEVENS. I thank my colleague.

Mr. President, I ask unanimous consent that my amendment be printed in the RECORD at this point. I ask unanimous consent that I may offer the second amendment so that the two amendments may be considered en bloc, inasmuch as they deal with the same subject.

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

The amendment (UP No. 1768) is as follows:

On page 173, line 25, before "If" insert the following: "The Office of Personnel Management shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.".

On page 174, between lines 6 and 7, insert the following:

"(c) The Comptroller General shall from time to time review on a selected basis per-

formance appraisal systems established under this subchapter to determine the extent to which such system meets the requirements of this subchapter and shall periodically report its findings to the Office of Personnel Management and to Congress.

UP AMENDMENT NO. 1769

(Purpose: Requires identification of critical elements in the evaluation of job performance)

Mr. STEVENS. Mr. President, I send the second amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an unprinted amendment numbered 1769.

Mr. STEVENS. I ask unanimous consent that further reading of the amendment be waived.

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

Mr. STEVENS. I ask that the amendment be printed in the RECORD at the conclusion of these remarks outlining its effect.

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

(See exhibit 1.)

Mr. STEVENS. Mr. President, I wish to submit an amendment to establish objective criteria in the development of performance appraisal systems. Senate bill 2640 requires agencies to develop new appraisal systems to evaluate the performance of all employees affected by the legislation. These systems for employee evaluation will be even more significant than current applications. Personnel actions including removal have been strengthened by a streamlining of the appeals process. The basis for adverse action will be even more clearly centered on the employees' performance appraisal.

The appraisal systems currently used in civil service have been widely criticized. The fact that practically all evaluations result in a satisfactory rating is a symptom of the problem. The current system lacks some specific standards to meet the goals of personnel evaluation required in the civil service reform bill.

The reform bill requires agencies to develop new performance appraisal systems consistent with criteria to be established by the Office of Personnel Management. Yet the bill is silent on establishing one criterion of the greatest importance. Critical elements of the position must be clearly stated as basis for performance evaluation. Critical elements should be defined as those specific skill levels, responsibilities, or individual actions which will be evaluated in performance appraisal.

My amendment requires performance appraisal systems to identify the critical elements of a position. The employee must know the specific criteria which will be used in his evaluation. This amendment clearly states that intention.

Mr. President, I am hopeful that since we have considered these two amendments together, the managers of the bill will accept them en bloc.

EXHIBIT 1

Mr. STEVENS' amendment (UP No. 1769) is as follows:

On page 169, line 24, after "system", insert the following: "which permit the accurate evaluation of job performance on the basis of criteria which are related to the position in question and specify the critical elements of the position".

Mr. RIBICOFF. Mr. President, as manager of the bill, I am willing to accept the amendments of the Senator from Alaska. I understand that the amendments are satisfactory to Senator PERCY as well.

Mr. STEVENS. I move, then, that the amendments be agreed to en bloc.

The PRESIDING OFFICER. The question is on agreeing, en bloc, to the amendments (UP No. 1768 and UP No. 1769) of the Senator from Alaska (Mr. STEVENS).

The amendments, en bloc, were agreed to.

UP AMENDMENT NO. 1770

(Purpose: To minimize Federal involvement in State and local government personnel matters)

Mr. STEVENS. Mr. President, I have a third amendment, which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Alaska (Mr. STEVENS) offers an unprinted amendment numbered 1770.

Mr. STEVENS. 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 265, line 22, after the word "and" insert the following: "such standards shall be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration and".

Mr. STEVENS. Mr. President, I am offering this amendment to reduce Federal involvement in State and local personnel administration. Senate bill 2640 currently permits Federal agencies to require, as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office of Personnel Management. These standards will apply specifically to the positions involved in carrying out the assistance programs.

Adherence to merit principles is desirable in all personnel systems, whether Federal, State, or local. But the imposition of other Federal personnel standards on State and local governments is often inappropriate.

Federal intervention in State and local personnel administration interferes with State sovereignty. The power to govern State and local employees is a right which properly belongs to State and local governments. Such power is indispensable to the separate and independent existence of these jurisdictions.

This amendment will require that the personnel standards, prescribed by the Office of Personnel Management and governing individuals administering assistance programs, be designed to minimize Federal intervention in State and local personnel administration. Its purpose is to limit the authority of the Office of Personnel Management in establishing rules governing employees outside of the Federal system. The amendment will improve the administration and execution of Federal assistance programs and protect the right of State and local authorities to govern their own employees.

I hope, again, that the managers of the bill will find this injunction, which requires that particular OPM standards shall be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration, acceptable to them.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Alaska is acceptable to the manager of the bill, and also to the ranking minority member (Mr. PERCY).

Mr. STEVENS. Mr. President, I ask unanimous consent that the amendment be printed in the RECORD following my remarks, and I move its adoption.

The PRESIDING OFFICER. Without objection, it is so ordered. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. STEVENS' amendment (UP No. 1770) is as follows:

On page 265, line 22, after the word "and" insert the following: "such standards shall be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration and".

The PRESIDING OFFICER (Mrs. HUMPHREY). The Senator from Illinois.

UP AMENDMENT NO. 1771

(Purpose: Allowing the Board to make a finding in cases of prohibited personnel practices involving Presidential appointees)

Mr. PERCY. Madam President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois (Mr. PERCY) proposes an unprinted amendment numbered 1771.

Mr. PERCY. Madam 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 page 162, strike out lines 18 through 20, and insert in lieu thereof the following: "(1) If the Special Counsel determines, after any investigation under this section of any prohibited personnel".

On page 163, strike out lines 5 through 11.

On page 163, strike out lines 16 through 20, and insert in lieu thereof "Systems Protection Board.".

On page 165, line 14, strike out "Any" and insert in lieu thereof "(a) Except as provided in subsection (b), any".

On page 166, line 9, strike out the end quotation marks and the end period.

On page 166, between lines 9 and 10, insert the following:

"(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position who was appointed by the President, by and with the advice and consent of the Senate, such employee shall be entitled to the hearing provided in subsection (a) but the Board shall issue no final order in such case. The Board shall transmit to the President, and make available to the public, its findings and recommendations for disciplinary action in such case.".

Mr. PERCY. Madam President, the Governmental Affairs Committee put much effort into developing this civil service reform bill to absolutely insure against any form of destructive political manipulation of the Federal bureaucracy. We have provided for a strong Merit Systems Protection Board and Special Counsel, firm protections for "whistleblowers," controls on political use of the Senior Executive Service, firm merit principles and prohibited personnel actions, all aimed in this direction.

One weakness in this area, however, remains. This concerns an exemption in the legislation under which Presidential appointees, those individuals appointed by the President and confirmed by the Senate to fill the highest positions in Government, about 900 individuals in all, are provided a special immunity from responsibility for wrongful actions.

My amendment is intended to plug this final loophole.

Title II of S. 2640 provides that any Government official who commits a "prohibited personnel practice" can be brought before the Merit Systems Protection Board on charges of abuse. If the Board finds the charges substantiated, it may impose disciplinary penalties ranging from reprimand to suspension to removal to civil fines to disbarment from Federal service for a period of up to 5 years.

The provision, however, specifically excludes Presidential appointees from this enforcement authority. If the special counsel comes across evidence that a Presidential appointee has abused the merit system, all he can do is to report his finding to the President. Not only is the MSPB denied the ability to impose sanctions—it is not even given an opportunity to judge whether the charges have a basis. The President is thus presented with unproven allegations, the official has no chance to attempt to clear his name, and the lines of responsibility for wrongful actions are left thoroughly blurred.

While it is true that, constitutionally, only a President can remove one of his appointees, and that good policy might dictate allowing the President to be the final judge of what discipline short of removal is best suited, a system under which a finding of guilt or innocence is never made would leave even the most well-intentioned President in a difficult situation, having no independent finding upon which to base his decision.

My amendment would remedy the problem by allowing the MSPB to hear charges of merit abuse brought against Presidential appointees and make a public finding on those charges, both as to whether the allegations are true and a recommendation as to what discipline is proper. It would then be up to the President to decide, at his own discretion, whether action is to be taken.

S. 2640 provides broad grants of management flexibility and administrative powers to agency heads. Presidential appointees, particularly under the Senior Executive Service. Without this type of authority, the MSPB would be in no position to effectively police against abuses under the new system.

We have worked long and hard over past years to eliminate what is often a double standard of justice in this country under which the powerless bear the full brunt of law, while the powerful go free. Surely, we do not want to institutionalize such a double standard of justice into the civil service system.

I urge adoption of my amendment.

Mr. RIBICOFF. Madam President, Senator CHILES, who had opposed this amendment and prevailed in the committee seven to six, should be given the opportunity of presenting the opposite point of view. I supported in committee the position of the distinguished Senator from Illinois.

Mr. PERCY. Madam President, if the Senator will yield, the staff of the Senator from Illinois has notified Senator CHILES that the amendment is pending now and we have not had word back yet. Certainly, I want to give every opportunity to the distinguished Senator from Florida to comment on the amendment.

Mr. RIBICOFF. I suggest the absence of a quorum while we try to get Senator CHILES.

Mr. PERCY. Also, I think Senator MATHIAS wishes to speak on the amendment. He has been advised also that the amendment is pending.

The PRESIDING OFFICER. Does the Senator from Connecticut suggest the absence of a quorum?

Mr. RIBICOFF. I suggest the absence of a quorum, yes.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MATHIAS. I ask unanimous consent that Cynthia Gulley of the staff of the distinguished Senator from Wyoming (Mr. WALLOP) may have the privilege of the floor during this debate. I make a similar request on behalf of Betty McKay of the staff of the Senator from California (Mr. HAYAKAWA).

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

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

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

Mr. MATHIAS. Madam President, I ask unanimous consent that Mr. Michael Jones of the staff of the Senator from Massachusetts (Mr. BROOKE) may be permitted the privilege of the floor during this debate.

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

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

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

Mr. PERCY. Madam President, the distinguished Senator from Maryland (Mr. MATHIAS) and the Senator from Illinois have discussed the pending amendment and the point has been made, and I think aptly so, that what we should do is attempt in every way possible to have an evenhanded approach toward the presidential and nonpresidential appointments, taking into account that by the amendment the ultimate decision is to be made by the President in a case of presidential appointees.

In the wording of the amendment, as it now stands, it provides that "The Board shall transmit to the President and make available to the public its findings and recommendations."

The Senator from Illinois asks unanimous consent to modify the wording of the amendment to strike out the words "and make available to the public," and substitute the words "to the appropriate committees of the Senate." In some cases there may be more than one committee that has jurisdiction.

I so make such unanimous-consent request.

The PRESIDING OFFICER (Mr. SPARKMAN). The Senator has a right to modify his amendment. The unanimous consent is not required.

The amendment is so modified.

The amendment, as modified, is as follows:

On page 162, strike out lines 18 through 20, and insert in lieu thereof the following:

"(i) If the Special Counsel determines, after any investigation under this section of any prohibited personnel".

On page 163, strike out lines 5 through 11.

On page 163, strike out lines 16 through 20, and insert in lieu thereof "Systems Protection Board.".

On page 165, line 14, strike out "Any" and insert in lieu thereof "(a) Except as provided in subsection (b), any".

On page 166, line 9, strike out the end quotation marks and the end period.

On page 166, between lines 9 and 10, insert the following:

"(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position who was appointed by the President, by and with the advice and consent of the Senate, such employee shall be entitled to the hearing provided in subsection (a) but the Board shall issue no final order in such case. The Board shall transmit to the President, and to the appropriate Committees of the Senate, its findings and recommendations for disciplinary action in such case.".

Mr. PERCY. The purpose of this modification in the amendment is simply, first, to treat non-Presidential appointees and Presidential appointees the same with respect to making public the findings and recommendations. They should be handled exactly on the same basis.

But the Senate should have the ability to act and in the advice and consent authority that it has from the Constitu-

tion should know whether an appointee by the President, confirmed by the Senate based, generally speaking, upon the recommendation of the appropriate Senate committee with oversight authority, should know when charges have been made against a presidential appointee.

The wording of the amendment simply provides that the MSPB hear charges of merit abuse brought against presidential appointees.

The Senator from Illinois wishes to point out that this is not a charge that is made by an individual. This would be a charge made by the special counsel and only by the special counsel, and it would only be for a personnel abuse, and prohibited personnel practices are clearly defined in this legislation.

It could not be just an indiscriminate charge. It would have to be a charge that there has been either illegal discrimination; or solicitation in consideration of recommendations unless based on personal knowledge or a review of the record consisting of an evaluation of competence, character, loyalty, or suitability; or a charge of political coercion; or a charge of willfull deception or obstruction of the right of an individual to compete for a Federal job; or a charge of influencing a person to withdraw from competition for Federal positions so as to improve or injure employment prospects of any applicant; or a charge by the special counsel of granting of any preference not authorized by law, rule or regulation; a charge of nepotism; reprisals against whistle blowers; reprisals for use of appellate rights; or a charge of violation of law, rule, regulation, or merit system principles.

These charges cannot be lightly made. They would have been thoroughly investigated by the special counsel. He would have made such charges only after having adequate evidence that there is a reasonable basis for those allegations.

And then the amendment simply provides that when a Presidential appointee is involved that the MSPB shall have an opportunity to have a hearing exactly as with any other charge against any other civil servant in a supervisory capacity and to make a determination and a recommendation that those determinations and recommendations shall be sent to the President. In accordance with the terms of the Percy amendment it is at the President's discretion and the President's sole discretion as to whether action of any kind shall be taken.

But when the President is dealing with some, at the present time, 900 Presidential appointees, he would have available to him a proven procedure that is applicable to all civil servants. That would give him the benefit of that proven system so that he would then have available to him all of the facts taken in the same procedure which is applicable to other Federal supervisory employees, and would enable the President to make a determination as to what should be done.

Also, of course, the appropriate committee of the Senate would be given such information and could advise and counsel with the President in this particular case.

The Senator from Illinois brings to the attention of his colleagues a situation we have faced, and I mention it only because it has been in the headlines of the newspapers all across the country, involving GSA. Certainly this is a matter that should and must be dealt with as effectively as possible, and should there be such instances involving possibly a Presidential appointee, then it would seem to the Senator from Illinois that a system of fairness should prevail, and there should be a procedure that would be followed.

Surely I think that we, as the Senator said in his opening comments, have worked long and hard over past years to eliminate what is often a double standard of justice in this country under which the powerless bear the full brunt of law while the powerful go free. Surely we do not want to institutionalize such a double standard of justice into the civil service system.

It is for this reason that the Senator from Illinois offers the pending amendment which, I believe, would be an improvement in the bill before the Senate, S. 2640.

Mr. CHILES addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. Mr. President, this matter in a slightly different form was presented to the Committee on Governmental Affairs and discussed in the Committee on Governmental Affairs. The committee, after deliberation on it, decided to delete this and to change this provision and provided, as in the bill now, that in the case of an employee in a confidential, policymaking policy-determining or policy-advocating position, who was appointed by the President, by and with the advice and consent of the Senate, that such complaint and statement and any response by the employee to such complaint shall be presented to the President in lieu of the board or administrative law judge referred to in paragraph (1) of this subsection.

I think to understand this we really need to try to determine what we are seeking to do in this civil service reform. What we need to determine is what the role of the special counsel is going to be, what the role of the merit board is, what the duties and responsibilities of the President are.

First, we are talking about civil service employees. That is what this bill is all about. When we talk about a special counsel who is going to provide protection for whistleblowers, we are talking about a special counsel who is going to prosecute people in the civil service system, the civil service employees against whom charges are brought before the Merit Board so we will know we can have faith and confidence in the civil service system.

But what we really are talking about and what we are dealing with here are civil service employees.

When we start talking about presidential appointees, we are talking about people now who are in that category who are appointed not out of the ranks of the registry, not after taking competitive examinations, people who do not have tenure, people who serve at the pleasure of the President of the United States, and when the President changes they change, and if the President wants to change them, they change, and these employees do not have the normal protections of the civil service employees nor are they normally brought before the Merit Board for disciplinary response because they are the charges of the President of the United States.

One reason, and a very strong reason, why I resist this is because I do not think you take away or you should take away from the President the responsibility for knowing that he is the one who must discipline his appointees; he is the one who is responsible for their misconduct, and I do not think we should put a buffer between the President and that responsibility.

Under provisions now, any charges referred to the special counsel, he can investigate those charges, he can report his findings, together with his investigations, together with those charges, to the President, and they become the responsibility of the President. That is where the responsibility should rest. It should not go to a merit board which is going to determine whether it thinks the President should do this or that, and the board sends its recommendations to the President and the President, according to this amendment, does not have to follow the recommendations. So you are not adding anything really to it because he does not have to follow the recommendations. He could say, "Well, the merit board looked at this and they took care of it, so I am free of the responsibility."

I do not think he should be free, if he has a Haldeman, an Ehrlichman, if he has somoene else, who is doing something wrong, I think he should have the responsibility, and it is a political responsibility, it is his political appointment, and that responsibility should rest clearly with him.

On the other side, I think we want to be careful that we do not stop the Government from operating. If we go into a situation in which we are going to require a trial now before the merit board, the merit board ought to be protecting those civil service employees; the merit board ought to be weeding out those civil service employees who are not doing their job. It is civil service reform we are talking about, and it is the civil service system that needs looking after. That is what the public wants us to do. But we are going to give them an additional charge. We are going to give them a charge where, if the speical counsel decides one of the Presidential appointees is doing something bad, they are going to sit as the judge over that case and they are going to listen to that case, and then they are to report their findings to the President.

I just see no real reason for it. If we are accomplishing anything, we are making it public, and if an employee is charged, that charge goes to the President, it goes to the press at the same time. People know, and it is up to the President to determine what he is going to do about that charge, and that polit-

ical responsibility should rest solely with him.

On that basis, it seems to me we would be much better off to keep it that way and to keep that focus clearly on the President and not dilute it by putting some merit system in the middle and giving them something else to do which takes them away from their duties, their primary duties, of being the overseers of the civil service system itself.

Mr. SASSER. Mr. President, will the Senator from Florida yield?

Mr. CHILES. I yield.

Mr. SASSER. I ask unanimous consent that Mr. Alvi From of the Subcommittee on Intergovernmental Relations be allowed the privileges of the floor.

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

Mr. SASSER. Mr. President, will the Senator from Florida yield further?

Mr. CHILES. I yield.

Mr. SASSER. Mr. President, I rise to agree with the distinguished Senator from Florida. This issue, which has been raised, was fully debated in the committee consideration of this bill, and I share the concerns of the Senator from Florida that the President of the United States should be solely responsible for the discipline of his own appointees.

Another consideration which I think is raised by this amendment of the distinguished Senator from Illinois is simply a question of whether or not such a statutory provision would be constitutional.

A Justice Department opinion given the Committee on Governmental Affairs recognizes that there is some uncertainty, as a matter of fact considerable uncertainty, on this issue. This body ought to be careful, Mr. President, about inviting disputes on constitutional grounds.

Second, a statutory discipline procedure could delay or thwart a President's desire for summary discipline of an appointee whose conduct was inconsistent—I emphasize that, was inconsistent—with the merit system, and that prospect to the Senator from Tennessee is, frankly, very disturbing.

However, I believe the strongest argument is the one which has been so ably made by the distinguished Senator from Florida, and that is in favor of the provisions that are now present in the committee bill rather than those in favor of the amendment; that is, we must hold the President responsible for the actions of his personal advisers and his personal appointees, and to pass that responsibility off, even in this limited way, to a merit board or any other authority, merely gives the President an excuse or could give a President the excuse for not disciplining his closest advisers.

I find, Mr. President, that in this legislative body there still appears to the Senator from Tennessee to be a Watergate hangover. This hangover appears to manifest itself in efforts of the legislative branch, on occasion, to take from the executive branch that which should be the executive branch's natural prerogative, and in some cases those prerogatives which are given the executive branch by the Constitution of the United States.

I believe fully that the executive branch and the President should be responsible to the American people and responsible to the legislative branch of the Government. But in making them responsible, I do not think we are acting in the best interests of this country, or that it is good public policy, to dilute the authority of the President of the United States to discipline and manage those whom he—or she—would appoint to high office in the Government of this country.

I yield back the remainder of my time.

Mr. CHILES. I yield the floor.

The PRESIDING OFFICER (Mrs. ALLEN). The question is on agreeing to the amendment.

Mr. PERCY. Madam President, I wish to comment very briefly, and then I am prepared for a vote. Since we apparently do have a difference on this issue, I would 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 PERCY. First, the Senator from Illinois would like to make it eminently clear that the Special Counsel is an appointee of the President, and it is only the charges made by the Special Counsel of the Merit System Protection Board that we are involved with. If that special counsel, a Presidential appointee, after investigation, makes charges against a Presidential appointee, then there may be a hearing before the Merit System Protection Board.

In the case of a non-Presidential appointee, the finding of the Merit System Protection Board is binding; the case ends there. In the case of a Presidential appointee, the Merit System Protection Board merely transmits to the President and to the appropriate committees of the Senate its findings and a recomendation, but the decision is entirely in the hands of the President of the United States.

Perhaps a comparable case—the parallel is not exact, of course, but when the President appoints an Attorney General, and that Presidential appointee makes charges against an individual in the Government who happens to be a Presidential appointee, he is not restricted at all. That individual is not above the law, and he must obey the law; and if the Attorney General and the Justice Department wish to take action, they certainly can.

In this case, the categories of charges are extremely limited. They must constitute a merit abuse, and they must be certain specific abuses as outlined by the Senator from Illinois.

So it would seem to me that by working with the distinguished Senator from Maryland, who fully supports this amendment, we have found a mechanism to help the President, because the tendency is, as we all know, in the real world in which we live, that when a new administration is being put together, the President, his advisers, and the campaign staff have to draw upon people who have worked with them, whom they have gotten to know in the campaign in one context. They take people up out of one activity of life and put them, many times, into an entirely new activity, and we are all well aware of the fact that we have today serving in Government people who have been in the private sector, who, for the first time, have assumed a government role.

Certainly the President cannot be expected, or the White House staff cannot be expected, to be a watchdog over everything that 900 people do.

All the Senator from Illinois is trying to do is provide a procedure because of that, because of the known abuses and the great problems we have, and the fact that we do find an erosion of confidence in government. It used to be that we looked upon the Federal Government as an area where there was little abuse of the kind that we had experienced in local politics. You would expect to see hanky-panky in the sheriff's office, but you would not expect to see problems with the FBI. You would to see problems in the State legislature of one State or another, but you very seldom ever did in the Congress of the United States. You might expect to see, in some local financial agency or in a State government, problems of conflicts of interest or payoffs or kickbacks, but you would not expect to see it in the General Services Administration of the United States of America.

But all of us, within the last 12 months, have seen that Congress is not immune, the FBI is not held guiltless in some of its activities because of the charges that have been made, and certainly the present Civil Service administration has not been immune from the kind of problems that we have encountered at other levels of government.

This is merely to say that the public's erosion of confidence in the Federal Government must be arrested, and we have to take steps to see that we do not have a double standard, with one standard applying to most officials in positions of responsibility, but making immune 900 of the most powerful positions in the executive branch of the Government.

I should think the President would welcome and look forward to having the feeling that, a general counsel, appointed by him, confirmed by the Senate, through the Merit System Protection Board, once he had a basis for feeling that there had been violations of these particular areas, nepotism, illegal discrimination, et cetera, that he would have the protection that could be offered to his office, if charges were made by the special counsel, the Merit Systems Protection Board would have a hearing and have its findings sent to the President for his final and ultimate determination.

The Senator from Illinois is quite prepared to vote on the amendment, unless there are further comments.

Mr. CHILES. Mr. President, I would like to comment briefly. There was an allusion that this might be similar to the Attorney General being able to prosecute charges against any Presidential appointee.

There is a distinct difference there. The Attorney General is charged with being sort of the chief prosecutor of all crimes. He is not over civil service employees; he is not over a class of people.

His job, of course, is to be the chief law enforcement officer of the United States, for and against all of its citizens.

We are now dealing with the Merit Protection Board, which is to oversee and to look over charges for and against employees under civil service. That is a class of people; it is not all citizens, so there is a distinct difference in that regard.

As I pointed out earlier, it is my feeling that we are reaching a point here where we should allow the merit protection system to work its judgment for and against employees that are covered by the civil service. We should allow the special counsel to protect the whistleblower bringing charges against a wrongdoer under the civil service.

We are dealing with a class of people who are given special protections, protection against firing, protection against layoff. They also have to pass a merit exam to get that employment. We are taking them out of the old political system.

But we decided in the wisdom of many, many Congresses, and many past actions, that we will allow a President to appoint a certain number of appointees who are political appointees. At the same time, we make him directly responsible for those appointees. I think we need to continue that responsibility. I think it is very important that we continue that responsibility, that we do not set up a buffer that says, "You are going to allow the merit system to look in between."

We do not give the special counsel these additional responsibilities.

If charges are made, and it is covered in this bill, if charges are made against one of these Presidential appointees, the special counsel who can look into those charges would report his findings to the President, and those findings are made public. We allow the public spotlight to determine whether the President handles those charges correctly or not. I think it is that political responsibility that is the strongest kind of force we could have to have the President act properly. At the same time, I would not relieve him of that responsibility at all.

Under the circumstances, Madam President, I move to table the amendment of the Senator from Illinois, and 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 question is on agreeing to the motion to lay on the table the amendment of the Senator from Illinois. 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 South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from North Carolina (Mr. MORGAN), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

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

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. LAXALT), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The result was announced—yeas 60, nays 31, as follows:

[Rollcall Vote No. 363 Leg.]

YEAS—60

Allen	Glenn	Metzenbaum
Bayh	Gravel	Moynihan
Bentsen	Hart	Muskie
Biden	Hatfield, Mark O.	Nelson
Bumpers	Hatfield, Paul G.	Nunn
Burdick	Hathaway	Packwood
Byrd, Harry F., Jr.	Hodges	Pearson
Byrd, Robert C.	Hollings	Pell
Cannon	Huddleston	Proxmire
Chiles	Humphrey	Randolph
Church	Inouye	Ribicoff
Clark	Jackson	Riegle
Cranston	Kennedy	Sarbanes
Culver	Leahy	Sasser
Danforth	Long	Sparkman
DeConcini	Magnuson	Stennis
Durkin	Matsunaga	Stevenson
Eagleton	McGovern	Stone
Ford	Melcher	Thurmond
Garn		Williams
		Zorinsky

NAYS—31

Bartlett	Hatch	Schweiker
Bellmon	Hayakawa	Scott
Brooke	Heinz	Stafford
Case	Helms	Stevens
Chafee	Javits	Talmadge
Curtis	Lugar	Tower
Dole	Mathias	Wallop
Goldwater	McClure	Weicker
Griffin	McIntyre	Young
Hansen	Percy	
Haskell	Roth	

NOT VOTING—9

Abourezk	Domenici	Laxalt
Anderson	Eastland	Morgan
Baker	Johnston	Schmitt

So the motion to lay on the table UP amendment No. 1771 was agreed to.

Mr. CHILES. Madam President, I move to reconsider the vote by which the motion to table was agreed to.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I will yield for unanimous-consent requests.

Mr. HEINZ. Madam President, I ask unanimous consent that Pam Haynes of my staff be granted privilege of the floor during consideration of this.

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

Mr. EAGLETON. Madam President, I ask unanimous consent that Emily Eiselman and Sally Brian be granted privilege of the floor during the pendency of this measure, as well as the tariff and tax bills.

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

Mr. PELL. Madam President, I ask unanimous consent that William Young and John Rich of the Foreign Relations Committee staff be granted privilege of the floor.

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

Mr. GLENN. Madam President, the same request for Walker Nolan of my staff.

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

Mr. STONE. Madam President, the same request for Craig Wolfson of my staff.

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

Mr. BUMPERS. Madam President, the same request for Karen Minton of my staff.

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

Mr. WALLOP. Madam President, the same request for Cynthia Gulley of my staff.

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

Mr. DECONCINI. Madam President, the same request for Shirley Wilson.

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

Mr. HARRY F. BYRD, JR. Madam President, the same request for Joan O'Neal.

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

Mr. NUNN. Madam President, the same request for Robert Carragher.

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

Mr. LEAHY. Madam President, the same request for Jeff Petrich of Senator DURKIN's staff and, for the duration of the day, Michael Choukas of my staff.

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

UP AMENDMENT NO. 1772

(Purpose: To protect whistleblowers within the Federal Government)

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Vermont (Mr. LEAHY) proposes an unprinted amendment numbered 1772.

Mr. LEAHY. Madam 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:

Page 158, line 22, strike "(j)" and insert in lieu thereof "(i)".

Page 158, line 25, strike "(J) (2)" and insert in lieu thereof "(i) (2)".

Strike page 159, line 12 through page 161, line 14, and insert in lieu thereof the following new subsection:

"(e) (1) The Special Counsel may receive information, the disclosure of which is not specifically prohibited by statute or Executive Order 11652, or any related amendments thereto, concerning the existence of any activity which appears to constitute a violation of law, rule, or regulation, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety. In such cases, the Special Counsel shall not disclose the identity of the person who disclosed the information without the consent of such person, unless the Special Counsel determines that such disclosure is unavoidable.

"(2) (A) Whenever the Special Counsel receives information of the type described in paragraph (1) of this subsection, the Special Counsel shall promptly transmit such information to the appropriate agency head.

(B) If, within fifteen days after the receipt of such information, the Special Counsel determines that there is a substantial likelihood that the information discloses a violation of law, rule, or regulation, or mismanagement, gross waste of funds, abuse of

authority, or a substantial and specific danger to the public health or safety, the Special counsel may require the agency head to conduct an investigation and submit a written report within sixty days after the day on which the information is transmitted to the agency head or within such longer period of time as agreed to in writing by the Special Counsel: *Provided, however,* That the Special Counsel may require an agency head to conduct an investigation and submit a written report only where the information was transmitted to the Special Counsel by a present or past employee or applicant for employment in the agency which the allegation concerns.

"(3) Any report required under subparagraph (2)(B) of this subsection shall be reviewed and personally signed by the agency head and shall include—

"(A) a summary of the information with respect to which the investigation was initiated;

"(B) a description of the conduct of the investigation;

"(C) a summary of the findings of the investigation;

"(D) a listing of any violation or apparent violation of any law, rule, or regulation found during the course of the investigation; and

"(E) a description of any corrective action taken or planned as a result of the investigation, such as—

"(i) changes in agency rules, regulations or practices;

"(ii) restoration of any aggrieved employee;

"(iii) disciplinary action against any employee; and

"(iv) referral to the Attorney General of any evidence of criminal violation.

Any such report shall be sent to the Congress, to the President, and to the Special Counsel for transmittal to the complainant. Whenever the Special Counsel does not receive the report of the agency head within the time prescribed in subparagraph (2)(B) of this subsection, the Special Counsel may transmit a copy of the information which was transmitted to the agency head to the President and to the Congress together with a statement noting the failure of the agency head to file the required report.

"(4) Whenever the Special Counsel transmits any information to the agency head under subparagraph (2)(A) of this subsection, but does not require an investigation under subparagraph (2)(B) of this subsection, the agency head shall, within a reasonable time after the information was transmitted, inform the Special Counsel, in writing, of what action has been, or is to be taken and when such action will be completed. The Special Counsel shall inform the complainant of the report of the agency head.

The Special Counsel shall maintain and make available to the public a list of noncriminal matters referred to agency heads under paragraph (2) of this subsection together with the reports submitted by the heads of agencies; Provided, however, that nothing in this paragraph shall permit the public disclosure of any information the disclosure of which is specifically prohibited by statute or Executive Order 11652 or any related amendments thereto.

"(5) If, during the course of any investigation, the Special Counsel or the agency head determines that there is reasonable cause to believe that a criminal violation by an employee has occurred, such official shall promptly report such determination to the Attorney General and shall submit a copy of such report to the Director of the Office of Personnel Management and to the Director of the Office of Management and Budget."

Page 161, line 15, strike "(g)(1)" and insert in lieu thereof "(f)(1)".

Page 162, line 13, strike "(h)" and insert in lieu thereof "(g)".

Page 162, line 18, strike "(i)(1)" and insert in lieu thereof "(h)(1)".

Page 163, line 12, strike "(j)(1)" and insert in lieu thereof "(i)(1)".

Page 163, line 17, strike "(i)(2)" and insert in lieu thereof "(h)(2)".

Page 163, line 20, strike "(i)(2)" and insert in lieu thereof "(h)(2)".

Page 164, line 4, strike "(k)" and insert in lieu thereof "(j)".

Page 164, line 10, strike "(l)" and insert in lieu thereof "(k)".

Page 164, line 16, strike "(m)" and insert in lieu thereof "(l)".

Page 164, line 20, strike "(n)" and insert in lieu thereof "(m)".

Page 164, line 24, strike "(o)" and insert in lieu thereof "(n)".

Page 165, line 6, strike "(d), (e), (i) or (j)" and insert in lieu thereof "(d), (e), (h) or (i)".

Mr. LEAHY. Madam President, the amendment I have sent up is very similar to the amendment that was there before with some changes. It is a whistle-blowing amendment.

The amendment collapses two subsections of section 1206—subsection (e), concerning special counsel discovery of illegality, and subsection (f), dealing with special counsel referral of the substance of whistle-blower complaints—into a single new subsection (e).

Under the provisions of this amendment, the special counsel is authorized to receive allegations of violations of law, rule, or regulation, mismanagement, gross waste of funds, abuse of authority, or substantial and specific dangers to the public health or safety. All such allegations must be promptly transmitted to the head of the agency which the allegations concern. The identity of the complainant should not be disclosed by the special counsel except where it is unavoidable. In those cases, however, where the special counsel finds, within 15 days, that there is a substantial likelihood that the allegation is true, the special counsel can order an agency investigation. However, the special counsel can insist on an agency investigation only when the complainant is a present or recent past employee or applicant for employment in the department which the allegation concerns.

In "substantial likelihood" cases, the agency can conduct whatever type of investigation which, in its discretion, it determines to be appropriate. The agency must, however, report back to the Special Counsel, to the President, and to the Congress within a fixed time—60 days unless the Special Counsel extends—on the conduct and findings of the investigation. The Special Counsel transmits his copy of the report of the agency head to the individual who made the allegation, so that his identity need never be revealed. Where the agency head fails to report back within the fixed time, the Special Counsel may send the original allegation to the President and the Congress with a statement noting the failure of the agency head to respond.

In cases other than "substantial likelihood" cases, the agency head is under an obligation to inform the Special Counsel, within a reasonable time, of what action has been taken or is planned. Where the allegation is frivilous on its face, it would be appropriate for the agency head to inform the Special Counsel that no investigation has been conducted nor is planned. The Special Counsel informs the individual who made the allegation of what the agency head reports.

The Special Counsel is required to keep a public log of all noncriminal referrals and the reports of the agency heads about these referrals. This public log will not contain any classified or statutorily protected information.

Whenever the Special Counsel or the agency head finds evidence of criminal wrongdoing by an employee, they are under an obligation to report that information to the Attorney General and to the Directors of OPM and OMB.

The Leahy whistleblowing amendment will not change who can report allegations to the Special Counsel. It will not affect in any way the number of complaints which the Special Counsel is likely to receive. All of the provisions are identical to the language which was reported from the Senate Government Affairs Committee.

The Leahy amendment will also not change the protection from reprisals which are provided for in the committee bill.

When an agency conducts an investigation in response to a substantial liklihood request from the Special Counsel, a report of that investigation will be forwarded to the President, the Congress, and the Special Counsel. The Special Counsel will not review or comment on the report. He or she will provide the original whistleblower with a copy of the agency report. This will complete the circle since the whistleblower went to the Special Counsel to be assured, whenever possible, of anonymity. The President and the Congress can decide what, if any, action they consider appropriate having received the report.

Madam President, this matter has come up somewhat earlier than we expected. I should note that a Dear Colleague letter in support of this amendment was to have been circulated this afternoon. I would like to share that Dear Colleague letter and list our cosponsors:

COMMITTEE ON APPROPRIATIONS,
Washington, D.C., August 24, 1978.

DEAR COLLEAGUE: When the Senate considers S. 2640, the Civil Service Reform Act, we intend to offer an amendment to strengthen the whistleblower protections. This proposal will assure that the charges raised by whistleblowers—those federal employees who disclose illegality, waste, abuse, or dangers to public health or safety—are fully investigated. We ask you to join with us in establishing a mechanism for the handling of whistleblower complaints which will result in the systematic weeding out of wronged from the federal service.

The Governmental Affairs Committee strengthened the protections accorded federal employees who go public with evidence of illegality, mismanagement, waste of funds, or dangers to public health or safety. The Committee should be praised for its efforts to safeguard the free speech rights of federal employees. We do not believe, however, that the committee went far enough.

Although employees are free, under the committee's bill, to publicly disclose impropriety, no dissent channel is established so that employees can seek internal resolu-

tion of allegations. Our amendment seeks to assure that employees have a safe place to go outside their agency where their allegations will be taken seriously. We hope to encourage employees to give the government the first crack at cleaning its own house before igniting the glare of publicity to force correction. We do not want to limit the employees' rights to speak out when they see wrongdoing; we do want to assure them that the government has a commitment to eliminating the wrongdoing.

The amendment would empower the Special Counsel of the Merit System Protection Board to receive complaints of violations of law, rule, or regulation, mismanagement, gross waste of funds, abuse of authority, or substantial and specific dangers to the public health or safety. The Special Counsel would protect the employee by preserving his or her anonymity. All complaints would be forwarded to the head of the agency involved, but for those complaints with a substantial likelihood of validity the Special Counsel could order a sixty day agency investigation. The agency would report on its findings to the President, so he could exercise his executive responsibilities; to the Congress, so it could fulfill oversight obligations; and to the Special Counsel, so he could transmit the report to the employee who filed the complaint.

Hence, the Special Counsel serves first and foremost as the protector of employees' rights and as a conduit to prevent reprisals and to help agencies purge wrongdoing. The Special Counsel is not set up as an all-powerful overseer: He lacks any power to investigate or to review the investigation of an agency. Rather, we assume that authorizing the President and the Congress to review agency reports will force agencies to take corrective action.

Adoption of this amendment will vindicate the Code of Ethics for Government Service, established by Congress twenty years ago, which demands that all federal employees "Uphold the Constitution, laws, and legal regulation of the United States and all governments therein and never be a party to their evasion" and "Expose corruption wherever discovered." Under our amendment, an employee can fulfill these obligations without putting his or her job and career on the line. In fact, an employee could force agency self-correction without ever going public, under this amendment.

Our amendment creates a systematic method of eliminating various forms of wrongdoing from the federal government. Historically, changes are made only after a scandal is disclosed. This method of rooting out corruption is hit or miss, scatter-shot. The amendment allows for selfcleaning to take place on a regular, continual basis. If vigilant government workers are around, illegalities need no longer swell and fester for years before discovery. Mismanagement, abuse, and waste of funds can be promptly discovered and corrected with the help of dedicated federal employees. In the long run, we are certain that this early discovery and rectification will result in more efficient, less bloated government. Isn't the message we have been getting from the country in the last few months precisely this—that people want an honest and efficient government that works?

Finally, this amendment can assure that the type of over politicization which some fear will result from S. 2640 is nipped in the bud. Disclosure can call a halt to a President misusing agency personnel to perform campaign work or to advance certain favored special interests. This amendment provides the counterweight to the increased management flexibility provided for in the Civil Service Reform Bill.

We seek your cosponsorship and support on our amendment. If you need additional information or have any questions please contact David Julyan (x42398).

Sincerely,

Bob Dole, William Proxmire, Edward M. Kennedy, Charles H. Percy, Robert T. Stafford, Claiborne Pell, James Abourezk, Howard Metzenbaum, Patrick J. Leahy, Muriel Humphrey, Dennis DeConcini, Richard Lugar, Dick Clark, Donald Riegle, Henry Bellmon, John Melcher, and Orrin Hatch.

Mr. RIBICOFF. Will the Senator yield?

Mr. LEAHY. Certainly.

Mr. RIBICOFF. Madam President, I want to take this opportunity to extend praise to the distinguished Senator from Vermont for his early and hard work to protect whistleblowers.

The committee's action in strengthening the protection of whistleblowers came primarily because of the work that the Senator from Vermont and the Senator from Minnesota (Mrs. HUMPHREY) contributed.

I do believe that this amendment improves the protection for whistleblowers.

I want to commend the Senator from Vermont and, as manager of the bill, I am more than pleased to accept the amendment of the Senator from Vermont.

Mr. LEAHY. I thank the Senator.

Mr. METZENBAUM. Madam President, I rise to support the amendment of my distinguished colleague from Vermont (Mr. LEAHY). He has worked diligently in the development of his own legislation to provide greater protections for whistleblowers. I commend him for his efforts in this area. I, too, submitted a bill to this Congress which would have provided judicial remedies for Federal employees who suffer reprisals after exposing illegal or wasteful governmental activities. My work in this area convinces me that the amendment now offered by my colleague from Vermont would establish the best possible mechanism for protecting whistleblowers. It would allow the special counsel of the Merit Protection Board to order an investigation of allegations of illegal conduct or gross waste in the Federal Government without revealing the name of the complaining employee. This approach would protect whistleblowers from reprisals while exposing deficiencies in the way the Government and its employees operate.

I am sure there are a number of Federal employees today who would speak out about abuses of authority if it were not for the real danger that they would be subjected to harassment, financial loss, or damage to their careers. The country needs conscientious civil servants who care enough to criticize deficiencies and want to improve the Federal Government's ability to meet its obligations to the citizenry. Providing remedies to employees only after some overzealous superior has acted to discipline outspokenness is nct the answer. The costs are too great even when the whistleblower eventually prevails. Ernest Fitzgerald, and those who have helped him, spent over half a million dollars to gain job reinstatement after Fitzgerald disclosed a $2 billion cost overrun in the C–5A program. And, I am certain that such financial hardship does not compare to the enormous psychological costs to employees who are the objects of reprisals.

Federal agencies and departments will benefit from this amendment, because they will be able to cure waste, mismanagement, violations of law, and dangers to health and safety without the glare of publicity that can accompany whistleblowing. If appropriate governmental bodies fail to act to solve such problems, the Congress and the President will be alerted so they can initiate the necessary reforms.

I commend my good friend from Vermont for this innovative approach to protecting whistleblowers when they reveal governmental dificiencies and to encouraging the most effective and efficient Federal bureaucracy possible.

Mr. LEAHY. Madam President, I appreciate the comments of the Senator from Ohio. I appreciate very much the comments of the distinguished Senator, the chairman (Mr. RIBICOFF).

I might say that Senator RIBICOFF has been in the forefront of this effort long before I came to the U.S. Senate. It would have been impossible for me to have put together this amendment without his help and diligence, the help of the ranking minority member (Mr. PERCY), and the others I have named here today. We all have worked very closely together.

I might say, also, that Senator CHILES, who has shown a great deal of interest in this matter, has worked closely with us today. The final bill is a result of the cooperation among Senator RIBICOFF, Senator PERCY, Senator CHILES, Senator HUMPHREY, myself, and others. We have a bill on which we all agree.

I yield to the Senator from Illinois.

Mr. PERCY. Madam President, as a cosponsor of the Leahy amendment, the Senator from Illinois knows of no objection on this side of the aisle, and the amendment is acceptable.

I commend my distinguished colleague for his leadership in this area.

Mr. LEAHY. I understand the committee is going to accept this amendment, and I am perfectly willing to yield back the remainder of my time.

The PRESIDING OFFICER. There is no time limitation.

● Mr. KENNEDY. Madam President, I rise to express my strong support for the amendment offered by the distinguished Senator from Vermont. In doing so I would also like to commend Senators RIBICOFF and PERCY, as well as the Governmental Affairs Committee as a whole, for their work on this important and timely legislation.

The whistle-blower provisions of this bill, if coupled with the Leahy amendment, will be just what the public and the Congress want—and what the bureaucracy needs—for this proposal is clearly in line with the message that we have been receiving from an angry public: We have had too much waste in Government; we have had too much ineptitude in Government; we have had too much inefficiency in Government; and we have even had too much corruption in Government. And we do not need new

ranks of bureaucrats to clean up what others have messed up. We merely need to provide protection and incentives, for those presently in public service, to bring to light—and to rectify—lawlessness and waste in Government.

For whistle-blowing will be amply staffed by our existing army of the conscientious and dedicated Government employees—those who are committed enough, professional enough, and patriotic enough to "blow the whistle" on corruption, waste or illegality that they see around them. That is why I express strong support for S. 2640 and its protection for Government employee whistleblowers.

But insuring that the alarm is sounded. and insuring that the employee is indeed protected, is only the first step in the process. For the true purpose of whistleblowing is not the public recognition of the dedicated employee, but the correction of Government wrongdoing, the saving of taxpayer's money, and the prosecution of the corrupt.

Some provision must therefore be made to follow up on substantial allegations of waste or wrongdoing, while screening out frivolous or unfounded accusations. This is exactly what our amendment accomplishes.

If after a period of 15 days, under this proposal, the Special Counsel finds a substantial likelihood that an allegation is true, he can require that the head of the relevant agency conduct an investigation and submit a report on that investigation within 60 days. To insure that an agency does not attempt to whitewash an in-house scandal, the amendment explicitly spells out what that report must include, including substantiation of the charges, corrective measures, disciplinary actions, et cetera.

Any report not deemed adequate will be transmitted to the Congress and the President, thereby opening further incentives for correction of any wrongdoing.

In turn, the Special Counsel would act as a filtering process that would screen out frivolous or self-serving accusations by eliminating cases during the initial 15-day investigatory period. The amendment goes further to provide an opportunity for the agency to exonerate itself of baseless charges and to correct and eliminate any internal waste or corruption within its own house. The amendment thus allows the agency the opportunity of an internal investigation. Only if the agency refuses to undertake an investigation, or their investigation proves inadequate, does the glare of publicity come into play. Of course, throughout this process the identity of the whistleblower is kept confidential, unless the Special Counsel determines that he has acted in bad faith.

I have been a firm believer in the benefits of "whistleblowers" since I introduced the first whistle-blower legislation in 1971. I chaired hearings before the Subcommittee on Administrative Practice and Procedure where we heard dozens of witnesses recount stories of transfer, demotion, harassment, and retaliation in return for telling the public the truth. I am more than happy to see the fruits of these efforts today.

All but the most simplistic of sloganeers know that our Federal agencies are not "faceless bureaucracies," but that they are instead made up of individuals who are professional, honest, and hard working. We must maximize the contributions that conscientious public servants can have to good government and increased economy. We must provide our civil servants with an impartial "dissent channel" to which they can direct reports of corruption or waste. We must provide them with the protection that they deserve for speaking out. And we must make the most of their courage and honesty by providing a follow-through mechanism that will correct the wrongs that are disclosed. Let us achieve all of these worthy purposes, by supporting S. 2640, the civil service reform bill, and Senator LEAHY's amendment.●

Mr. RIBICOFF. As I said, Madam President, the amendment is acceptable to the manager of the bill and the ranking minority member.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. LEAHY. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

● Mr. DOLE. Mr. President, as an original cosponsor of this amendment, I am pleased to rise in support of this long-needed protection.

Mr. President, this amendment will provide Federal employees an opportunity to speak out when they witness governmental waste, inefficiency, and illegality, without fear of reprisal.

WHISTLEBLOWER PROTECTION

Mr. President, one of the most important aspects of this amendment is the encouragement of Federal employees to disclose illegality, waste, abuse, or dangers to public health or safety, without the fear of reprisal. As we all know, Federal employees who have been aware of wrongdoings have not felt comfortable or safe in complaining within their own agencies. Unfortunately, those who have and have been punished for their whistleblowing, clearly points to the need for a separate, independent agency to receive and process these allegations in a safe, confidential, and in a expeditious manner.

WHISTLE BLOWING: LET US PROTECT ITS USEFULNESS

Mr. President, while I wholeheartedly endorse the concept behind this amendment, that is, to encourage Federal employees to disclose acts of governmental wrongdoings, and to protect the employees—the whistle blower—from retaliation, I want to make it very clear that this is not an open invitation to any disgruntled Federal employee or misinformed citizen to make false allegations of wrongdoings by a Federal agency.

Mr. President, in this regard, our amendment would empower the special council of the Merit System Protection Board to receive complaints of governmental wrongdoings. The special council would protect the employee by preserving his or her anonymity. It is my understanding that all the complaints would be forwarded to the head of the agency involved, and that for those complaints with a substantial likelihood of validity, the special council could order a 60-day agency investigation. The agency would then report on its findings to the President, enabling him to exercise Executive responsibility to the Congress so it could fulfill oversight obligations; and to the special counsel so he could transmit the report to the employee who filed the complaint.

Mr. President, I believe that the American people will be the prime beneficiaries if this amendment is adopted. The American people are entitled to the best Government and the best officials their tax dollars pay for.●

AMENDMENT NO. 3514, AS MODIFIED

Mr. PELL. Madam President, I call up my printed amendment and ask that it be stated and modified as indicated.

The PRESIDING OFFICER. The amendment, as modified, will be stated.

The legislative clerk read as follows:

The Senator from Rhode Island (Mr. PELL) proposes an amendment numbered 3514.

The amendment, as modified, is as follows:

On page 133, line 21, immediately before the semicolon, insert ", Foreign Service officers of the United States".

On page 167, after line 7, insert the following new section:

"§ 1208 Exception for Foreign Service officers

"This chapter shall not apply to Foreign Service officers of the United States.".

On page 175, line 15, strike out ", and" and insert in lieu thereof: "; or",

"(D) an individual who is a Foreign Service officer of the United States; and".

On page 178, line 14, strike out the period and insert in lieu thereof: "; or",

"(5) who is a Foreign Service officer of the United States.".

On page 203, line 2, immediately after "position", insert: "(other than a Foreign Service officer of the United States)".

On page 203, line 17, strike out "Except for a position in the Foreign Service" and capitalize "the" immediately after the deleted phrase.

On page 258, line 13, immediately after "individual" insert "(other than a Foreign Service officer of the United States)".

Mr. PELL. Mr. President, this amendment is cosponsored by Senators GLENN and JAVITS. I ask unanimous consent that their names be added as cosponsors.

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

Mr. PELL. Madam President, what this amendment does as modified—am I correct in saying that it is modified?

The PRESIDING OFFICER. It is modified.

Mr. PELL. Madam President, this amendment, as modified, exempts from the civil service reform bill the Foreign Service officers, who are a small group with their own personnel system, their own grievance procedures, their own

selection-out system, a system that does not apply to the CIA or the FBI.

The PRESIDING OFFICER. Will the Senator suspend?

The Senate will be in order. The galleries will please be quiet.

Mr. PELL. Madam President, this bill would make a fundamental change in the Foreign Service career personnel system and would reduce the authority of the Secretary of State to administer the system. These are not changes that should be made lightly, without full consideration, and I do not believe they have received such consideration. Certainly the Foreign Relations Committee has not had an opportunity to hold hearings on this bill.

Accordingly I propose this amendment to exempt Foreign Service personnel from several provisions of this bill to avoid possible inadvertent long-term damage to the Foreign Service.

This is the civil service reform bill. The fundamental problems addressed by this bill are related primarily to the Government-wide civil service system administered by the Civil Service Commission. The employees involved are in the general schedule—GS—pay system.

There is no need to cover the Foreign Service under this bill, because it has its own set of statutory merit principles, very similar to those in this bill. It is administered by the Secretary of State independently from the Government-wide civil service, general schedule system. It has its own legislated grievance system—the only such system in the Government of which I am aware. Foreign Service employees with a grievance can appeal to the independent Foreign Service Grievance Board and get a fair hearing. That Board is set up to deal with the problems that may arise in the context of the Foreign Service requirement to live and work abroad for a substantial part of one's career.

It is not necessary for Foreign Service personnel to have a separate avenue of appeal to the proposed Merit Systems Protection Board. Neither is it necessary to give the Board and its special counsel authority to investigate merit violations in the Foreign Service system, nor authority to stay an adverse Foreign Service personnel action. To do so would be to duplicate existing appeal rights and related investigatory authority—the exact opposite of the much advertised streamlining purpose of this civil service reform bill.

Madam President, the fundamental change in the Foreign Service personnel system about which I spoke at the outset could result from the inclusion of Foreign Service personnel under the proposed Senior Executive Service that would be established by title IV of this bill.

Title IV adapts principles applicable to the Foreign Service and military systems from their founding—and, of course, the military is not covered in any way by this bill. These principles are the rank-in-person rather than rank-in-position pay system and transferability at the convenience of the Government rather than the individual.

The Senior Executive Service would provide a rank-in-person system which allows flexible assignments, but only at the senior level and covering all agencies. This program is fundamentally incompatible with the existing personnel structure of the Foreign Service, which operates on a rank-in-person system with mobility among jobs throughout an entire career.

The pursuit of our national objectives in the areas of foreign policy requires a Foreign Service system which trains people in diplomacy throughout their careers, and which can retain those individuals in the Foreign Service in senior positions. The career concept of the Foreign Service also depends upon the availability of senior positions for those personnel who spend their professional lives developing the necessary skills and attributes to fill them. Those senior level jobs are an integral part of the total Foreign Service personnel system and should not be treated differently.

Foreign Service officers are hired not to fill a particular post, but for their long-term career potential. They are promoted by merit from rank to rank as they grow in experience. The system is disciplined, and characterized by frequent transfers from job to job and country to country; it is designed not just to insure that necessary tasks are performed, but to develop leaders through increasing challenges. The system prepares and screens the best officers for service at ambassadorial and other high levels.

I note that the intelligence services which also have their own career personnel systems in the Excepted Service are exempted from the Senior Executive Service, and I support that position. My amendment would add the Foreign Service of the United States to the list of personnel systems and agencies to be exempted from title IV of the civil service reform bill and from other titles and sections of this bill that would lead to duplication or that would be potentially harmful to the Nation's ability to effectively carry out its foreign policies and programs.

The effect of these amendments will be to maintain the present, separate legislative base for the modern Foreign Service of the United States which the Congress has taken great care to preserve over the years since the passage of the Rogers Act of 1924 and more recently the Foreign Service Act of 1946.

In the Foreign Service Act of 1946, Congress introduced a new personnel structure to replenish the war-depleted ranks of the Foreign Service "through entry at the bottom on the basis of competitive examination and advancement by merit to positions of command." * The almost military tone of that passage from the report indicates that the congressional authors had in mind a highly disciplined, tightly unified service running clear to the top positions in our foreign affairs activities.

The necessity for such a disciplined and unified service is no less strong today. Unless the civil service reform bill is amended, the Foreign Service would face the same problem that would confront the military services if their senior ranks above colonel and captain were put into a separate organization. A disciplined service has to be a unified service. The congressional founders of the Foreign Service saw that, and my amendments will serve to keep intact the structure which they considered so important to conduct of our foreign relations.

For those reasons, it seems sensible that this amendment should be accepted.

I have been in conversation with the manager of the bill and the ranking minority comanager of the bill, and they have indicated some support.

Mr. RIBICOFF. Madam President, the amendment of the distinguished Senator from Rhode Island is acceptable to the manager of the bill.

Mr. PERCY. Madam President, the distinguished Senator from Rhode Island, I think, is the only member of the U.S Senate who has served in the Foreign Service and we look to him for guidance and counsel many times. I find the amendment acceptable, and I know of no objection.

Mr. GOLDWATER. Madam President, if the Senator will yield, I really do not understand what this amendment does. Will the Senator explain it?

Mr. PELL. It gives the Foreign Service officer corps, who have their own personnel system, their own grievance procedure system, their own promotion system, based on promotion up or selection out—very like the military—the same exemption that the CIA, the FBI, and the military services enjoy under the bill as drafted.

Mr. GOLDWATER. In other words, to put them under Civil Service?

Mr. PELL. No, just the opposite.

Mr. GOLDWATER. They are taken out?

Mr. PELL. It keeps them as they are, as a separate service. This does not apply to the secretaries and staff people who would be under the system. It applies only to people who have commissions signed by the President or the Secretary of State as Foreign Service officers.

Mr. GOLDWATER. I see no objection. They are far better protected than any people under civil service.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. PELL. Madam President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Is there further amendment?

Mr. RIBICOFF. I think the Senator from Pennsylvania has an amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. METZENBAUM. Madam President, will the Senator yield for a unanimous-consent request?

Mr. HEINZ. I yield.

Mr. METZENBAUM. Madam Presi-

*HR Rep. No. 2508, 79th Cong., 2nd Session (1946)

dent, I ask unanimous consent that Marc Asch and Ellen Bloom have the privilege of the floor during the consideration of this measure.

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

Mr. GOLDWATER. Madam President, will the Senator yield for a comment?

Mr. HEINZ. I yield.

Mr. GOLDWATER. Madam President, I have listened to these requests for staff members to be on the floor. I have made the interesting observation that there are more staff members on the floor than elected Senators of the United States. Maybe we had better include the Senators under Civil Service and let the staff take the floor.

[Laughter.]

The PRESIDING OFFICER. Is the Chair supposed to comment?

[Laughter.]

The Senator from Pennsylvania.

UP AMENDMENT NO. 1773

(Purpose: Placing restrictions on dual pay for retired military members serving as civilian employees of the Government)

Mr. HEINZ. Madam President, I send to the desk an amendment on behalf of myself, Senator EAGLETON, and Senator PERCY.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 1773.

Mr. HEINZ. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 198, after line 25, insert the following:

DUAL PAY FOR RETIRED MEMBERS OF THE UNIFORMED SERVICES

SEC. 305. (a) Section 5532 of title 5, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting after "entitled" the following: ", except as provided in subsection (c),"; and

(B) by striking out "or retirement" each place it appears;

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

"(c)(1) If any member or former member is receiving retired pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired pay (reduced, in the case of a retired officer of a regular component of a uniformed service, by an amount equal to the annual rate of the reduction under subsection (b) of this section), exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's pay for such employment shall be reduced by an amount computed under paragraph (2). The amounts of the reduction shall be deposited to the general fund of the Treasury of the United States.

"(2) The amount of each reduction under paragraph (1) for any pay period in connection with employment in a position shall be equal to the retired pay allocable to the pay period (reduced, in the case of such an officer, by an amount equal to the amount of the reduction under subsection (b) of this section for such period), except that the amount of the reduction may not result in the amount payable for the pay period, when combined with the retired pay allocable to the pay period (as so reduced in any such case), being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule.";

(3) by redesignating subsection (c) as subsection (d);

(4) in subsection (d), as so redesignated—

(A) by striking out "subsection (b) of";

(B) by striking out "or retirement";

(C) by striking out "a retired officer of a regular component of a uniformed service" and inserting in lieu thereof "a member or former member receiving retired pay"; and

(D) in paragraph (1), by striking out "whose retirement was" and inserting in lieu thereof "whose retired pay is computed, in whole or in part,"; and

(5) by striking out subsection (d), as in effect before the effective date on this subsection.

(b)(1) The heading for section 5532 of title 5, United States Code, is amended to read as follows:

"§ 5532. Employment of retired members of the uniformed services; reduction in pay".

(2) The item relating to section 5532 in the analysis for chapter 55 of title 5, United States Code, is amended to read as follows:

"5532. Employment of retired members of the uniformed services; reduction in pay.".

(c) Section 5531 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(3) 'member' has the meaning given such term by section 101(23) of title 37; and

"(4) 'retired pay' means—

"(A) retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (A) through (D) of such section 8311(3); or

"(B) a pension or compensation paid under laws administered by the Veterans' Administration after a waiver of retired pay pursuant to section 3105 of title 38.".

(d) The amendments made by this section shall apply only with respect to pay periods beginning after the effective date of this Act and only with respect to members who first become eligible for retired pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section), after the effective date of this Act except that the provisions of section 5532(b), as amended by this Act, shall apply to any officer of a regular component of a uniformed service irrespective of the date he became eligible for retired pay.

Mr. HEINZ. Madam President, the purpose of this amendment is to place certain restrictions on dual pay for retired military members serving as civilian employees of the Government at the highest levels.

What our amendment does is to address the problem of double dippers—namely, those military retirees collecting pensions who are employed by and are earning salaries from the Federal Government.

Currently, only retired regular military officers have their total earnings limited. Any such retiree who is employed by a Federal agency will have his military pension reduced by approximately $4,000 plus one-half of the remainder. This is current law. But because this applies only to retired regular officers—and exceptions are permitted among even these—we currently have thousands of military retirees who are simultaneously getting paid twice by the Federal Government.

This spring, the House of Representatives held extensive hearings on the problem of dual compensation, and we were shocked to learn that, as a result of our dual compensation law, there are nonetheless more than 200 retirees earning a combined income of between $60,000 and $80,000 annually, paid for by the Federal Government, and that means taxpayers. There are another estimated 2,500 retirees earning an average of $48,000.

The amendment that Senator EAGLETON, Senator PERCY, and I are proposing will limit the total combined income for all military retirees, except those disabled in combat, to the pay limit of Executive Level 5, which currently is $47,500. It will extend to Reserve officers and enlisted personnel and those who could be excepted under current law.

My amendment would be prospective—I emphasize that—and would not penalize any of those retirees currently employed by the Federal Government in civilian capacities.

The House version of the Civil Service Reform Act, H.R. 1128, contains a similar provision, which provision is estimated by the Congressional Budget Office to save approximately $56 million over the next 5 years.

Madam President, this amendment is an extremely modest but nonetheless necessary and reasonable first step in addressing the complex issues of dual compensation.

I feel that the issue as a whole needs a great deal more further study and deep consideration, so that more extensive resolutions to this problem can be examined and considered by Congress; but there should be no doubt in our minds that it is not in the national interest to have at Executive Level V, at the Deputy Assistant Secretary level, at a policy level or position, somebody who would be identified as a double dipper, paid for at taxpayer expense.

Madam President, it is my understanding that the administration has no objection to this amendment.

Indeed we have attempted to work closely with them. I am tempted to say that they support it, but I cannot say that simply because I have not had the opportunity this afternoon to discuss with them personally their support. But my understanding is that they did support the House amendment and that this amendment actually does a somewhat better job from the administration's point of view than does the House amendment.

Mr. GOLDWATER. Madam President, will the Senator yield to me?

Mr. GLENN. Madam President, will the Senator yield for a question?

Mr. HEINZ. Let me first yield to the Senator from Arizona and then I will be happy to yield to my good friend from Ohio.

Mr. GOLDWATER. Madam President, I understand what my friend from Pennsylvania is getting at, and I really think it is time we take a proper long look at this so-called double dipping.

If the Senator wants to include me I can be included and so can many Members of this body and the other body.

But all of the attention is focused on the former man in uniform. One-tenth of 1 percent of the people employed by the Federal Government were formerly officers of the military. Most of these people were enlisted men making very low salaries who now have an opportunity, because of their experience, to make a little more money than their retired pay.

I am not complaining about the Senator's efforts to look into the double dipping, so called, of the military man, but I wish to raise the question about the former Members of Congress who have been important members of committees who go to work in big law firms in Washington and draw down fees that are very exorbitant mostly because of their former association with, say, the Interior Committee or the Judiciary Committee, or who have many friends left on committees on the Hill to whom they can go and get favors.

While that does not come under the same classification, I am getting a little sick and tired of hearing the man in uniform kicked around because he has the expertise, he has the know-how, that certain agencies of Government have to have and they cannot find it anyplace else. Yet at the same time we allow, without any comment, former colleagues of ours on retired pay to take jobs with foreign countries, to take jobs representing giant concerns, where they can use their influence with former friends in Congress to accomplish things.

So I suggest to my friend from Pennsylvania that when he resumes the study of so-called double dipping that we get into this whole field. I say I think we are wrong in attacking the man in uniform or former man in uniform who just because he happens to have gathered knowledge while he was on duty and knowledge that has to be used by the Government is going to be penalized because people look rather shabbily at the man who was in the service of his country.

I hope that when the Senator resumes his studies next year, we cover the whole field including the man in civilian clothes along with the man in uniform.

Mr. HEINZ. Let me say to my good friend from Arizona that I think he makes an excellent point.

First, as a former man in uniform, a former enlisted man, a former member of the Air Force Reserve, and I think the Senator from Arizona still can claim that he is an active member of the Air Force Reserve—maybe he is now retired—but let me say that I share the sentiments about our military myself. I am the stepson of a retired career military officer. My stepfather went to Pensacola and Annapolis, and served in the Navy for 20 years and worked very hard for the Federal Government in that capacity. I have nothing but the highest respect for our men in uniform, and I know the Senator from Arizona is well aware of that.

I happen also to be the only Vietnam veteran in this Chamber. I did not actually fight in Vietnam. I did not go there. But I served in our Armed Forces during that period.

I think the Senator is correct that this is a broad issue. Indeed, this is the reason that we have a commission that has been asked to study this in some detail; namely, the President's Commission on Military Compensation, and it is our hope that that commission will finish its work shortly.

This amendment, I point out once again, is prospective in its application. It will not hurt a single Federal employee, even those who might be earning $80,000 from their combined pay and pension. We do not touch those people, and we do not intend to because that would be breaking a contract implied, I believe, that we have, and we will in no way touch, even prospectively, any of our disabled military, and I hope that the Senator from Arizona feels that the amendment is wise and just in that regard.

I thank my friend.

Mr. GLENN. Madam President, will the Senator yield for a question?

Mr. GOLDWATER. The Senator is not making it retroactive.

Mr. HEINZ. The Senator is entirely correct. We are not making it retroactive.

Mr. GOLDWATER. That is good.

Mr. GLENN. Madam President, will the Senator yield for a question?

Mr. HEINZ. I am very pleased to yield to the Senator from Ohio.

Mr. GLENN. I thank the Senator from Pennsylvania.

On page 5 of the amendment I note that that whole section says, "* * * after effective date of this Act, except that the provisions of section 5532(b), as amended, by this Act, shall apply to any officer of a regular component of a uniformed service irrespective of the date he became eligible for retired pay."

Can the Senator illuminate a little for me what section 5532(b) is?

Mr. HEINZ. Section 5532(b) is the existing civil service law, and it is not the intention of this amendment to change the existing civil service law at all, and it does not.

The section that the Senator from Ohio refers to is to ensure that we do not repeal section 5532(b) through any action that we take here. It is the existing law.

Mr. GLENN. Is it the one where a retired regular officer comes to the Senate, he loses under existing law about a fourth or a third of his retirement pay? Is that the part that is affected here that would continue the same way?

Mr. HEINZ. I regret that I do not have the civil service code in front of me. I could tell the Senator, though, how it reads. Essentially, it says that if you have a pension and are a Federal employee, you will be entitled to your retirement benefit and retirement pay—what is it—approximately $4,000—it is $2,000 adjusted by the cost of living since that law was enacted, which is quite a while ago, plus one-half of the remainder of your retired pay. I do not know, I have to say to the Senator, whether that is the section that the Senator is referring to, but that is what the section does.

Mr. GLENN. This will not change existing law, then?

Mr. HEINZ. This will not change existing law in any way.

Mr. GLENN. I wish to add that I favor the prospective aspects of this, but I also associate my remarks or my views very much with those of the Senator from Arizona, Senator GOLDWATER, in this regard. I think this double-dipping thing is looked at wrongly by a lot of people compared to the views that were held by regular officers of the vintage in which I was in in the military for 23 years.

We looked at it as deferred pay. We gave up some of our pay at that time. At that time we were receiving what was looked at then, and I am sure would be considered now, as substandard pay compared to our compatriots who were in the civilian business world and holding comparable jobs in industry.

I was offered about 2½ times once what my military pay was to go on the outside. If I had done that it would not have taken in the same kind of retirement benefits, and I was quite happy to stay where I was at the reduced pay level with the idea that when I retired it was a good retirement. It was deferred pay, and that is the way I looked at it.

I was earning that, I was earning every nickel of it at the time, and willing to take the reduced salary at the time in order to have this guaranteed income later on when I might retire.

That is the way all people looked at it at that time. We were happy to accept that.

Pay scales in the interim period drastically changed in the military, and I have no objection at all to going forward here henceforth with a different arrangement that people know about when they get in, it is part of their contract with their Government, their Government lives up to it, and that is it.

But if we would do anything that was retroactive, I think we would be breaking faith with people who put up with lesser pay at that time. My kids did with lesser things than I might have been able to buy for them at that time, and my family, because I was willing to accept this deferred pay concept.

I want to explain this because I think a lot of people believe that somehow there is a big ripoff occurring here. I ask the Senator from Pennsylvania if this study should be of all different aspects of double-dipping, whether it comes from retired Members of Congress who may

come back into a different Government position and still have retirement benefits here, whether it occurs by some of the examples mentioned by the Senator from Arizona a few moments ago, why are we pushing this particular area right now to get it through in this bill when we have a big study coming up that should address the whole thing?

A second question would be: To my knowledge there has never been any extensive hearing conducted on this as to what the different groups of people should be who would be considered in this, and I am very happy to see this go forward, let me make that very, very clear. I am happy to see a study of this go forward that would encompass the whole problem of double-dipping and not just addressing it in this one specific area which has been beaten to death over the past couple of years, until the military are supposed to look as though they were big crooks, conning the Government out of something they never earned, when they in fact devoted their lives to the service of their country. All they are asking is that the original contract be lived up to. That is a minimum.

I would be happy to support a very thorough investigation of the whole double-dipping situation if we would go forward with it affecting Congressmen and other people who have been in Government service, other people who have come into Government, if we study the whole thing of double compensation and take it up as a unit.

I would be happy to support it and would be happy to appear as a witness and be happy to participate in such debate and in such hearing.

But to take it up on one little narrow issue that just hits at the military, when we do have a big study coming up, is a bit premature.

Mr. HEINZ. Let me respond to the Senator. First, I agree wholly with the sentiment expressed by the Senator, and I think the question he asked, namely, why do we want to address this very narrow range, this very narrow category, at this time is a perfectly good question.

What is the reason we are addressing this narrow range? First, let us ask the question why are we looking only at military people. Well, there are only two groups of people who can be affected by this legislation: civil servants, because this is the Civil Service Act we are dealing with, and the military people.

As a practical matter, I know of no retired civil servants who have gone into the military. It is pretty hard to get in at age 45, just like it is any place else.

Mr. GLENN. I would agree that probably not too many of them can.

Mr. HEINZ. So we cannot look at it, I say to my friend from Ohio, as civil servants going into the military. That leaves only one thing, the military going into civil service. We cannot help it, it is just the way life works.

Why the particular range of salaries? Well, this happens to be executive level 5. These are policymaking jobs in the U.S. Government, executive level 5, and up—which includes people who make policy for the military, for the civil service, for the Defense Department, for veterans, for health care.

The President himself, both in his campaign and since, has taken a very hard line against double dipping, and this simply conforms to making sure that in the future nobody comes aboard into those policymaking level positions who is going to be considered, no matter how you slice it, a double-dipper.

If there are any double dippers in those policy-level jobs we are not going to hurt them, as this is something that is prospective and will only affect those people who would have, as I say, a combined compensation of $47,500, that is, equivalent to executive level 5 compensation.

Mr. GLENN. Mr. President, if the Senator will yield, if we are addressing this double dipping problem, should we not say and/or Congressmen, Members of Congress, who are eligible for retirement and leave the Congress and go into a Government position with their retirement pay intact? They are probably worse double-dippers than most military because the retirement pay of Congress is very liberal.

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

Mr. HEINZ. If I may just respond, as the Senator well knows, the point he is making is extremely well taken. Congress is not subject, as he knows, to the civil service laws. Congress is not subject to EEOC, Congress is not subject to the child labor law; Congress is not subject to a lot of things. I think the Senator understands—and I wish it were otherwise—that he and I believe together that what is good for the goose is good for the gander, and I know the Senator joins me in that.

But I think the Senator also knows, without my having to say so, that this is a civil service law, and that is why, as the Senator I am sure knows, it will not apply to Congressmen.

Mr. GLENN. That is true, but the problem——

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

Mr. HEINZ. I will be happy to yield.

Mr. RIBICOFF. The committee held 12 days of hearings with 86 individuals representing 55 organizations. In addition, Senator PERCY and I wrote to about 90 experts in public administration and personnel administration. What bothers me, as the manager of this bill, is the fact that we had no discussion or comment directed in any way to the problem we are now discussing under this amendment.

It is important. I think the Senator from Arizona (Mr. GOLDWATER) and the Senator from Ohio (Mr. GLENN) have raised very important points. The question comes with the study commission: Are we obligated to go into all phases of double dipping and not just the question of those in the military?

I have discussed this with the Senator from Tennessee (Mr. SASSER), who is chairman of the Subcommittee on Civil Service, and I have asked him whether he would be willing, at the beginning of next year to conduct full hearings on this, and all these problems, so that we can address it intelligently and have an answer to the Senator from Arizona (Mr. GOLDWATER) and the Senator from Ohio (Mr. GLENN), which I do not think we have here. With all the work we have done on civil service reform, we in no way touched upon this most important field.

I feel that we do not have the necessary information to make an intelligent judgment on this matter. So I personally am reluctant to approve this amendment without having hearings. There were no direct discussions in committee and in the markup. We held 7 days of markup. There was a tangential discussion, if my memory serves me right, in which the Senator from Ohio made some comment, but there was no direct discussion, if my memory serves me right, on anything approaching the Heinz-Eagleton amendment.

I think there is a vacuum here. This is a very important point, raised by the distinguished Senator from Pennsylvania.

Mr. HEINZ. Mr. President, if the Senator will yield——

Mr. RIBICOFF. You have the floor.

Mr. HEINZ. I do not dispute in any way the Senator's characterization of our discussion, but that is not to say that this issue has not been discussed year in and year out, on many occasions, both on the floor of this body and the floor of the House of Representatives, over in the committees of Congress, and downtown.

Indeed, this amendment has been discussed with the administration and with the civil service people. It conforms to their suggestions and to what they feel they can accept, and it conforms, most importantly, I think, to a standard that was adopted in the House of Representatives. I am referring to the Schroeder amendment which was adopted in committee after discussion over there.

Just because this idea was not invented in our committee—and I would be the first to give full credit to Representative SCHROEDER for having taken the initiative on this—I do not think we should reject it. I would hope that the committee would see fit to accept the amendment.

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

Mr. HEINZ. I yield.

Mr. GLENN. I would agree with the floor manager. I think it is great that we are considering this. But just as an example, do we have any figures on the number of people affected?

Mr. HEINZ. Yes, we do.

Mr. GLENN. Do we have figures on the dollar savings?

Mr. HEINZ. Yes, we do.

Mr. GLENN. Do we have figures on how the public has been misled?

Mr. HEINZ. Yes, we do.

Mr. GLENN. I have not seen any figures or heard any testimony on that.

Mr. HEINZ. We have exact figures on the number of retired people employed

by the Federal Government, the number of retired military employed by the Federal Government, with exact statistics on their income.

We do not have any consensus, but we have statements of policy from the administration on what they want.

Mr. GLENN. We have never, as the Senate, held hearings on this, as we do on every other subject, is that not correct?

Mr. HEINZ. I cannot speak for the Senator from Ohio, but this is not the first time I have been involved in the subject.

Mr. GLENN. I know of no hearings we have had on this double dipping since I have been in the Senate. Perhaps there have been some I was not aware of.

Mr. HEINZ. I am not in a position to dispute what the Senator says.

The PRESIDING OFFICER. (Mr. BAYH). Does the Senator yield the floor?

Mr. HEINZ. I yield the floor.

Mr. EAGLETON. Mr. President, let me address a few remarks, if I may, to the exchange between the Senator from Ohio and the Senator from Pennsylvania.

First of all, as to the context in which Senator HEINZ and I raise this amendment, it was raised in the first place by Mrs. SCHROEDER on the House side. It is part of the House bill. The best estimate is that it will be in the House bill that goes to conference. So the issue will be joined, one way or the other.

Mrs. SCHROEDER, in the draft of her amendment, proposes to repeal the one section of existing law with reference to "double dipping."

Let me tell you what the law says. It is called the Dual Compensation Act. Here is approximately what it says: Assume you retire from the military, and your military retirement pay is, let us say, $20,000. Assume then you go to work, often the very next day, often at the very same desk, often using the same parking lot. The only difference is that one day you are called "colonel" and the next day you are called "mister."

Now let us assume your civilian salary the next day is $30,000. You get $20,000 in retired pay, and $30,000 in new civilian salary.

Existing law says that is not right. So what does existing law do about it? Existing law says that the first $4,300 of your retirement pay, you keep that and next, you keep half the difference between the $4,300 and what your retirement pay would have been had you not gone to work in a civilian capacity for the Federal Government.

Thus, under my hypothesis, a fellow who would have been entitled to $20,000 retirement pay would get $4,300 off the top, and half of $15,700, plus his $30,000 new salary.

Senator HEINZ and I did not invent that law. This is no stab in the back, no insult, no violation of contract. This is what is on the law books today.

Mrs. SCHROEDER, with her amendment, repealed the one existing law on the books.

Now, why is there concern about this question of double dipping and retired pay? I think the reason there is great concern about it, Mr. President, is that if we permit this military pension business to linger and malinger, as it has for decades, then one of these days it will bankrupt even the incredibly wealthy Pentagon.

Ten years ago, retired pay, out of the defense budget, was $1 billion. Ten years ago, $1 billion; that was the total annual payment for pensions out of the Pentagon to retirees.

Do you know what it is today—$10 billion? In a decade it has gone from $1 billion to $10 billion. And do you know what actuarial experts say it will be by 1995—$34 billion? That is what it will be.

Now, we hear people say, "You know, we ought to start thinking about doing something about it, but this is not the right time."

"Now is not the right time," it is said. Thirty years from now it might be the right time, but not now. Do you know how many Presidential and departmental study commissions there have been in recent years to "study" this question of dual compensation, double dipping, retired pay, and the like? Five. Five commissions, either commissioned by the President of the United States or by the Secretary of Defense, the most recent one being called the Zwick Commission. What are we told after each of these commissions makes its report? "Study it further," we are told "Study, study, study, but never act." That is what we are constantly advised to do. "Double dipping," as an amendment, was raised on a Defense Appropriation bill some years ago, and it was said to those who offered the amendment at that time, "Now is not the right time." It was offered a year later and it was said to those who offered that amendment, "Now is not the right time." Never is it the right time.

This is not a question, Mr. President, of trying to be punitive or petulant or peevish, or to punish anyone. This is a question that, if it constantly remains unsolved, I repeat, one of these days it will bankrupt the Pentagon.

This is the first, halting, "tip of the iceberg" attempt to focus some attention on this issue. What brought it to a head—I do not have the newspaper clip with me, but what brought it to a head was a front page news article in one of the newspapers which showed a fellow holding up his two paychecks, one his retired pay and the other his newest civilian paycheck and the total annual aggregate was, I think, was some $80,000. Mrs. SCHROEDER and others thought that was not a very good system of compensation, to pay somebody $40,000 in retirement, and the next day move him one desk over to keep doing the same thing, and pay him an additional $40,000. That was an imperfect way to do the public's business, some of us believed.

Now, what about Congress? I would be delighted to see an amendment that said any former Member of Congress, if he takes another Government job, postpones his pension or retirement until such time as he gives up that second Government job. If he wants to take a second Government job as a member of the Cabinet, or, as a janitor in some building, or whatever he wants to do, that is fine; let him take the job.

But do not let him draw his Government pension at the same time he is drawing a new Government salary.

That is quite proper, as far as I am concerned.

All we are talking about in the Heinz-Eagleton amendment is retired Regular military officers who get the next Government job usually with the Pentagon. There are 5,000 currently in such a capacity; that is, 5,000 retired Regular military officers receiving a second Government paycheck for a subsequent Government job.

The Heinz-Eagleton amendment simply says:

> If the sum aggregate of the retired Government paycheck you receive and the new Government paycheck you are about to receive exceeds $47,500, that is too much. You cap it out at $47,500.

As I have said, it is a tip of the iceberg situation we have before us. But it would demonstrate, if adopted, that this Congress is about at its outer limit of tolerance insofar as this retired military pay, "double dipping" business is concerned.

Mr. GOLDWATER. Will the Senator yield?

Mr. EAGLETON. I yield.

Mr. GOLDWATER. Mr. President, it is not easy for me to oppose this amendment. I agree with the Senator from Missouri that we will never get anything done in this field until we start.

To bring this into a sharper focus and probably a little more shaky focus, if we were not to take in another man in uniform starting this very second, before the last man had died we would have paid out $400 billion. Is the man in uniform to blame? No.

I have to separate today from yesterday. When I first went into the military, the bright rung on the ladder that faced us was that silver one at the top that said, "You can retire with compensation that you did not pay for." And during those days when a second lieutenant was paid $115 a month, that was very attractive. I think this is what we have been running into, the terrific impact of retirees to whom the American people promised retirement pay.

I am happy to say that under Senator NUNN sometime next year we are going to hear some greatly improved approaches to this whole retirement problem, approaches that I am sure the military will want to see, which will be more in line with the civil service concept under which we operate.

I repeat, my objection is that we constantly harass the poor guy in uniform who had nothing to do with this. This was somebody's idea probably 100 years ago to entice men into uniform.

I want to take a look at my own situation because as a so-called double

dipper who is a former reserve officer, we have I do not know how many in this Congress, though there are quite a few. This was long ago in the last days of President Truman when they put the reserve officer on the same footing as the regular as far as time went.

When I first went on duty in 1930 as a reservist, every 2 days I served as a reservist counted as a full day, or 1 day for pay purposes. This was changed in the late 1940's to give equal time for reservists. Had I been in a capacity where I could have assisted by a vote, I would have voted against it, because I have never believed that a man in the reserve who only spends time on duty when he is called to active duty or his weekends or summers, which in my case amounted to 37 years of which probably 7 years was served on active duty—I do not think I should be treated as an equal to a man on regular status.

I looked into this because I have had people raise all kinds of hell with me for double dipping. So I asked the Air Force what would happen if I asked them to stop sending me my monthly check for retirement. They said, "It would cause a lot of trouble. First of all, have you ever told a computer to stop doing anything?"

I said, "Well, let us say that you do it."

They said, "Fine, here you retire from politics and you will have to pay income on the whole ball of wax."

If I have no other income than the income when retiring from the Senate, without that retired pay as major general I will be back for food stamps or something.

I am not arguing with what the Senator wants to do. Something has to be done. I do not want to join the argument that maybe we better wait. Maybe we have waited too long.

But I want to be sure that when we take a step that we look at the man who served in this body or the other body, or served in some capacity in the Federal Government, who now is employed at great benefit to our country. Where would we have been without George Marshall, without Jim Gavin, without Maxwell Taylor? I could go on down the list of great men we have gotten out of the military who went to work for our Government. Under the concepts now advocated by some members of the press in the East we would never have had the services of those men unless they said, "Well, I just felt so strong in my heart that I want to serve my country that I will do it for nothing." We do not have many of those come along.

I am not going to stand in opposition to this amendment. I just wanted to speak my little piece on it in defense of the man in uniform who catches a lot of hell on this when he should not.

Mr. EAGLETON. I want to say, Mr. President, the Senator from Arizona has spoken well as he always does, with candor and sincerity. I think he has stated his viewpoint in a very able and forthright way.

Mr. President, as far as I am concerned, I have said about all I intend to say on our amendment. Perhaps Senator HEINZ would like to close on the amendment.

Mr. HEINZ. I thank my colleague from Missouri. I think he has made an excellent case for the amendment we jointly offer.

Just so there is no misunderstanding among any of our colleagues here in the Chamber, I want to reemphasize once again the very modest effect of this amendment. It is prospective; it is not retroactive. It only applies to those at the $47,500 level. If you took all the retired regular officers—all of them—who are now employed in the Federal Government at whatever level of pay, they would total all of 5,164 people.

That is fewer than 4 percent of the total retired personnel.

I just want to emphasize, as I say, that this is a very modest step. I say to my good friend from Arizona that I stand foursquare with him. It is not my intention to pick, in any way, shape, or form, on the military or my retired navy stepfather, or anybody like that.

This is a civil service bill. This matter is germane to the bill. Indeed, it is unlikely that we are going to have another civil service reform bill in Lord knows how many years. Indeed, this bill has been much too long coming to Congress.

I do not say that with any disrespect to the Senator from Connecticut or the Senator from Illinois. They have worked wonders in bringing this bill to us. It is not their fault that we have not been able to produce a civil service reform bill years before this.

Mr. GLENN. Will the Senator yield for a question?

Mr. HEINZ. I am happy to yield.

Mr. GLENN. I wonder if the Senator would accept changing this, since we are concerned with Government expenditures. I agree completely with the Senator from Missouri on the magnitude with which this has grown. I certainly grant that military considerations are not the biggest part of this thing, but I wonder if the Senator from Pennsylvania would consider modifying this to include a limitation on anyone accepting a Government job who has previously held any Government job, from whatever source. This would not limit it just to retired regular officers, which is a very narrow categorization.

In other words, if we really want to get at this double dipping problem, would he accept an amendment, which I am sure we could draw up in a few moments here, which would really take on this double dipping problem? We would take it on and set this limitation the Senator imposes, that it be from whatever source previous service was, whether military, whether previous civil service, coming back into the Cabinet—whatever the limitation is. It would not narrowly restrict this to the group the Senator proposes in this amendment.

Mr. EAGLETON. That would be an excellent amendment, because that is basically what is present law. If you retire from the civil service and you decide to go back to work within the civil service, there is more or less, a dollar-for-dollar offset between the retirement pay and the new earned pay. The existing Dual Compensation Act as well as the proposed Heinz-Eagleton amendment permits $4,300 of retired military pay plus half the difference between $4,300 and the full amount.

The Senator does not want, I take it, to do what is done with respect to civilians and knock them out entirely with a dollar-for-dollar offset?

Mr. GLENN. No, because I think the military, in general, has had a lower pay scale than civil service employees with comparable responsibilities.

Would the Senator accept congressional limitations, for example, if there are congressional retirees who come back into the civil service from whatever area? Why should they be paid twice if regular officer military retirees are not?

Mr. HEINZ. It seems to me the Senator's problems, as I understand it, are already addressed by current law.

Mr. EAGLETON. If the Senator will yield, I should like to read three sentences into the RECORD from the report, "Dual Compensation Paid to Retired Uniformed Services' Personnel in Federal Civilian Positions." It is from the Subcommittee on Investigations of the Committee on Post Office and Civil Service of the House of Representatives, dated April 3, 1978:

REEMPLOYED ANNUITANTS

Civil service annuitants who retire from civilian positions are not barred from reemployment in the Federal service because of their retired status. If an annuitant becomes reemployed in an appointive or elective position in the Federal Government subject to the Civil Service retirement system, the salary in that position is usually reduced by the amount of annuity paid. The reduction in civilian salary is * * *

So there is the dollar-for-dollar offset. Under the Heinz-Eagleton amendment, there is not a dollar-for-dollar offset. It keeps the so-called Dual Compensation Act on the books as it is which is more generous to retired military officers.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further discussion?

Mr. GLENN. Mr. President, I move to lay the amendment on the table 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 on agreeing to the motion to lay the amendment on the table. The yeas and nays have been requested. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. GOLDWATER (when his name was called). Present.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), and the Senator from Louisiana (Mr. JOHNSTON) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. LAXALT), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The result was announced—yeas 32, nays 58, as follows:

[Rollcall Vote No. 364 Leg.]

YEAS—32

Allen	Hathaway	Sarbanes
Bumpers	Hollings	Sparkman
Byrd, Harry F., Jr.	Huddleston	Stennis
	Humphrey	Stevens
Byrd, Robert C.	Inouye	Stevenson
Cannon	Jackson	Stone
Chiles	Long	Talmadge
Clark	Mathias	Young
Culver	Matsunaga	
Durkin	McIntyre	
Glenn	Moynihan	
Hatfield, Mark O.	Nunn	
	Ribicoff	

NAYS—58

Bartlett	Hart	Nelson
Bayh	Haskell	Packwood
Bellmon	Hatch	Pearson
Bentsen	Hatfield, Paul G.	Pell
Biden		Percy
Brooke	Hayakawa	Proxmire
Burdick	Heinz	Randolph
Case	Helms	Riegle
Chafee	Hodges	Roth
Church	Javits	Sasser
Cranston	Kennedy	Schweiker
Curtis	Leahy	Scott
Danforth	Lugar	Stafford
DeConcini	Magnuson	Thurmond
Dole	McClure	Tower
Eagleton	McGovern	Wallop
Ford	Melcher	Weicker
Garn	Metzenbaum	Williams
Griffin	Morgan	Zorinsky
Hansen	Muskie	

ANSWERED "PRESENT"—1

Goldwater

NOT VOTING—9

Abourezk	Domenici	Johnston
Anderson	Eastland	Laxalt
Baker	Gravel	Schmitt

So the motion to lay on the table UP amendment No. 1773 was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania. On this question the yeas and nays have been ordered.

Mr. HEINZ. Mr. President, I ask unanimous consent that the order for the yeas and nays on my amendment be vitiated.

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

The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO 1774

Mr. HATCH. Mr. President, I send to the desk an unprinted amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes an unprinted amendment numbered 1774.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 8, strike lines 17–25.
On page 9, strike lines 1–25.
On page 10, strike lines 1–25.
On page 11, strike lines 1–4.

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

Mr. HATCH. I yield.

Mr. ROBERT C. BYRD. Mr. President, it is my understanding that the managers of the bill may be prepared to accept this amendment.

Mr. HATCH. The managers have indicated that they would accept it. Senator MATHIAS and Senator STEVENS have indicated that they would accept it. It is not controversial, so far as I know, and there is no reason to debate it.

Mr. RIBICOFF. There are a few amendments being offered by the Senator from Utah which we have discussed, and I am ready to accept the series of amendments being offered by the Senator from Utah. I am uncertain about any other amendments.

Mr. STEVENS. I shall offer the one we have discussed with the Senator's staff, and I shall not offer the other.

Mr. RIBICOFF. During the discussion, we will go into the other amendment. I am not sure which one that is.

Mr. ROBERT C. BYRD. Mr. STEVENS has one amendment. Are there other amendments? Only the amendment by Mr. STEVENS after the amendments by Mr. HATCH.

Mr. STEVENS. Senator DOLE has an amendment.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on final passage.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senate will be in order.

Mr. HATCH. Mr. President, are the floor managers willing to accept the amendment I have just sent to the desk? As I understand it, they have accepted the amendment.

Mr. RIBICOFF. It is accepted by the manager of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 1775

(Purposes: (1) To insure secret ballot elections under all circumstances prior to imposing a bargaining obligation on any agency. (2) To decertify any exclusive representative who fails to take action to prevent or stop a strike, work stoppage, slowdown, or picketing of any agency. (3) To protect the employee's right to hear both sides of union representation arguments so long as no threats, force or promise of benefit are involved)

Mr. HATCH. Mr. President, I send three unprinted amendments to the desk.

The PRESIDING OFFICER. Does the Senator request that they be considered en bloc?

Mr. HATCH. Yes. I ask unanimous consent that they be considered en bloc.

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

The amendments will be stated.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes three unprinted amendments numbered 1775.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

On page 296, line 8, after the word "chapter" delete the period and substitute a semicolon and then add the following new proviso,

"*Provided*, That nothing in this chapter shall be construed as requiring an agency to negotiate in good faith with any labor organization certified after the enactment of this Act until a representative of its employees has been determined by means of a secret ballot election conducted in accordance with the provisions of this chapter. This proviso shall not be construed to bar a consolidation of units without an election.

On page 301, line 3, add the following new subparagraph,

"(e) Any labor organization which has violated section 7216(b)(4)(B) shall, upon an appropriate finding by the authority of such violation, have its exclusive recognition status revoked and it shall cease immediately to be legally entitled and obligated to represent employees in the unit."

On page 298, line 16, add the following new subparagraph,

"(f) The expression of any personal views, argument, opinion or the making of any statement shall not (i) constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, or (ii) constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit.".

Mr. HATCH. Mr. President, these amendments also are acceptable to the managers of the bill, and I move their adoption.

Mr. BELLMON. Mr. President, may we have a brief explanation of what these amendments do?

Mr. HATCH. Mr. President, the first amendment deals with title VII and provides that no new labor organization which comes into being after the enactment of this act can achieve collective bargaining rights unless a majority of the employees in an appropriate unit vote for the union via a secret ballot election. This amendment preserves the sanctity of the employee making a free choice through a secret ballot election and only through that process which is the proven method of guaranteeing a fair and unfettered employee choice. That is amendment No. 1.

That is amendment No. 1.

No. 2; The second amendment also deals with title VII and provides for the decertification of any labor organization which is found by the authority to have condoned, by failing to take appropriate action to prevent any strike, work stoppage, or slowdown by employees. I believe the public interest demands that we take the legal authority away from any union which abrogates its responsibility to remedy unlawful employee actions. This act creates rights and duties on the part of both collective bargaining participants, and I feel this is a minimum obligation the union should assume or risk losing its legal bargaining status.

The third amendment: The last amendment protects the employee's right to hear both sides of union representation arguments so long as no threat, force, or promise of benefit are involved. Employees should be able to hear, and digest, any personal views, arguments, opinions, or other statements about the union situation whether by the union agents or the agency's managers and supervisors without an unfair labor practice being found or an election set aside based upon the expression of views. We have the added protection here that the views must be fair and not contain threats, force, or any promises of benefit for the employee involved.

I commend the three amendments offered en bloc to the attention of the floor managers and I believe they are willing to agree to them, and they have been run by the administration, they agree to them, and I believe that they are very good amendments which will enhance this bill, especially title VII.

Mr. JAVITS. Mr. President, I ask the managers of the bill, because they have been handling the bill, and I am a member of the same committee—these are labor amendments—what is their rationale for accepting each amendment, and have they consulted with the administration and is the administration willing?

Mr. RIBICOFF. May I say that there was consultation between the Senator from Utah and Mr. Campbell, as I understand it, and the staffs.

Mr. HATCH. That is correct.

Mr. RIBICOFF. Mr. Campbell, the chairman of the Civil Service Commission, worked out the language with the Senator from Utah.

Mr. HATCH. Mr. President, will the Senator yield for a slight additional explanation.

Mr. RIBICOFF. I yield.

Mr. HATCH. We have revamped a number of amendments which I brought to the attention of Mr. Campbell and the civil service people and their aides and staffs, and we revamped them in accordance with their recommendations and desires, and I believe the amendments are in good order.

Mr. JAVITS. So the managers are not prepared to explain the rationale; they are simply relying upon the fact that these amendments have been accepted by the Civil Service Commission; is that correct? The Civil Service Commission is the employer, for practical purposes, is it not? Has any effort been made to get labor's view on these amendments?

Mr. RIBICOFF. Personally, I did not discuss this with labor. I do not feel it is incumbent upon me personally, as a U.S. Senator, to discuss something with labor or with management. It was worked out with the Civil Service Commission after a series of conferences. I was busy in the Chamber with the entire bill, and I was willing to accept this. I will be candid with my distinguished colleague from New York.

Mr. JAVITS. All right. I just wanted to get the ground rules. I am not trying to find any fault with the managers at all. I will get to the merits in just a minute. But I did first want to find out how the managers felt and their reasons.

Mr. PERCY. Mr. President, will the Senator yield for a question on this?

Mr. JAVITS. I yield to the Senator.

Mr. PERCY. Obviously you cannot touch base with everyone, I am sure this could have been run by some additional people. But in looking at the amendments and considering that the distinguished Senator from Utah brought in a rather bulky package of amendments today, I think that what has been sifted out gets right down to the heart of some of his concerns.

The first, as I understand it, would be to decertify any union found to be involved in a strike—that is an illegal action against the Government and that appeared on the surface at least to be reasonable; to insure a secret ballot in all union elections, and that should be, I would think, something the unions would want to preserve; and to see that there is a full opportunity to insure the expression of personal or dissenting views in union campaigns.

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

Mr. PERCY. I am happy to yield.

Mr. HATCH. This also protects both the unions and the civil service people because it allows the consolidation to take place. As I understand it, there are some 3,500 different unions, and it protects their right to consolidate and protects them prospectively and retrospectively in this matter.

Mr. PERCY. As the Senator from Illinois mentioned many times during the debate on the labor reform bill, it is our duty in Congress to protect the rights of the individual.

As I interpret these amendments, they do go to the heart of protecting individuals. I should think that responsible labor leadership would support them. But the Senator from Illinois will admit that time pressure has been so great this afternoon with the intention of the leadership to finish this bill and have final passage voted by 5 o'clock—we are now 1 hour and 5 minutes behind that—but if there are serious reservations about them, we will certainly do the best we can to check it out to be certain we looked at every aspect of it.

Mr. JAVITS. Mr. President, the purpose of my taking the floor is because I am the ranking minority member of the Labor Committee, a committee of which Senator HATCH is a member, and his views on union organization are as well known as mine.

Mr. HATCH. That is correct.

Mr. JAVITS. Therefore, it is my duty to examine them carefully and find out what is the rationale, to decide whether I wish to agree or to oppose. But before I do that, because the Senators are my friends, and I have great faith in them, and they are handling this bill, I wanted to find out the basis on which they were taking them, and now they have told me.

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.

The PRESIDING OFFICER (Mr. STEVENSON). Without objection——

Mr. METZENBAUM. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. I just want to make an announcement.

Mr. METZENBAUM. I withdraw my objection.

ORDER OF PROCEDURE TONIGHT

Mr. ROBERT C. BYRD. Mr. President, it is hoped that the Senate can complete action on this bill this evening without having to stay late and, if that is possible and achievable, then the Senate will go out until 9 o'clock tomorrow morning. On tomorrow the Senate will take up the CETA bill and the remaining tax bills. So I hope that all Senators will cooperate and work together to complete action on this bill this evening and, if possible, hopefully it will not be too late and, as I say, the Senate will go out.

Mr. METZENBAUM. Mr. President, the three amendments that have been offered are matters of major concern, as I see it, and I am just taking the time in order to see if I can find out exactly what they do provide. It is for that reason that 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. BELLMON. 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. METZENBAUM. Mr. President, reserving the right to object, and I will not object, as I understand it, the Sentaor wishes to raise a point having nothing to do with the Hatch amendments?

Mr. BELLMON. That is correct.

Mr. President, I would like to call the attention of the distinguished floor manager of the bill to section 3591 on page 222 of the bill. This is the section that deals with removal from the senior executive service, and I would like to ask a question or two in order to be better informed about how the removal procedure would operate.

As I understand the language of the bill, if a person has been serving in the senior executive service, and there is a desire on the part of the executive branch to remove the person from the position, if the removal occurs within 1 year of the appointment it can be done without any difficulty whatsoever. All that is necessary is for the notice to be given to the senior executive service member, and that member then goes back to his original position without any problem.

Mr. RIBICOFF. May I respond to the distinguished Senator from Oklahoma by saying that a senior executive service employee with career status may be reinstated to any senior executive service position if he has completed the probationary period, which is 1 year.

However, if he left the senior executive service for either misconduct, neglect of duty, malfeasance or for less than fully successful performance, then he could not. But in the absence of those provisions he could go back to his career position.

Mr. BELLMON. Mr. President, if the Senator will let me raise another question, as I understand, one of the main objectives of this bill is to provide the executive branch with greater flexibility in filling the key decisionmaking positions in Government. It is an objective that I strongly endorse. But, it seems to me, if a member of the civil service agrees to an appointment in the senior executive service that it is not necessarily desirable to require the executive branch to have to make a case that this person is then guilty of misconduct, neglect of duty, or malfeasance in order to replace that person or send that person back to his permanent civil service rating, and that we think this unnecessarily damaging to the civil servants who may only be—when the executive branch may desire to make a change. Perhaps the person has been doing good work but the executive branch feels other persons can do better. How flexible is this procedure?

Mr. RIBICOFF. I think he gets more protection than at the present time. Now he may be removed from the civil service and he is out entirely.

But here, if he is removed from the senior executive service and there was no misconduct or malfeasance, he can go back to the career service, to the job that he had before, on the same level.

Mr. BELLMON. Let us assume the person does not necessarily want to leave the senior executive service.

Mr. RIBICOFF. Well, he could come back provided there was not misconduct or less than fully successful performance. If there was misconduct or malfeasance, he may be removed, after he has a hearing and goes through all the disciplinary proceedings.

Mr. BELLMON. Let me take a possible case. Let us assume that President Carter appoints a person from the civil service to the senior executive service, and when President Carter leaves office in 1980 or 1984, the new President decides that he wants a different person put in that position. Is it necessary, then, for the new President or the new administration to charge this member of the senior executive service with less than fully successful performance or misconduct, neglect of duty, or malfeasance, and if such charges are made, does this then force the member of the senior executive service to go into court to defend his reputation?

Mr. RIBICOFF. He does not have to charge misconduct. He can remove that person from the position he has within the senior executive service to another position within the senior executive service. The employee would have a career in the senior executive service, but there would be flexibility to move him within the agency. He could not be moved involuntarily from one department or agency to another or out of the senior executive service. He would be protected to be in that higher echelon of employees.

Mr. BELLMON. Then this really only gives the executive branch flexibility one time; there will be a chance to appoint a good many people to these senior executive services one time, but from then on they will be more or less locked in?

Mr. RIBICOFF. They are not locked in the particular position, but they can remain in the senior executive service, provided they do the job and are not guilty of misconduct or perform unsatisfactorily. There is the senior executive service, and they can be shifted within their agency, but you cannot force them out of that senior executive service.

Mr. BELLMON. Except for malfeasance, misconduct, and these other things?

Mr. RIBICOFF. And if it were done for partisan political purposes, it would be a prohibited personnel practice.

Mr. BELLMON. I think the distinguished Senator from Connecticut will agree with me that sometimes it is a good thing to give the executive branch some flexibility to bring people into these decisionmaking slots, and then, if they do not perform necessarily as well as they might, even though they are not guilty of misconduct, neglect of duty, or malfeasance, be able to move them out or put them back where they came from.

Mr. RIBICOFF. Well, they can do it today, of course. If they do not successfully perform their jobs, they could be removed. But again, there would have to be proof of unsatisfactory performance. If they are removed, they go back into a GS–15 position in the civil service. They retain their standing in the career service.

Mr. BELLMON. I believe the distinguished Senator from Connecticut will agree that at the present time it is practically impossible to remove someone from civil service without a lengthy court proceeding, and very often those proceedings fail and people have to be reinstated with backpay.

Mr. RIBICOFF. That is one of the reasons for this bill, because for all practical purposes today, you cannot remove anybody from Government employment, no matter how bad he is. Here we are trying to make it easier to keep the good ones and get rid of the bad ones.

Mr. BELLMON. But it seems to me section 3591 sets up a procedure that will lead to the same result as is the current experience.

Mr. RIBICOFF. Well, he can be removed. Under section 3591 he can be removed, first, during the 1-year probationary period, or for less than fully successful executive performance, or for neglect of duty, misconduct, or malfeasance. So there is an opportunity to remove someone if he does not do his job, if he does not perform successfully, or if he is guilty of neglect of duty or misconduct.

During the 5-year period, if he has two unsatisfactory annual ratings he is out of the Senior Executive Service; or if he gets three less than fully successful annual ratings in the 5-year period he is out. So it is easier to get rid of somebody than it is at the present time. At the present time it is almost impossible to remove employees for unsatisfactory performance. But under this bill there are these ratings that must show satisfactory performance in order to stay.

Mr. BELLMON. If a new administration came into office, theoretically, at least, they could give every one of the members of the Senior Executive Service an unfavorable rating for 2 years in a row, and those people would all be——

Mr. RIBICOFF. No; they could not just give it. There are standards as to what constitutes an unsatisfactory or less than satisfactory rating. If a person is discharged and he feels that is less than just, he has a right to appeal.

Mr. BELLMON. So that may set in action the same kind of appeal process that we have under the present law.

Mr. RIBICOFF. The appeals process is somewhat different under the bill. If it is a career employee whose performance is being reviewed, he has to have a majority of fellow career employees on the rating board. So it is not just Presidential appointees; it is career employees who are rating their fellow employees.

Mr. BELLMON. Would the Senator object if we worked out some language to make the removal less complicated, and so that it does not require the

destruction of a career service employee's character in order to get him out of the senior executive service and back into the position from which he came?

Mr. RIBICOFF. We tried to work this out with the distinguished Senator from Alaska. I think we were able to achieve it in the Mathias-Stevens amendment. During the continuation of the quorum call, we will be able to call your attention to the Stevens-Mathias amendment, which may have taken care of the situation that concerns the Senator from Oklahoma. If the quorum call continues, we will go over that with you, to see if we have not achieved what you desire.

Mr. YOUNG. Mr. President, could I ask one question?

Mr. RIBICOFF. Yes.

Mr. YOUNG. If a career civil service employee refuses to be transferred, what recourse does he have? He can be fired for refusing a transfer, can he?

Mr. RIBICOFF. If he is transferred and refuses to do it, he cannot stay in the senior executive service.

Mr. YOUNG. He cannot be fired for that?

Mr. RIBICOFF. He can be voluntarily transferred from HEW to Commerce or Labor, or from HEW to Agriculture or Interior.

Mr. YOUNG. But if he refuses any of these transfers, is that grounds for being fired?

Mr. RIBICOFF. I would say yes. He is out.

Mr. YOUNG. He can be fired?

Mr. RIBICOFF. That is what is the situation at the present time. That is the case at the present time, yes.

Mr. YOUNG. I have one further question. What recourse would he have if he is fired? What recourse would he have to the Civil Service Board of Appeals?

Mr. RIBICOFF. He has full appeal rights.

Mr. YOUNG. Full appeal rights?

Mr. RIBICOFF. To the Merit System Protection Board.

Mr. YOUNG. Thank you.

Mr. MATSUNAGA. 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. JAVITS. 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. JAVITS. Mr. President, do I understand that the amendments of Senator HATCH are now pending?

The PRESIDING OFFICER. The Senator is correct.

Mr. JAVITS. Has there been a consolidation of them?

Mr. HATCH. I have moved that they be considered en bloc.

Mr. JAVITS. Mr. President, are they divisible?

The PRESIDING OFFICER. The amendments are not divisible because they are to be considered en bloc, by unanimous consent.

Mr. JAVITS. I thank the Chair.

Mr. President, my first question would be addressed to the Senator from Utah as follows: The amendment which relates to the choice for the representative of the employees by means of a secret ballot election, that, as I understand it, would make it necessary to have a secret ballot election before there could be certification. That is a change in existing law or practice. Otherwise, there could be a certification on some other evidence of representation or on the volition of the United States. In short, is the effect of the amendment to require a secret ballot election where it otherwise might not be necessary as a matter of law to have one?

Mr. HATCH. As I understand it, the bill provides——

Mr. JAVITS. I cannot hear the Senator. Will he use his microphone?

Mr. HATCH. As I understand it, the bill itself provides for certification by a secret ballot election. What this amendment does is reinforce that, plus it does so prospectively, so that no organization which presently represents any of the civil service employees would be decertified by this amendment.

Mr. JAVITS. Decertified? In other words, this would only apply to future certification?

Mr. HATCH. That is what I understand.

Mr. JAVITS. How does it change existing law?

Mr. HATCH. As I understand it, the same way that the bill does. That is by requiring a secret ballot election. Under existing law the two sides can get together and alleviate the secret ballot election. This mandates the secret ballot election in all civil service certification.

Mr. JAVITS. That is right. The two sides could get together and dispense with the election, but this would require such an election.

Mr. HATCH. That is right, and this is for the protection of the employees who work in civil service.

Mr. JAVITS. And is prospective in its operation?

Mr. HATCH. That is correct.

Mr. JAVITS. Mr. President, speaking for myself alone, I personally see no objection. It is a change in the law and it does make a difference, but I do not think it makes so much of a difference that I would care to disturb the existing understanding between the managers of the bill and my colleague.

Mr. MATSUNAGA. Will the Senator from New York yield?

Mr. JAVITS. I yield.

Mr. MATSUNAGA. Mr. President, as I read the amendment being discussed by the Senator from New York and the Senator from Utah, it requires an additional election, after a union has been certified, to choose a representative of the employees, such as a business agent, by a secret ballot election before the agency may deal with that representative of the employees. Is my interpretation correct?

Mr. HATCH. On a prospective basis, that is true. In other words, in the future the employees will be protected by the mandated secret ballot election with regard to Federal civil service employees. This is an employee's right that we want to protect. That really does not hurt the union, so far as I am concerned.

Mr. MATSUNAGA. So that in the event a union has been certified by secret ballot, if that union is to send a business agent to deal with the agency, that union must hold a second election to elect the business agent who is sent to deal with the agency?

Mr. HATCH. No, upon the effective date of this act, all duly certified unions representing civil service employees which have been certified up to that time, whether or not by secret ballot, will be preserved. But after the duly effective date of this act, from that time forward, all elections certifying the union will have to be secret-ballot elections. So the Senator is incorrect.

Mr. MATSUNAGA. That is already in the law, is it not?

Mr. HATCH. No.

Mr. MATSUNAGA. My question, I suppose, is directed to the meaning of the term "representative of its employees" as shown in the Senator's amendment.

Mr. HATCH. That is right.

Mr. MATSUNAGA. What does that refer to? Does that refer to the union or to the business agent of the union?

Mr. HATCH. That refers to the union.

Mr. MATSUNAGA. It refers to the union?

Mr. HATCH. Right.

Mr. MATSUNAGA. That clarifies it.

Mr. HATCH. It preserves the union's representative status.

Mr. MATSUNAGA. So as I understand it, there is no requirement for election by a secret ballot of a business agent sent by the union?

Mr. HATCH. That is right. In other words, it is not a requirement for a secret ballot to choose the union agent, only the union, as the representative of the employees.

Mr. MATSUNAGA. I thank the Senator.

Mr. WILLIAMS. Will the Senator yield?

Mr. JAVITS. May I ask one other thing? Then I shall yield to the Senator.

I think quite inadvertently, the Senator's amendment said "Nothing in this chapter shall be construed as requiring an agency to negotiate in good faith." I am sure the Senator did not mean that entitles him to negotiate in bad faith?

Mr. HATCH. No, certainly.

Mr. JAVITS. I wonder if he would strike the words "in good faith". I do not think the Senator had any such intention, but it could be so read.

Mr. HATCH. I ask unanimous consent that the amendment be modified in that manner.

The PRESIDING OFFICER. The Senator has that right.

The amendment was modified.

Mr. WILLIAMS. Mr. President, I should like to make an observation. The Senator from New York said he was speaking only for himself in agreeing that this amendment was acceptable to him. I speak for the Labor Committee, and for myself, quite frankly, I did not know of this amendment until almost

literally minutes ago. Recognizing the substantial distinctions between private sector collective bargaining, it seems to me that in the context of public sector unionism, the proposal that before a union must be bargained with it must be certified in a secret ballot election is not an unreasonable one and I am prepared to vote for it.

Mr. HATCH. I thank my distinguished friend.

I assumed when I brought these amendments up that they were acceptable and I was asked to expedite it to the extent that I could, so I tried. I am happy to have had this colloquy at this time. I shall be happy to answer any other questions.

Mr. JAVITS. Moving now to the next amendment, the so-called free speech amendment, that troubles me for this reason, and I shall communicate my concern to the Senator and he will give me his views and his explanation. It is a fact that we consider the Federal Government in this bill as an employer, but it is also the Federal Government.

Mr. HATCH. That is true.

Mr. JAVITS. And you cannot strike against the Federal Government, so, if you work for the Federal Government, you give up something. You may strike illegally, as the postal workers are threatening to do, but that is true of any law. It can be broken and punishment and reaction must follow.

The United States has laws favoring union organization or, at least making it possible under the propriety of law.

Is it not a fact that, under this free speech amendment, an individual manager, speaking personally, could say that he does not like unions and he does not think they are a very good idea and he does not think that they will do anybody who joins them any good. That would still be within the purview of this amendment, would it not?

Mr. HATCH. That is correct.

Mr. JAVITS. Because it does not include a threat of reprisal or force or promise of benefit.

Mr. HATCH. That is right. In other words, he may express his personal good-faith opinion, but he cannot express a threat of reprisal or force or promise of benefit, which is the present law. But he may tell what he personally feels without fear of an unfair labor practice charge.

Mr. JAVITS. Would that privilege, as the Senator describes it, also apply to an employee of the Federal Government, who could say to the other employees, "I think he is all wet?"

Mr. HATCH. No question about it.

Mr. JAVITS. "Notwithstanding that he is the manager, he is a hired hand just like the rest of us and does not know what he is talking about," et cetera. He can be just as vehement and just as strong.

Mr. HATCH. Just like the rest of them.

Mr. JAVITS. Just so long as it contains no fear of reprisal or threat.

Mr. HATCH. Under the present law, as the Senator knows, the employee can do that, even if it threatens reprisal, but the employer cannot. I think in the enlightened Federal Government of today, this is not an undue exercise of free speech by the manager or the employee.

Mr. JAVITS. Of course, the manager is also a Government employee; he is not the owner of his own business. I think it is quite different.

I am not saying that I find this so offensive and I do not think at this stage that it interferes with what I know.

May I explain that, and say I am really sorry that I felt duty bound to pick this up. Everything seemed to be going so well and smoothly between the managers. But I am sure the Senator, like myself, when he has a duty and he sees it, simply cannot suppress it.

Mr. HATCH. Will the Senator yield on that?

Mr. JAVITS. Of course.

Mr. HATCH. I appreciate the Senator's bringing up his concerns on these amendments. I assumed, when talking to both floor managers, who are, as the Senator knows, both very distinguished Senators on this floor and have reviewed this matter, but more particularly, in talking to the representatives of the civil service, including the top man of the civil service, and, I felt, a labor representative as well, that this matter had been covered. I am glad that we are able to have this colloquy. Certainly, I was not trying to put these forth without the Senator's having the opportunity of seeing them, and would not try that, as the distinguished Sentaor from New York knows.

I do appreciate this colloquy at this point because, if there are any misunderstandings or difficulties, I want to clear them up.

Mr. JAVITS. I just managed a very complicated bill on the floor and I know that there are at least a dozen Senators who would have a right to complain because I did not consult them about this or that or the other. I realize the problems and I understand them fully.

Mr. RIBICOFF. Mr. President, I deeply regret that the distinguished Senator had other duties, because we had our hands full on the floor. We did rely on the Civil Service Commission and the staff to work it out.

I think it should be pointed out that it is my understanding, on the freedom of speech and expression amendment, the employees and union officials clearly can comment as well as somebody representing the agency.

Mr. HATCH. No question about it.

Mr. RIBICOFF. Employes and union officials have the same freedom of speech.

Mr. HATCH. Will the Senator yield to me to make one more comment about that?

Mr. RIBICOFF. Yes.

Mr. HATCH. The difference between this and present law is that this provision for free speech allows anybody to speak freely about the collective bargaining process as long as it does not involve threats of reprisal or force or promise of benefit. Under pesent law, the only ones who basically can do that with impunity happen to be the union oganizer, not even the employees. So what this does is correct, and I think allow, anybody in good faith, as long as they are not threatening a reprisal or force or promising a benefit, to speak freely what is in their minds.

Mr. JAVITS. There is one thing that is different, I say to the Senator. It probably can be worked out in conference, but I should like to call it to his attention.

He has used at the end of this amendment a different catechism than has been used elsewhere in the bill. Just so long as we are clear on his intention, I do not think it will cause us any headaches, but I should like to point this out.

If we look back at 7216(a) (1) and (2), we see that it is an unfair labor practice for an agency—and here is where the catechism comes in—to interfere with, restrain, or coerce an employee in connection with the exercise of rights assured by this chapter or to encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment.

Therefore, it might have been better if the end of the amendment said, "if such expression is not in violation of section 7216(a) (1) and (2)."

The Senator might just study that.

Mr. HATCH. I certainly will.

Mr. JAVITS. Then he would have a consistency of expression as to exactly what he had in mind.

Mr. HATCH. I do not have any problem because we are talking about the right of individual expression and not of the right of the agency.

Now, if the agency comes down and threatens or, in this case, encourages or discourages any labor organization, I think it would apply, I would agree.

Mr. JAVITS. It just said, "encourage or discourage," and says "by discrimination."

The Senator does not expect——

Mr. HATCH. I do not expect that.

Mr. JAVITS. That is why I say what I do. Look it over, study it, not this minute.

Mr. HATCH. As long as the rights of individual managers—I think I do not mean by this the individual manager who expresses his own belief or opinion, then since he works for the agency his actions are imputed under agency law to the agency.

I do not intend my amendment to forbid his personal right of expression.

Mr. JAVITS. It may be giving him in that regard, because the language is different, although its purpose and meaning are the same——

Mr. HATCH. Yes, but I would not want to have this construed, anyway, because it would make it meaningless, the free speech amendment, when he speaks from his own standpoint, he binds the agency, so it violates this rule.

Mr. JAVITS. Does the Senator feel the words "no threat or reprisal, or force or promise of benefit" are any different than——

Mr. HATCH. No. Those words apply even to the individual. Even my amendment. But I do not want, as it says in 7216(a)(2), that it should be an unfair labor practice for an agency to encourage or discourage membership in any

labor organization by discrimination in regard to hiring, tenure, promotion——

Mr. JAVITS. The Senator does not want the individual manager to do that, either, does he?

Mr. HATCH. Not representing the agency, but I want him to have the right of free speech, otherwise.

Mr. JAVITS. Well, a fellow is a manager, he is the boss in the particular agency. If he is going to discriminate in regard to hiring, tenure, or promotion, or others, I think the Senator goes a lot further than there is any reason for going in order to give him freedom of expression.

Mr. HATCH. I do not believe my amendment permits him to discriminate in any way.

On the other hand, I also do not intend this amendment to mean because he expresses his own viewpoint with regard to whether or not a union is good or bad that it is imputed under agency rules to involve the agency itself.

Mr. JAVITS. Let us break it down——

Mr. HATCH. The agency may have a standard that their managers have to comply with, and that standard may very well say they cannot speak ill of the unions, regardless.

Mr. JAVITS. What concerns me is the Senator may have a conflict between his amendment and section 7216, depending on who is the manager.

The normal rules of agency may apply to him.

Mr. HATCH. I say I do not want them to apply to him with regard to the expressions made in good faith.

Mr. JAVITS. But they may apply and, if so, it would be the agency guilty of the unfair labor practice if the rules of agency designated him as the agent.

That is why I suggested that language, because I do not think the Senator's language means anything different than what is already contained.

But for the purpose of this discussion, if the Senator feels he cannot do that, what I would like to ask the Senator is the following.

Mr. HATCH. Yes.

Mr. JAVITS. Does he intend that in this amendment, that is, the personal views, argument, opinion, or the making of any statement by the individual, that those views, argument, opinion, or the making of any statement shall be equivalent to interfering with restraining or coercing an employee in connection with the exercise of rights assured by this chapter, or encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment?

Mr. HATCH. The language in my amendment does not permit that.

Mr. JAVITS. All right. We agree on that.

Mr. HATCH. We agree on that.

Mr. JAVITS. We will worry about the language.

Mr. HATCH. Right. I believe the conferees could change that.

Mr. JAVITS. So much for the free speech amendment.

Mr. HATCH. But let me add this, that I want the free speech provisions to enable any member of the civil service management to speak his own mind freely, without it being imputed to the agency, thus involving these technical rules and causing the agency to be guilty of an unfair labor practice.

Mr. JAVITS. Would the Senator consider that? In view of his intent, adding to the end of the amendment the following:

Such expression contains no threat of reprisal or force or promise of benefit and is not made under coerceive conditions.

Mr. HATCH. Yes, that is fine.

Mr. JAVITS. All right.

Mr. HATCH. I would accept that language.

Mr. President, I move that my amendment be modified to accept that particular language.

Mr. JAVITS. I will send the modification to the desk.

Mr. HATCH. I do move the modification.

The PRESIDING OFFICER. The Senator has the right.

The amendment is so modified.

Mr. JAVITS. Mr. President, the last amendment—I apologize to the Senate for the time, but I think we are making very good progress in this matter.

I would like to point out to the Senator that in respect to decertification of a labor organization, which is a very lethal remedy——

Mr. HATCH. It certainly is.

Mr. JAVITS. The Senator knows that.

At the same time, the Senator is absolutely right that the matter which he is seeking to redress is a very strong and important Federal right, and I think it is important enough so that I ought to read to the Senate what section 7216 (b) (4) (B) says.

Mr. HATCH. Right.

Mr. JAVITS. It says:

Condone any activity described in subparagraph (A) by failing to take action to prevent or stop it.

Let me read (A) because that is what is referred to:

(A) Call or participate in, a strike, work stoppage, slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes or reasonably threatens to interfere with an agency's operations.

May I ask as a first question, why did the Senator not include (A), why just (B), just as a question of curiosity?

Mr. HATCH. Because (B) does by implication include (A).

Mr. JAVITS. In other words, the Senator intends to include (A)?

Mr. HATCH. Yes; there is no question about it.

Mr. JAVITS. And the condoning of course, is the more inclusive.

Mr. HATCH. Yes; to make it even more clear, the authority is the labor authority provided for pursuant to this act. If that authority says they have condoned this type activity, then when the union itself has an affirmative duty in the public interest not to have such activity, then this remedy does and should come into play.

Mr. JAVITS. As a practical matter, Mr. President, the Senator goes on in his amendment to say, "upon an appropriate finding by the authorities"——

Mr. HATCH. By the authority.

Mr. JAVITS. Authority.

Mr. HATCH. Meaning the authority in this bill.

Mr. JAVITS. The authority in this bill of such a violation.

The Senator will agree, will he not?

Mr. HATCH. That is the Federal labor relations authority provided in this bill.

Mr. JAVITS. The Senator will agree that this being a drastic remedy, there could be a lot of argument about the facts and the merits.

Mr. HATCH. I certainly do agree.

Mr. JAVITS. Is there any procedure—and I have not examined this closely, and I am sure the Senator has, and that is why I ask this—is there any procedure with relation to a finding? Is there a notice, a hearing, an opportnuity to contest the facts?

The Senator says in his amendment that upon an appropriate finding by the authorty, its exclusive recognition status is revoked and it shall cease immediately to be legally entitled and obligated to represent employees. That is a pretty drastic remedy. Has the Senator any procedure of notice or hearing or appeal or some procedure which is involved in such a drastic remedy?

Mr. HATCH. Yes; pursuant to this particular bill, there would be notice of an unfair labor practice that would be litigated. If it is found to be unfair and the condoning has taken place, the offending union would be decertified.

Mr. JAVITS. Can the Senator key us to these procedure sections, notice and hearing, which relate to the issue, the words "appropriate finding"? I beg the Senator to help me in that, because, as I say, he undoubtedly has checked this out closely.

Mr. HATCH. Does the manager of the bill know exactly where that provision is? He may be able to assist us in that regard. I think it begins on page 271. I think it is paragraph 7216.

Mr. JAVITS. What page is that?

Mr. HATCH. 7216 starts on page 295.

So it would be pursuant to the unfair labor practices section, as I understand it, in the committee bill which we are considering at the present time.

Mr. JAVITS. So when the Senator speaks——

Mr. HATCH. Probably also 7233, although I am not positive of that.

Mr. JAVITS. When the Senator speaks of "appropriate finding," the Senator incorporates by reference the procedure of 7216?

Mr. HATCH. The whole chapter 72 on the Federal service management relations chapter, which starts on 7201, up through 7205.

Mr. JAVITS. In other words, the whole procedure chapter.

Mr. HATCH. That is right—as defined in the bill.

Mr. JAVITS. Is it not the fact, also, that whether or not the word "immediately" belongs will depend upon the outcome of that proceeding?

Mr. HATCH. That is correct.

Mr. JAVITS. So that we really need it or do not need it.

Mr. HATCH. There would have to be a justicable decision, with all the rights accorded to both sides.

Mr. JAVITS. And that decision would determine the time of its effectiveness and the procedure?

Mr. HATCH. That is right. If that procedure is appealed, there has to be an ultimate decision that determines the immediate effect.

Mr. JAVITS. By using the word "immediately"—which I hope the Senator ultimately will decide against—the Senator is not trying either to abbreviate or increase that time?

Mr. HATCH. No. We do not want to be unfair to any labor organization with this amendment, so "immediately" refers to the finding of an unfair labor practice, meaning condoning the illegal activities provided for under this bill.

I think it is going to be up to the labor authority to determine whether that immediate effect takes effect upon the finding, even though there may be an appeal.

Mr. JAVITS. Yes.

Mr. HATCH. Or whether it will not take effect until there be a final resolution of the matter, which may be in the Supreme Court of the United States.

Mr. JAVITS. Would not the Senator agree with me that under the expression he gives the words "appropriate finding" and the word "immediately," it really is not necessary, because it may be immediate and it may not? It depends upon the determination, the rules, the procedures, of the authority? All I am trying to avoid is to add or subtract anything that the Senator has incorporated by reference.

Mr. HATCH. Why do we not change the language this way, to satisfy the Senator:

and it shall cease, upon such finding, to be legally entitled and obligated to represent employees in the union.

Mr. JAVITS. That is all right. Do not do it yet, though.

Mr. President, for the moment, I should like to yield the floor, because I see that Senator METZENBAUM is anxious to be heard on this matter.

The PRESIDING OFFICER (Mr. STONE). The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, will the Senator from Utah yield for a question?

Mr. JAVITS. I have yielded the floor.

Mr. HATCH. I will be happy to answer any questions.

Mr. METZENBAUM. Will the Senator from Utah tell me whether in private practice, with respect to employers, there is any situation which is comparable to that just provided for under his section (b), which provides that where a labor union condones any activity described in paragraph (a), that labor union may be decertified?

All the Senator provides here is that under paragraph (b), if the labor union fails to take action to prevent or stop certain procedures as provided for under paragraph (a), then, whether immediate or otherwise, you have decertification. Is it not a fact that a private labor organization—when I say private, I mean a private employer——

Mr. HATCH. The Senator is talking about the private sector?

Mr. METZENBAUM. Yes.

All that would occur under those circumstances is that the union would be found guilty of an unfair labor practice; but there is no procedure and the courts have not ruled, even in some cases which were very flagrant with respect even to discriminatory practices, where the union has been decertified. Is that not a fact?

Mr. HATCH. Let me answer the question this way:

Even in the private sector, which is distinguishable here, there is no law which says a union cannot strike. They have the right to strike in the private sector. In the public sector, they do not have the right to strike. Yet, we are finding all kinds of threats to strike all over the country, which could cause chaos.

My amendment may resolve that. But there are some situations. I can think of one cursorily in which a union, even under the private sector, can be decertified for certain activity, and that is where it practices racial discrimination. It can be decertified even in the private sector, under that circumstance, and there may be others.

Mr. METZENBAUM. The courts have not held in accordance with the statement just made by the Senator from Utah, as I understand it. I think the case is Handy Andy, or something like that.

The fact is that merely for condoning a strike, even if the union has agreed by contract not to strike, or condoning picketing, or a slowdown, or a work stoppage, unions do not become decertified in the private sector.

My question is, Why does the Senator go to the extreme that he goes in this case in order to decertify the union and cause it to lose its parking rights?

Mr. HATCH. Because the union, by becoming a decertified union in the public sector, has as its basic tenet the obligation and affirmative duty to act in the public interest, too. Since the law says that a union cannot strike—which is the present law, irrespective of what is being done here in civil service reform—the union has an obligation not to promote or encourage a strike.

The reason why I believe this provision is not extreme but a provision which is needed is that presently we are being faced with all kinds of threats of strikes on the part of public-sector employees, and even some of their union leaders, in violation of the law, in violation of their affirmative duty not to do so.

As Senator JAVITS pointed out, I am trying to prevent that, thus putting some teeth in the law, so that they will have to think twice before they advocate in any way abridgement of their affirmative duty not to strike in the public sector.

To be honest with Senators, they will have all of their rights protected, as Senator JAVITS in his characteristic fashion has so amply pointed out, by formal litigation proceedings which may under certain circumstances go to the Supreme Court of the United States, but this puts some teeth into that particular provision. And that is the purpose of it.

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. JAVITS. 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. JAVITS. Mr. President, I wonder whether the Senator from Utah would mind if momentarily his amendments are set aside so that Senator HEINZ may offer an amendment which I gather will be accepted and then immediately resume on the amendments of the Senator.

I make that unanimous-consent request.

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

The Senator from Pennsylvania.

Mr. HEINZ. Mr. President, of course, I say to the managers of the bill, Senator RIBICOFF and Senator PERCY, how much I admire the excellent job they have done on this legislation, not only here in the Chamber but in our Governmental Affairs Committee.

Mr. President, before discussing this amendment, I reiterate my support for S. 2640 and commend my colleagues on the Governmental Affairs Committee for their long and careful consideration of the civil service reform legislation and the civil service reorganization proposal. More than a year has been spent by the administration and Congress in closely analyzing the many problems of the civil service system and weighing various solutions to them. After this amount of effort, we have a responsibility to insure that the bill we pass will truly address these problems. It is clear that our civil service system is in dire need of reform; the Federal bureaucracy has become a labyrinth of redtape duplicated and unnecessary work, and lack of responsiveness to the needs of the American people. The public today is frustrated at the size and cost of Government; it is frustrated at its inefficiency, and frustrated at its inability to provide the services they are paying for with their taxes. Not only is the public dissatisfied, but civil servants are frustrated with the amount of redtape and bureaucratic barriers which prevent them from effectively performing their jobs as public servants.

Reforming this system on the basis of sound management principles, enabling "managers to manage", and streamlining the existing maze of rules and regulations which control Federal personnel management is certainly a meritorious goal. I am, however, deeply concerned that S. 2640, as reported from the Governmental Affairs Committee, falls short of ensuring that these goals will be met. The problem of size and cost of this bureaucracy is not adequately addressed. "Streamlining" the existing bureaucracy should make it smaller and more cost effective; it should not increase its size and cost. The amendment I am proposing will partially address this inconsistency and ensure that this legislation will more truly be a reform measure.

Inherent in S. 2640 and in the reorganization plan, which will soon go into effect, is an increase in the number of top level appointed positions in the civil service system and an increase in the cost of these top level positions. Currently,

the civil service is controlled by the Civil Service Commission. This presidentially appointed, three-member commission is headed by a chairman, and includes the vice chairman and third Commission member.

CIVIL SERVICE COMMISSION

Chairman—Executive Level III, $52,500.

Vice Chairman—Executive Level IV, $50,000.

Member—Executive Level IV, $50,000.

The reorganization and reform proposals will abolish the Civil Service Commission and replace it with an Office of Personnel Management and a Merit System Protections Board to assume the personnel management and judicial responsibilities currently held by the Civil Service Commission, repectively. The creation of these two new agencies will not only increase the number of top level management positions from 3 to 11, it will also increase the executive levels of those positions. This increases bureaucracy; it will also increase its cost by the additional positions and the upgrading of these positions.

OFFICE OF PERSONNEL MANAGEMENT

Director—executive level II, $57,500.

Deputy Director—executive level III, $52,500.

Associate directors (five)—executive level IV, $50,000.

MERIT SYSTEMS PROTECTION BOARD

Chairman—executive level III, $52,-500.

Vice Chairman—executive level VI, $50,000.

Member—executive level IV, $50,000.

Special Counsel to the MSPB—executive level IV, $50,000.

These positions alone will add an additional $417,500 in salaries for top level appointees. This figure does not include the cost of assistants and secretaries which will almost certainly accompany them.

In addition, Mr. President, the creation of the Federal Labor Relations Authority will also create new top level slots in the bureaucracy. The responsibilities of the Chairman, two Members and General Counsel have until now been held by personnel in the Civil Service Commission, the Department of Labor and the Office of Management and Budget. These were not previously full-time responsibilities for any single members of those agencies. The new Federal Labor Relations Authority positions will be:

FEDERAL LABOR RELATIONS AUTHORITY

Chairman—executive level II, $52,500.

Members (two)—executive level IV, $50,000.

To more effectively implement Federal personnel policy it may in fact be necessary to separate responsibilities currently held by the Civil Service Commission, creating two new agencies, and to create permanent full-time positions to direct Federal labor relations; however, I feel it is an unnecessary expenditure of taxpayers dollars to elevate these positions to the proposed levels. The remainder of my amendment would, therefore, reduce each of the proposed new positions by one executive level. This would result in an annual savings of an estimated $132,500, or 18.5 percent, of the current salary levels in the bill.

In sum, Mr. President, we are seeing a so-called reform proposal transpose what are 3 full-time positions and 3 very much part-time jobs into a total of 13 top level full-time positions, all at a higher pay level than currently. While it is tempting to try to restructure and prune back this proliferation of top level political appointees, my amendment only seeks to cut the pay of these positions by one level, thus preventing the pay inflation in the bill.

UP AMENDMENT NO. 1776

(Purpose: Reducing the level of compensation of officers and members of OPM, MSPB and FLRA)

Mr. HEINZ. Mr. President, I send to the desk my unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania (Mr. HEINZ) proposes an unprinted amendment numbered 1776.

Mr. HEINZ. 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 page 147, strike out lines 10 through 22, and insert in lieu thereof the following:

(b)(1) Section 5314 of title 5, United States Code, is amended by inserting at the end thereof the following new paragraph:

"(67) Director of the Office of Personnel Management.".

(2) Section 5315 of such title is amended by inserting at the end thereof the following new paragraph:

"(122) Deputy Director of the Office of Personnel Management.".

(3) Section 5316 of such title is amended by inserting at the end thereof the following new paragraph:

"(144) Associate Directors of the Office of Personnel Management (5).".

On page 166, strike out lines 10 through 23 and insert in lieu thereof the following:

(b)(1) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(123) Chairman of the Merit Systems Protection Board.".

(2) Section 5316 of such title is amended by adding at the end thereof the following new paragraphs:

"(145) Members, Merit Systems Protection Board.

"(146) Special Counsel of the Merit Systems Protection Board.".

(3)(A) Paragraph (17) of section 5314 of such title is hereby repealed.

(B) Paragraph (66) of section 5315 of such title is hereby repealed.

(C) Paragraph (99) of section 5316 of such title is hereby repealed.

On page 316, strike out lines 4 through 15, and insert in lieu thereof the following:

(f) Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(124) Chairperson, Federal Labor Relations Authority.".

(g) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(147) Members, Federal Labor Relations Authority (2).".

On page 281, line 6, strike out "Senate." and insert in lieu thereof the following: "Senate, and shall be paid at an annual rate of basic pay equal to the maximum annual rate of basic pay currently paid, from time to time, under the General Schedule.".

Mr. HEINZ. I would be pleased to respond to questions.

Mr. RIBICOFF. Mr. President, we have had an explanation of the amendment by the distinguished Senator from Pennsylvania. He makes his point and he makes it well. His amendment is acceptable to the manager of the bill.

Mr. PERCY. Mr. President, I find the amendment acceptable and I know of no opposition on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania.

The amendment was agreed to.

Mr. HEINZ. I would just like to thank the managers of the bill.

I very much appreciate their acceptance of the amendment.

Mr. President, I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. RIBICOFF. Mr. President, if I may have the attention of the distinguished Senator from Ohio (Mr. METZENBAUM), the Senator from New York (Senator JAVITS), and the Senator from Utah (Senator GARN). I do appreciate the concern of the distinguished Senator from New York and the Senator from Ohio. Unfortunately, they were not on the floor in the early part of the afternoon. During the day the distinguished Senator from Utah presented this amendment to us in advance of a series of amendments.

The distinguished Senator from Illinois (Senator PERCY) and I were busily engaged in explaining this bill and handling amendments. It was my suggestion that the Senator from Utah and our staffs meet with Mr. Campbell, the Chairman of the Civil Service Commission, and the staff of the executive branch to try to work out a series of amendments that would be consistent with the thrust of S. 2640.

The amendments of the Senator from Utah were volumninous. Although the philosophy of the Senator from Utah certainly differs basically from that of the Senator from New York and the Senator from Ohio and myself—and I will let the Senator from Illinois speak for himself—the Senator from Utah was completely cooperative in trying to work out a series of accommodations, and the Senator from Utah came back after meeting with the administration and our staffs with these amendments.

I can understand the concern of the Senator from New York and the Senator from Ohio. At no time was the Senator from Utah trying to pull a fast one on anyone. This was carefully crafted and worked out with Mr. Campbell and his staff in the Vice President's office. We felt that in the sense of accommodation they worked it out.

I do feel, with the colloquy that took place between the Senator from New

York and the Senator from Utah, that some of the fuzziness or misunderstanding was clarified, and I do believe both the Senator from New York and the Senator from Ohio have rendered a public service to all of us on this legislation.

I want to make it perfectly clear that the Senator from Utah was most cooperative in trying to work out a very knotty problem.

Mr. HATCH. I thank the distinguished Senator.

Mr. PERCY. Mr. President, I will just be a moment. I should like to reiterate also what my distinguished colleague, Senator RIBICOFF, has indicated. From the outset of the day until now we have worked with the Senator from Utah. I did participate in some of the meetings with Chairman Campbell and members of the White House staff in the Vice President's office, and considering what we started with and what we now have there has been a remarkable change and a spirit of cooperation.

Once again we are deeply indebted to the distinguished Senator from New York for raising the question, for taking every word in these amendments to clarify what they mean, what the impact might be and what the implications might be for changing and modifying some of that wording accepted by the Senator from Utah, and also by establishing legislative history we can certainly get the intent and purpose of these amendments.

Under no condition or under no circumstances are we trying, basically trying, to change the thrust and direction here, but certainly in looking after the interests of workers throughout the country, as the distinguished Senator from New York always has, we must take into account that there are mixed feelings on all these issues with Government workers as well.

But the managers of the bill have tried the best they could to work out the most practical solution. The Senator from Illinois wants to express appreciation again to the Senator from Utah for his cooperation and to the distinguished Senator from New York for the extraordinary service he has rendered now in helping to clarify these matters that have been of concern to him and to our distinguished colleague from Ohio (Mr. METZENBAUM).

Mr. MATSUNAGA. Mr. President, pursuant to the response of the Senator from Utah to questions put to him earlier, in order to clarify the first amendment of the three, which he has offered, I propose an amendment to change in the second line of the proviso, the words "a representative of its employees" to "such labor organization." I have discussed this matter with the Senator from Utah, and he has indicated a willingness to accept my amendment as a modification to his first amendment.

I now yield to the Senator from Utah for that purpose.

Mr. HATCH. Mr. President, if the Senator will yield to me, I will yield to the distinguished Senator from New York so that he can have the floor and then he will yield and I will make the modifications.

Mr. JAVITS. Mr. President, I stirred this up and I hope to be able to be here when it is finished. I wish immediately to thank my colleague, Senator MATSUNAGA, and my colleague, Senator METZENBAUM, for giving this matter their close attention, and it has been very helpful, but my purpose was only to clarify, not to, if possible, interfere with the actions taken by my completely trusted colleagues, to wit, the managers of the bill, and Senator HATCH. He had not the remotest idea but that this matter was thoroughly cleared in every way that it should be, and I repeat I mentioned before and I say again, simply being on the floor and having some experience in labor matters and feeling it my duty to read things and to ask questions if I am in doubt, I carried out my responsibility.

I am pleased that things have ended up in concord, and I beg the Senator from Utah to believe that there is not the remotest question I think in anybody's mind on the floor that his conduct as a Senator was absolutely impeccable.

Mr. HATCH. I thank the distinguished Senator from New York. I always appreciate his good cooperation and his conduct, and I can truthfully say I thought everything had been cleared. I would certainly not present any amendment without having it cleared, and especially when we had had it cleared with the administration and the leaders of the bill, as is the usual case. I tried to be accommodating in having this language meet the needs of the Senators here, and I believe the distinguished Senator from New York, the distinguished Senator from Hawaii, the distinguished Senator from Ohio and, of course, my very revered chairman of the Governmental Affairs Committee have all added to the colloquy which, I think, has made this quite clear.

So let me make some modifications which I think will resolve the conflicts but still not denigrate the purpose of my amendments, which are acceptable to me.

Let us start with the first amendment, which was with regard to the secret ballot election. To accommodate the distinguished Senator from New York, we have already moved that the words "in good faith" be stricken, and that has been accepted, to the best of my knowledge. If not, then I so move.

The PRESIDING OFFICER (Mr. HART). The amendment has been so modified.

Mr. HATCH. To accommodate the distinguished Senator from Hawaii, although "a representative of its employees" is a series of legal terms of art in labor law, and since "labor organization" is utilized throughout this particular bill, we will strike "a representative of its employees," and substitute in lieu thereof "such labor organization," and I so move.

The PRESIDING OFFICER. The Senator has that right, and the amendment is so modified.

Mr. HATCH. I offer this amendment.

Mr. MATSUNAGA. If the Senator from Utah will yield, I thank him for his willingness to make the modifications I have suggested. Since he has accepted my proposed amendments and the modifications suggested by the Senator from New York, I can now lend him my support.

Mr. RIBICOFF. The modifications are acceptable to the manager of the bill.

Mr. HATCH. Since the modifications are acceptable to the manager of the bill, I move the amendment be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment as modified.

Mr. METZENBAUM. Has the amendment not been accepted?

Mr. JAVITS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. JAVITS. Is it not a fact that only one vote is required on all three amendments, but that they may be separately modified? That is the privilege of the Senator, is it not?

The PRESIDING OFFICER. The Senator is correct.

Mr. HATCH. Then I will present all the amendments and move they be adopted en bloc, the second amendment with the changes we have agreed to. It has to do with explicit recognition standards. He have stricken the word "immediate" and inserted in lieu thereof "upon such findings." Is there anything else we added?

Mr. JAVITS. We added something we sent to the desk on a yellow sheet, did we not? No; that is on free speech.

Mr. HATCH. I move that particular change. It may have been moved, but I move it again.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Mr. HATCH. As to the third amendment, with regard to free speech and the rights of free speech, at the conclusion of the amendment we have stricken the period and have added "or unduly coercive conditions," and I move that modification.

The PRESIDING OFFICER. The modification has been made.

Mr. HATCH. As I understand it, the managers of the bill have accepted all three of these amendments en bloc.

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

Mr. HATCH. Excuse me; Senator METZENBAUM also had another modification. I am sorry, Senator, I forgot yours.

With regard to the exclusive recognition amendment, we should add the words "after any labor organization which" and then add the words "willfully and intentionally by omission or commission has violated" and I move those additional changes.

Mr. METZENBAUM. Mr. President——

The PRESIDING OFFICER. The Senator has the right to modify his amendments.

Mr. METZENBAUM. Will the Senator from Utah yield for a minute?

Mr. HATCH. I am happy to yield for 1 minute.

Mr. METZENBAUM. I appreciate very much the cooperation of the Senator from Utah. It makes the amendment less objectionable than it was. I do not wish to indicate support for the amendment, but rather than delay the debate this

evening, I am pleased with his spirit of cooperation and am willing to accept this amendment as the basis from which to go forward at this point.

Mr. HATCH. I thank the Senator from Ohio for his cooperation, and I now move the adoption of the amendments, en bloc.

The PRESIDING OFFICER. Will the Senator from Utah send his amendments to the desk, so that there is no question about them?

Mr. HATCH. Could I ask that my aide and Senator METZENBAUM work these out? I do not have them written out. We will work them out at the desk. Is that acceptable to everyone?

Mr. MATSUNAGA. I have them written out.

Mr. METZENBAUM. I think it is pretty much agreed that we are really only inserting the language "wilfully or intentionally, by omission or commission."

The PRESIDING OFFICER. The question is on the adoption of the amendments, as modified, en bloc.

The amendments, as modified, were agreed to en bloc.

Mr. HATCH. I move to reconsider the vote by which the amendments were agreed to.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

Mr. HATCH. Mr. President, I wish to finish with my amendments.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. I yield to the Senator from Utah.

UP AMENDMENT NO. 1777

(Purposes: (1) To separate the reporting requirement from the MSPB and vest it with an independent agency. (2) To reduce the expense of an SES executive on a paid sabbatical. (3) Clarifies the manner in which the Director of the Office of Personnel Management may intervene in a proceeding of the MSPB)

Mr. HATCH. Mr. President, I send three unprinted amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. HATCH) proposes unprinted amendments, en bloc, numbered 1777. On page 141, add, following after line 21—

Mr. HATCH. I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair wishes to inform the Senator from Utah that for the amendments to be considered en bloc would require unanimous consent.

Mr. JAVITS. Could we hear them all first?

Mr. HATCH. Yes.

Mr. JAVITS. Let us hear them all read, and then ask unanimous consent.

Mr. HATCH. That will be fine.

The assistant legislative clerk read as follows:

On page 141, add the following after line 21:

"(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the MSPB which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the activities of the Office of Personnel Management, including an analysis of whether or not the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices."

On page 220, strike lines 11 through 23 and insert in lieu thereof the following:

"(d) An agency head may grant leave with half pay and full benefits to a career executive for a sabbatical period not exceeding twelve months or full pay and full benefits for six months to permit such person to engage in study or uncompensated work experience which will contribute to the individual's development and effectiveness. A sabbatical leave may not be granted more than once in a ten-year period. An individual, to be eligible for a sabbatical leave, must have completed at least seven years of Federal service in a position with a level of duties and responsibilities equivalent to the Senior Executive Service and at least two of which were as a member of the Senior Executive Service."

On page 153, line 24, strike the words "intervene in any such proceeding" and insert in lieu thereof "appear as a party or send a representative to any hearing called under paragraph (2)(C), present written briefs and other relevant material".

On page 153, line 25, strike the words "intervene" and insert in lieu thereof "participate".

On page 154, line 2, insert the following immediately after the period "Nothing in this title shall be construed to mean the OPM shall be permitted to interfere with the independence decison-making of the MSPB."

The PRESIDING OFFICER. Does the Senator from Utah wish to——

Mr. HATCH. I ask unanimous consent that the amendments be considered en bloc.

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

Mr. HATCH. Mr. President, the original language of the bill mandated a report to Congress prepared by the Merit System Protection Board, the MSPB mentioned in the amendment, on the "state of civil service," including analysis of whether the actions of the Office of Personnel Management have been in accord with merit principles.

I felt at the outset that this assessment should be performed by an independent agency, one apart from the executive branch or the civil service structure.

The managers of the legislation, however, have presented a better idea, which is two reports, one by the MSPB and one by GAO. In this way, all viewpoints and data will be stated. We in Congress, as well as the President, will be able to effectively evaluate our new reforms.

So that is the purpose for amendment No. 1.

Amendment No. 2 is an amendment which will change the policy with regard to sabbatical periods to a period not exceeding 12 months—well, half-pay for 12 months, with full benefits for the 12 months, or with full pay and full benefits for 6 months, and the employee has the right to make the choice in those matters.

I believe it is a very good compromise and an effective change in the bill. I also believe that the managers have agreed to accept this particular amendment.

The third one is an amendment which clarifies the manner in which the Director of the Office of Personnel Management may intervene in a proceeding before the MSPB. I believe the managers of the bill are prepared to take these amendments.

Mr. RIBICOFF. I will also point out that these amendments have been carefully gone over with the administration and have their approval. The amendment is acceptable to the manager of the bill.

Mr. HATCH. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIBICOFF. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. I compliment the distinguished managers of this bill for their cooperative efforts and the aid and counsel they have given me throughout what I did not expect to be a lengthy time with these amendments but which has been, I believe, an effective time. I hope we have been able to assist them in the preparation of their bill.

UP AMENDMENT NO. 1778

(Purpose: Eliminating an inequity in computing annuities of Federal law enforcement officers or firefighters)

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. DOLE) proposes an unprinted amendment numbered 1778.

Mr. DOLE. 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 page 198, after line 25, insert the following new section:

COMPUTATION OF CERTAIN ANNUITIES

SEC. 305. (a) Section 8339(d) of title 5, United States Code, is amended by inserting "(1)" immediately after "(d)" and by adding at the end thereof the following new paragraph:

"(2) The annuity of an employee retiring under this subchapter with at least 5 years but less than 20 years of service as a law enforcement officer or firefighter, or any combination thereof, is computed under subsection (a) of this section, except that the annuity of such employee is computed with respect to the service of such employee as a law enforcement officer or firefighter, or any combination thereof, by multiplying 2½ percent of his average pay by the years of that service.".

(b) Section 8339(h) of such title is amended by striking out "section 8336(d)" and inserting in lieu thereof: "section 8336 (d)(1)".

(c) The amendments made by this section shall apply with respect to individuals who become entitled to receive an annuity on or after the effective date of this Act.

Mr. DOLE. Mr. President, the amendment I am offering at this time was originally introduced as Senate bill S. 565 during February of 1977. At that time, I pointed out that the legislation is intended to correct an oversight in Public Law 93–350, which was enacted by the 93d Congress. That measure was the result of efforts by Senators PERCY and JAVITS, as well as others. The bill, S. 565, was referred to the Government Affairs Committee. However, in the intervening year and a half, no hearings have been held, and no action has been taken to report the measure to the Senate. For that reason, I have chosen to bring the proposal to the attention of my colleagues in this manner.

ANNUITY COMPUTATION FORMULA

Mr. President, during the 93d Congress, we gave our approval to a bill, H.R. 9281—later enacted as Public Law 93–530—to provide Federal law enforcement and firefighting personnel a special 2½-percent retirement computation formula in recognition of the special, hazardous duty service which they perform. In doing so, however, we failed to recognize the substantial inequity that would result from premising the incentive credit on a full 20 years of service in such capacity.

In order to correct that oversight, I have proposed this amendment, to extend appropriate annuity credit to retiring Federal employees who have at least 5 years' service as law enforcement or firefighter personnel, but who have not completed 20 years. This would be consistent with the full credit given congressional employees under the higher 2½-percent formula after they have served 5 years (5 U.S.C.A. 8339(b)). As the law now stands, Government employees who have performed "hazardous duties" for fewer than 20 years are penalized merely because they fail to reach the magic benefit line. Even though they were exposed to the same dangers, subjected to the same perils, and employed in the same high risk endeavors for our Nation, they receive no recognition if, for one reason or another, they choose or are compelled to leave such service 1 day before their 20 years are up.

SUPPORT FOR AMENDMENT

This legislation has been endorsed by the International Association of Chiefs of Police, Inc., and has been praised by the Federal Criminal Investigators Association, the National Treasury Employees Union, and the Society of Former Special Agents of the FBI.

AN EQUITABLE ARRANGEMENT

Although the Civil Service Commission is on record as opposing preferential computation formulas as a reward for particular kinds of service, it seems to me that as long as the current law provides for such treatment, all those entitled should receive it. If they do not, we are going to find ourselves in the business of suppressing lateral movement of these types of Government employees, as well as discouraging the initial recruitment of qualified personnel who may not wish to commit themselves for a full 20 years in such a demanding profession.

In addition to the recruitment argument, it is my belief that the change I am proposing could also operate to help retain qualified and experienced personnel within the Government by encouraging them to stay in, or return to, civil service rather than the private sector. Too often, now, for example, a firefighter or law enforcement officer who has put in perhaps 10 years of service and decides that it is not in his own or his family's best interest to continue for another 10 years, would have just as much motivation to go to private industry as to another Government agency.

It seems to me that 5 years is a reasonable minimum to expect of a career-oriented professional and that, in many instances, we are promoting morale problems and indifference among 15- to 20-year agents who are "putting in their time" simply because of the leverage being held over them by the 20-year requirement. Again, I think we could have a much more dedicated, effective, and inspired contingent of Federal officers if they knew they could transfer at any time from a hazardous position and still receive full credit for the period spent in that position when they eventually qualify for Government retirement.

Since the amendment I am proposing would become effective upon enactment, any problem of recomputation for those already retired would be avoided. Moreover, Federal service retirement computations are done on an individual basis anyway, and no additional administrative burden would be imposed.

Any measure designed to eliminate an existing inequity should, Mr. President, receive the sympathetic consideration of this body. I hope my colleagues will support this adjustment in the annuity computation formula for Federal hazardous-duty employees.

Mr. President, I ask unanimous consent that a letter from Glen R. Murphy, director, Bureau of Governmental Relations and Legal Counsel, International Association of Chiefs of Police, Inc., dated July 28, 1977; a letter from James L. McGovern, president, Society of Former Special Agents of the Federal Bureau of Investigation, dated May 23, 1977; and a letter from Frank J. Scodari, national secretary, Federal Criminal Investigators Association, dated March 16, 1977, be printed in the RECORD at this point.

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

JULY 28, 1977.

Senator ROBERT J. DOLE,
Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. DOLE: I would like to express to you, on behalf of the International Association of Chiefs of Police, our Association's support of S. 565, a bill introduced by you dealing with the computation of annuities for federal law enforcement officers and firefighters.

I might note that the International Association of Chiefs of Police, a nonprofit organization, has been serving the law enforcement profession and the public interest by advancing the art of police science since 1893. Its staff of 110 police consultants, attorneys and educators develops and disseminates improved administrative, technical, and operational practices and promotes their use in police work. Its aims are to foster police cooperation and the exchange of information and experience among police administrators throughout the world; to bring about recruitment and training of qualified persons; and to encourage adherence of all police officers to high professional standards of performance and conduct. IACP is the world's leading association of police executives with approximately 11,500 members representing 64 nations of the world.

The IACP is appreciative of the efforts being made to eliminate the existing inequities in the computation of annuities under title 5 of the U.S. Code. Please be advised of our continued support for this pending legislation, and do not hesitate to call on me if I can be of any assistance in assuring passage of the bill.

Sincerely,

GLEN R. MURPHY,
Director, Bureau of Governmental Relations and Legal Counsel.

ATLANTA, GA.,
May 23, 1977.

Senator BOB DOLE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR DOLE: The membership of the Society of Former Special Agents of the F.B.I. join me in expressing our appreciation to you for your interest in retirement benefit legislation affecting Federal law enforcement officers.

We are aware that your pending bill does not alter the provisions of Public Law 93–350 and appreciate your statement that you would have no objection to expanding those hearings which may be held on S. 565 during the 95th Congress so as to include provision for retroactive consideration of P.L. 93–350.

Sincerely,

JAMES L. MCGOVERN,
President.

WEST HEMPSTEAD, N.Y.,
March 16, 1977.

Hon. ROBERT DOLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOLE: Thank you for your letter regarding bill S. 565 which you recently introduced in the United States Senate.

Please be assured that this Association is keenly interested in having the bill passed and we will lend every assistance possible towards this goal. . . .

We appreciate your interest in seeking legislation that is beneficial and equitable for all Federal Criminal Investigators.

Very truly yours,

FRANK J. SCODARI,
National Secretary.

Mr. RIBICOFF. Mr. President, this amendment is acceptable to the managers of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. GARN. Mr. President, my objection to the House civil service reform bill is simply because they have the Hatch Act provisions attached to it. On numerous occasions I have talked to both the distinguished majority manager of the bill and the minority manager of the bill and they have agreed with my concern. So the Senate bill does not have any Hatch Act provisions in it. The House bill does. That bill has not passed the House.

My concern is what the actions of the

managers of this bill would be in conference if there were attached in conference the Hatch Act provisions.

Mr. RIBICOFF. Mr. President, may I respond as manager of this bill and chairman of the Governmental Affairs Committee?

Personally, I am opposed to changing the Hatch Act as it now exists. I have been consistent in opposition to any changes.

Also, there is no room for amending S. 2640 for the Hatch Act.

It is my personal view that to do so would negate all we are trying to achieve in S. 2640.

The Senator from Utah has my personal assurance that, the Senate not having put into S. 2640 an amendment in which the Hatch Act is changed, under no circumstances would I sign a conference report and bring back a conference report to this body which contained a change in the present Hatch Act.

Mr. GARN. I thank the distinguished Senator from Connecticut.

Mr. PERCY. I would like to advise that I have now put on the record a number of times the position of the Senator from Illinois on this matter. I took the position with the majority manager that if there was an attempt to put the Hatch Act amendment on his bill, it would kill the civil service reform bill. I have clearly indicated that I oppose such measure.

As minority floor manager of the civil service reform bill, I would refuse to sign a conference report which incorporated such a provision.

There will not be any such amendment, obviously, in this bill in the Senate. We have tried to send as unmistakable and as clear a message as possible to our colleagues in the House that it would be an exercise in futility to attempt to add it in the House.

This bill should be a civil service reform bill, period. Everything that we have attempted to do to depoliticize the civil service might be undone by Hatch Act changes, and certainly there would be absolutely no possibility of getting any such bill through the Congress this year.

I give my colleague as strong an assurance as any Senator can that this Senator would resist every attempt to have the Hatch Act reform provision added to this bill. It simply will not be done.

Mr. GARN. I thank my distinguished colleagues for their very definite and precise reassurances. On the basis of those reassurances, I intend to vote for the bill.

Mr. PERCY. I would like to say that my distinguished Illinois colleague, Congressman DERWINSKI, feels just as strong about this matter and has been working to reason with his colleagues in the House not to in any way impede or encumber, holdup or make impossible, the passage of civil service reform, which is a matter of high priority on both sides of the aisle, with both the Congress and the President of the United States.

Mr. SCOTT. Mr. President, I wonder when we are going to have a final vote. I told my wife I would leave here at 7:30. If we are going to have a vote right now, I want to vote. But if not, I am going to have to leave.

Mr. RIBICOFF. The Senator from Alaska has a final amendment and then we will go to third reading and vote on passage, if we can have the cooperation of the other Members of the Senate.

AMENDMENT NO. 3416

(Purpose: To provide for judicial review of Federal Labor Relations Authority unfair labor practice decisions)

Mr. STEVENS. Mr. President, I call up my amendment No. 3416 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. STEVENS) proposes an amendment numbered 3416.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

Mr. STEVENS. Mr. President, I send a modification of the amendment to the desk.

The PRESIDING OFFICER. The modification will be stated.

Mr. STEVENS. Mr. President, I ask unanimous consent that the reading of the modification be dispensed with.

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

The amendment as modified, is as follows:

On page 285, line 20, after "title," insert "and except as provided in section 7216(f) of this title,".

On page 298, between lines 16 and 17, insert the following:

"(f)(1) Any employee or agency adversely affected or aggrieved by a final order or decision of the Authority with respect to a matter raised as an unfair labor practice under this section, or with respect to an exception filed to any arbitrator's award under section 7221(j) of this title which involves an unfair labor practice complaint, may obtain judicial review of such an order or decision.

"(2) In review of a final decision or order under paragraph (1), the agency or the labor organization involved in the unfair labor practice complaint shall be the named respondent, except that the Authority shall have the right to appear in the court proceeding if it determines, in its sole discretion, that the appeal may raise questions of substantial interest to it. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority, and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law."

"(3) A petition to review a final order or decision of the Authority shall be filed in the Court of Claims or a United States Court of Appeals as provided in chapters 91 and 158, respectively, of title 28 and shall be filed within 30 days after the date the petitioner received notice of the final decision or order of the Board.

"(4) The court shall review the administrative record for the purpose of determining whether the findings were arbitrary or capricious, and not in accordance with law, and whether the procedures required by statutes and regulations were followed. The findings of the Authority are conclusive if supported by substantial evidence in the administrative record. If the court determines that further evidence is necessary, it shall remand the case to the Authority which, after such further proceedings as may be required, may modify its findings, and shall file with the court the record of such proceedings. The findings of the Authority are conclusive if supported by substantial evidence in the administrative record as supplemented.".

On page 308, line 13, after "section" insert "and under section 7216(f) of this title".

On page 316 between lines 15 and 16, insert the following:

"(i) Section 2342 of title 28, United States Code, as amended by section 206 of this Act, is amended—

"(1) by striking out 'and' at the end of paragraph (5),

"(2) by striking out the period at the end of paragraph (6) and inserting in lieu thereof '; and'; and

"(3) by adding at the end thereof the following new paragraph:

"'(7) all final orders of the Federal Labor Relations Authority made reviewable by section 7216(f) of title 5.'".

Mr. STEVENS. Mr. President, an employee aggrieved by a decision of the Merit System Protection Board is entitled to judicial review. Also, one who receives an adverse decision from the National Labor Relations Board has access to judicial review. However, presently S. 2640 fails to provide comparable review for decisions by the Federal Labor Relations Authority. This gives a body under the control of the President untenable authority.

Adverse actions, unacceptable performance appraisals, and discrimination complaints, among others, are appealable to the Merit Systems Protection Board, whether they proceed through negotiated grievance procedures under the labor section of the bill or through the normal appellate route. Such decisions by the Merit System Protection Board are appealable. Unfair labor practice decisions by the Federal Labor Relations Authority are not appealable, however, because the Federal Labor Relations Authority decisions are not subject to judicial review. Unfair labor practice complaints can be serious as complaints labeled adverse actions. So why should one board be subjected to judicial scrutiny while the other is not?

What is even more compelling is that decisions by the National Labor Relations Board are subject to judicial review. An unfair labor practice is basically the same, whether it is brought before the Federal Labor Relations Authority or the National Labor Relations Board. The only difference is in one case the employer is the Government, in the other it is private industry.

Mr. President, my amendment will provide for judicial review of Federal Labor Relations Authority decisions as they concern unfair labor practices. The review will be similar to that of the Merit System Protection Board's and the National Labor Relation Board's. The Federal Labor Relations Authority decisions will be subjected to the same substantial evidence standard of review.

Mr. President, judicial review is at the core of our Nation's beginnings and future.

Mr. RIBICOFF. Mr. President, the amendment of the Senator from Alaska is acceptable to the managers of the bill.

I commend and thank the Senator from Alaska for his cooperation throughout the entire consideration of this legislation in the committee, in markup, and on the floor.

Mr. PERCY. I would like to add my voice of appreciation to that, Mr. President. I know of no objection to the amendment. The amendment is acceptable on this side.

Mr. STEVENS. Mr. President, I move adoption of the amendment, as modified.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. BAYH. Mr. President, I support this legislation enthusiastically because I think it is important for us to find every humanly possible way to make our governmental service more efficient. I think it is possible for us to build on the strength and the dedication of the tens of thousands of dedicated public servants, to award merits, and yet see that those who are not meritorious are removed from the public service.

Mr. President, I am concerned about only one feature of this bill and feel compelled to call it to the Senate's attention.

The language in the Senate bill differs from the House version regarding the EEOC jurisdiction in the adjudication of discrimination cases. In the Senate version EEOC must share jurisdiction with the Merit System Protection Board.

It it necessary that the difference be closely examined in conference and that the House language be viewed as the better approach to this problem, in my judgment.

I point out that under the plan supported and originally submitted by the Carter administration the President felt that the administration was joined by the civil rights organizations in feeling that the discrimination complaints should be handled by the Equal Employment Opportunities Commission. I do not think any Member of this body wants civil service reform to be viewed as an effort to shortcut and lessen our efforts to wipe out the last vestiges of discrimination in public service.

With that in mind, I hope that the Senate conferees will consider again their position on this bill, and if at all possible, yield to the House of Representatives because I feel that is the position which gives us the best chance to fight against discrimination with all that it means.

Mr. THURMOND. Mr. President, I rise in support of S. 2640, the Civil Service Reform Act of 1978.

Efforts to reform the civil service system have been under consideration since the days of the Hoover administration. Administrations of both parties have sought to achieve a civil service system that is both accountable to the public through its elected leaders, but protected from the pressures and potential abuses of the political spoils system.

Unfortunately, over the years the civil service system has become weighted down with complicated and inflexible rules and procedures that have prevented merit principles to be maintained. It is the taxpayers of this country that suffer from this situation. When managers are unable to get dedicated and competent employees to perform the Government's work, the public is adversely affected. The need for an efficient and competent civil service is long overdue.

Mr. President, the overall thurst of S. 2640 is sound. It recognizes that an efficient and accountable civil service will improve services to the public, while insulating Federal employees from the political spoils system that plagued the Federal service in its early days.

There are major features of the bill that I believe will lead to definite improvements in the civil service. First, the bill separates the relationship of Federal employees. There is created an office of personnel management to supervise personnel management in the executive branch.

Second, it creates an independent merit systems protection board and special counsel to adjudicate employee appeals and protect the merit system.

Third, a Federal labor relations authority is established that would seek to improve labor-management relations by providing procedures for resolving grievances and defining unfair labor practices, exclusive recognition and employee rights.

Fourth, the bill creates a senior executive service which embodies a new structure for selecting, developing, and managing top-level Federal executives. This is an important feature since it would provide incentives to top-level employees and give them an opportunity to be rewarded for work well done. It is a voluntary service for no more than 9,200 persons, but an excellent tool for attracting and keeping top-flight people in the service of the Federal Government.

Finally, Mr. President, this bill streamlines the processes for dismissing and disciplining Federal employees, which in my opinion is necessary in order to have a civil service capable of adequately serving the American people.

Mr. President, there are two aspects of this bill which are of special importance to me. The first is the exclusion of certain employees from the coverage of civil service laws and regulations.

Several section of S. 2640 specifically exclude employees of the Federal Bureau of Investigation, the Central Intelligence Committee, and other intelligence-gathering and investigatory agencies of the Government. These employees are now excluded from civil service coverage, and they should remain so.

These people are excluded for proper reasons. The security of our country is at stake and to allow employees to act without fear of disciplinary action or dismissal would seriously impair the ability of our Government to carry out its intelligence gathering and investigative responsibilities. In addition, with the so-called whistleblower protections in this bill, the threat of other and numerous "Pentagon Papers" situations would increase if CIA, FBI and other national security-related employees were covered by civil service laws and regulations. Exclusion of these employees from the bill would insure that these situations could not arise in the future in great numbers.

Mr. President, the other area of concern to me is the elimination of the veterans' preference in the hiring and promotion of Federal civil service employees. I support the provisions of the bill as currently drafted and would be opposed to any effort to eliminate the current preference given our Nations' veterans in civil service employment.

This legislation is badly needed and deserves the support of my colleagues.

THE CRANSTON AMENDMENTS

Mr. SASSER. Mr. President, the distinguished Senator from California, the chairman of the Veterans' Affairs Committee (Mr. CRANSTON) earlier today offered a number of amendments to this bill, among them a provision to strengthen the procedural protections relating to preference eligibility for disabled veterans. I wish to voice my strong support for that provision as well as for the others submitted by Senator CRANSTON.

The veterans of our wars, especially those who become disabled during the course of their service to the Nation, are owed a sincere debt of gratitude by all our citizens. In the contest of civil service reform and Federal employment, we can express that thanks in at least one way by extending the benefits and protections already provided to veterans who apply for Government positions. For instance, one amendment would insure that disabled veterans who are denied jobs on the basis of inability to fulfill the physical requirements of the positions, will be notified and have an opportunity to appeal that denial. Another would authorize noncompetitive appointments for disabled veterans with service-connected disability of 30 percent or greater.

I wish to express my own thanks to the distinguished chairman of the Government Affairs Committee and to Senator CRANSTON for recognizing the opportunity to correct these inequities and to further provide for those citizens who have served in the Armed Forces.

CIVIL SERVICE REFORM IS OVERDUE

● Mr. BIDEN. Mr. President, I am pleased that the President's proposal for civil service reform has come to the floor for action by the full Senate.

Although to the average person on the street, much of the bill is seemingly concerned with technical and procedural changes in personnel and management policies, in fact this legislation will impact on the very quality of Government itself.

Public services are only as good as the people who are responsible for delivering them.

And that is what I think this bill will do, improve the responsiveness and quality of Federal Government employees.

The provision of high-quality public services rests on three things: The quality of people we recruit into the Government; the effectiveness of sound management and incentives for motivating good employee performance.

On the whole, I believe that the merit system has provided the Federal Government with reasonable, well-qualified candidates for public service.

The Government attracts many intelligent, dedicated men and women into its service each year.

We have made and must continue to make progress in recruiting qualified women and minority group members into all levels of Government policymaking.

There are still attitudinal and procedural barriers to the advancement of women, blacks, and other minority groups into middle and upper level management positions.

We must renew our commitment to overcoming these barriers.

At the same time, we must also recognize our special debt to those who fought in our Nation's service, particularly disabled veterans and Vietnam war veterans.

The Vietnam war was the longest and most divisive war fought by this country in over 100 years.

The scars and memories of that war still linger on.

We must insure that there is an adequate period for Vietnam war vets to readjust.

For those who were disabled during our Nation's recent conflicts, there can never be complete readjustment.

The loss of a limb or of an eye can never be completely overcome.

Too many young men have been forced by these disabilities to abandon earlier plans for the future and turn to other pursuits within their physical capabilities.

We must insure that opportunities remain available to disabled veterans in the Federal Government.

I believe that the separation of the Civil Service Commission into an Office of Personnel Management and a Merit Systems Protection Board, envisioned in this bill, is a sound move.

Increasingly the flexibility of recruitment decisionmaking to separate agencies, I believe, will enhance the ability of agencies to hire persons capable of carrying out the tasks entrusted to the agency.

The Merit System Protection Board will be responsible for insuring that agencies do not discriminate against women, blacks, minorities, or any other groups.

The Board would also be charged with protecting the rights of agency employees.

We must see to it that the system promotes effective management.

The Federal Government has been woefully slow in adopting management tools which could increase protection.

Title VI of the Civil Service Reform Act allows Federal agencies to experiment on a limited basis with various management and organizational changes which could enhance the delivery of services.

While managers should not experiment for the sake of experimentation, Government agencies should not retain outmoded and inadequate procedures simply because it is inconvenient to change.

Finally, the most important part of civil service reform must be to motivate good employee performance.

And it is in this area that the civil service system is most in need of improvement.

One of the most irritating and detrimental aspects of the present civil service system is the inability of managers to remove or transfer personnel who are obviously incompetent or who allow personal problems, like alcoholism, to interfere with their job performance.

Under existing procedures it is very difficult, if not impossible to fire these employees, because of the length and complexity of the appeals process.

So what happens?

The employee is either given nothing to do or is shoved off to some other division of the agency.

The employee becomes so embittered that he or she detracts from the performance of the agency and lowers the morale of other staff members.

The result is more "deadwood" on the Government payroll.

However, that does not mean that the agency can and should ride roughshod over employee rights.

The burden of proof should be upon the agency to prove that an employee is not performing his or her tasks.

The agency should also consider alternatives to outright dismissal of the employee.

Such alternatives might include job or personal counseling where alcoholism or personal problems interfere with the employee's productivity.

Another disincentive to good employee performance is the regularity which pay raises and promotions are given in the Federal Government.

Once you get on the payroll, promotions come as a matter of course, not necessarily because you deserve it.

It almost has gotten to the point where you have to actively try to not get the increase.

So I think there is a need to establish an incentive system where outstanding performances are rewarded.

That does not mean that I favor withholding cost-of-living increases because some GS–5 only processes 298 claims in 1 year as opposed to an average of 300.

But we do need a better way to reward the GS–5 employee who processed 400 claims a year.

After reviewing this legislation, I find the concept of a senior executive service reward based on performance evaluations interesting.

I certainly believe that employees at the GS–16 level and above do have a primary responsibility to insure that executive policy is carried out in their agency.

If they strongly believe that a particular directive is incorrect policy then I think they should be willing to resign rather than attempt to subvert the directive by covert means.

My major concern with this performance evaluation concept is who is going to be doing the evaluating and upon what criteria are senior executives going to be evaluated?

This is one area which is inadequately spelled out in the bill.

I do not believe that a purely political criteria is adequate.

There must be some substantive criteria available upon which to judge performance.

I do not think it is proper to create a mentality in the upper echelons of our civil service where "to get along, is to go along."

This would tend to reduce the quality of higher level employees and create a cadre of political hacks.

For this reason, I would like to see a little more guidance for performance review of the senior executive concept in this bill.

In conclusion, Mr. President, the time is long overdue that the Federal Government adopt widely accepted management techniques which any large organization interested in efficient operation would find logical.

The recruitment of high quality personnel and the establishment of effective management practices and employee performance incentives are closely related.

Strengthening each component will strengthen the overall effectiveness of the Civil Service.

And most important, it will allow the Federal Government to provide services to Americans on a fairer, more efficient, and compassionate basis.

This is what I believe civil service reform is all about and I intend to vote in favor of this bill. I urge my colleagues to support this legislation.●

● Mr. GLENN. I support and have cosponsored the civil service reform bill as it is reported by the committee and believe it to be, on the whole, an excellent proposal. I disagree, however, with a major feature of the bill: its apportionment of administrative authority relating to employment discrimination involving Federal workers.

The committee bill would create a procedure under which differences between the Equal Employment Opportunity Commission and the Merit System Protection Board on Employment discrimination questions would be resolved by the Court of Appeals. As the committee report states, "neither agency should have the authority to overrule the view of the other," and, when the matter is certified to the Court of Appeals, neither "agency should be considered as appealing the action of the other."

An alternative procedure, which I urged the committee to adopt but which it rejected, would allow both the MSPB and the EEOC to rule on such discrimination questions in a manner similar to that provided by the committee but would designate the EEOC as the final authority at the administrative level on such questions. Under this procedure, which was originally proposed by the administration, the EEOC would review the MSPB's actions insofar as they related to discrimination and render a decision which could be implemented immediately and, if reviewed, treated by the court with the deference normally accorded to final agency actions.

The basic difference between the two approaches lies in the respective answers they give to the question: Which agency

should be the final administrative authority on issues of alleged employment discrimination in the Federal work force? The committee's answer is that such final authority should be shared—although the extent of the sharing is ambiguous—between the MSPB and the EEOC. My approach would place that authority clearly in the EEOC.

The case for the latter approach rests on the proposition that the EEC is the Federal Government's central repository of sensitivity and expertise on employment discrimination matters. It is the administrative agency that has the responsibility at the Federal level for considering employment discrimination disputes arising in the private sector. I see no reason why, where discrimination disputes involve the employment practices of a Federal agency, the final administrative authority relating to those disputes ought not also to be centralized in the EEOC.

From the beginning three basic arguments have been made against this approach: that it would damage the independence of the MSPB by subjecting its decisions on certain questions to review by an executive branch agency; that the combination of adjudicatory and advocacy functions within the EEOC would be undesirable; and that such an approach would be administratively unworkable. I am not persuaded by these arguments.

With respect to the first, this committee and the Congress on several occasions have permitted an excutive agency to override an independent regulatory commission on questions which were considered best left to the executive branch. Precedents can be found in the existing Presidential override authority of the Civil Aeronautics Board and the International Trade Commission; and in the Department of Energy Organization Act and the Nuclear Nonproliferation Act of 1978, both of which were considered earlier in this Congress by this committee.

It is not the case, as it sometimes has been argued, that the executive branch may exercise these override authorities only in the foreign policy area. Under the DOE Organization Act, the DOE may veto FERC decisions on "energy actions" and other domestic matters specified in the act.

On the second and third of the arguments put forward, I can see no difference between the committee's approach and the one I support in the extent to which they are subject to the concerns raised. Apart from that, I believe those concerns to be minor at worst.

It is my hope therefore that the committee's action on this matter will be reversed in conference and that the House version will prevail.●

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. RIBICOFF. Mr. President, I ask for the yeas and nays on final passage.

The PRESIDING OFFICER. The yeas and nays have already been ordered.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

Mr. ROBERT C. BYRD. Mr. President, there will be no further rollcall votes tonight.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. ABOUREZK), the Senator from Minnesota (Mr. ANDERSON), the Senator from Delaware (Mr. BIDEN), the Senator from Mississippi (Mr. EASTLAND), the Senator from Alaska (Mr. GRAVEL), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from South Dakota (Mr. McGOVERN) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. GOLDWATER), the Senator from Nevada (Mr. LAXALT), and the Senator from New Mexico (Mr. SCHMITT) are necessarily absent.

The result was announced—yeas 87, nays 1, as follows:

[Rollcall Vote No. 365 Leg.]

YEAS—87

Allen	Hart	Moynihan
Bartlett	Haskell	Muskie
Bayh	Hatch	Nelson
Bellmon	Hatfield,	Nunn
Bentsen	Mark O.	Packwood
Brooke	Hatfield,	Pearson
Bumpers	Paul G.	Pell
Burdick	Hathaway	Percy
Byrd,	Hayakawa	Proxmire
Harry F., Jr.	Heinz	Randolph
Byrd, Robert C.	Helms	Ribicoff
Cannon	Hodges	Riegle
Case	Hollings	Roth
Chafee	Huddleston	Sarbanes
Chiles	Humphrey	Sasser
Church	Inouye	Schweiker
Clark	Jackson	Sparkman
Cranston	Javits	Stafford
Culver	Kennedy	Stennis
Curtis	Leahy	Stevens
Danforth	Long	Stevenson
DeConcini	Lugar	Stone
Dole	Magnuson	Talmadge
Durkin	Mathias	Thurmond
Eagleton	Matsunaga	Tower
Ford	McClure	Wallop
Garn	McIntyre	Weicker
Glenn	Melcher	Williams
Griffin	Metzenbaum	Young
Hansen	Morgan	Zorinsky

NAYS—1

Scott

NOT VOTING—12

Abourezk	Domenici	Johnston
Anderson	Eastland	Laxalt
Baker	Goldwater	McGovern
Biden	Gravel	Schmitt

So the bill (S. 2640), as amended, was passed.

Mr. RIBICOFF. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of S. 2640.

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

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, the Civil Service Reform Act of 1978, which the Senate has passed today is, without doubt, one of the most important pieces of legislation to have confronted us in the 95th Congress. It is truly landmark legislation. For this bill represents the first comprehensive overhaul of the civil service system in 95 years.

One of the great complaints of the citizens of this country over the past several years has been the feeling that their Government has become so vast and unwieldy as to no longer be responsive to their needs. They have come to regard their Government as impersonal and inefficient—composed of faceless individuals who loaf more than work.

This impression of the Federal worker is simply untrue and does him a great injustice. Of course, some of these workers do fail to give a full day's work for a day's pay—just as in any institution. But your average Federal worker is certainly fully as dedicated as his counterpart in private industry.

To the extent that this false impression of the Federal worker has been created and to the extent that the Federal Government has, indeed, become unresponsive to the needs of the people of this country, these things are due in large measure to a civil service system that no longer functions in the manner in which originally anticipated. Although laudably intended to provide a work force in which employees were selected and advanced on the basis of competence rather than political or personal favoritism, the inflexible structures that have developed over the years as a result of a patchwork of statutes and rules built up over almost a century threaten to asphyxiate the merit principle itself.

There are four major areas of concern about the civil service system that were originally voiced by the Second Hoover Commission in the late 1940's and that still remain valid today. First, there is insufficient incentive and reward for encouraging high productivity and competence in the Federal work force. Second, bureaucratic procedures delay even the most elementary personnel actions, including decisions to hire and promote employees. Third, it is difficult and time consuming to fire employees whose work is unsatisfactory. Finally, the Civil Service Commission provides inadequate protection against partisan political abuse of the merit system.

The bill that the Senate has passed today will be a giant step toward resolving these concerns.

Through the creation of the Senior Executive Service, the mandating of performance appraisal systems, and the establishment of a bonus pay system, ample incentives and rewards are provided for exemplary employee performance.

The decentralization of major personnel management procedures and the increased ability provided to agency heads to reassign senior managers to positions where they may be more effective will serve to streamline personnel procedures.

The elimination of unnecessary review, the establishment of time limits for processing cases and the establishment of new standards for disciplining employees guilty of unacceptable performance will render more effective the procedures for dismissing employees who do not perform as they should.

The creation of a Merit Systems Protection Board, the establishment of a special counsel of the Merit Board and the codification of merit principles and prohibited personnel practices will protect the integrity of the merit system.

In sum, the bill that we have passed today will make major strides toward the goal of insuring the people of this country an efficient and effective Government where reward and promotion are based upon merit rather than partisan politics. It will go a long way toward strengthening the faith of the citizens of this country in their Government.

Mr. President, this legislation would never have come before the Senate but for the diligence and long hours of hard work and skillful labors of the distinguished Senator from Connecticut and chairman of the Governmental Affairs Committee, Mr. RIBICOFF. This great effort on behalf of what was a very controversial piece of legislation has resulted in its passage so easily today. His dedication and willingness to work for what he believes in are well known and have been amply evidenced again.

Great credit must also be given to the distinguished Senator from Illinois (Mr. PERCY), the ranking member of the Governmental Affairs Committee, for his efforts on behalf of this bill as well. He, too, has worked hard for and can take pride in its passage.

The people of this Nation owe both of these men a great debt of gratitude.

I have once again witnessed the exemplary skill and dedication, and the ability to work together, that have been so often manifested by these two Senators, Mr. RIBICOFF and Mr. PERCY.

The Senate is in their debt.

I am personally grateful to both, and the country will be well served by their labors today.

Mr. RIBICOFF. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. RIBICOFF. Mr. President, I take this opportunity to thank the majority leader for his gracious comments. My thanks, too, for his understanding and consideration of the requests of the distinguished Senator from Illinois and myself to try to schedule this measure before the recess.

This, indeed, is one of the most important measures that this body has passed during this session. It became very important in the closing days, when the Calendar is so crowded and so many measures seek the attention of the majority leader. He was courteous and thoughtful in scheduling this bill today.

Again, not only do I appreciate his comments about my colleague, the Senator from Illinois. I do not know how a chairman could expect or hope for a ranking minority member to be the equal of Senator PERCY. We have worked together, our staffs have worked together, we tried to take these measures on a nonpartisan basis and work them out for the benefit of the Senate and the entire country.

I think this vote today, of 87 to 1, is a tribute to the President of the United States. It is a tribute to Mr. Campbell, and Mr. Sugarman, Chairman and Vice Chairman of the Civil Service Commission, and the other members of the administration who worked on this legislation. It is a tribute to Senator PERCY and the entire membership of the Governmental Affairs Committee.

Every member, both Democrat and Republican, of that committee worked completely cooperatively. They gave it their attention. Their staffs are outstanding.

Again, my thanks to the majority leader and Senator PERCY and, of course, Senator JAVITS, who always is in there pitching.

Also, I call attention to the Senator from Tennessee (Mr. SASSER). While he sits in the rear of this Chamber, he is the chairman of the subcommittee that has the responsibility for civil service legislation. This legislation could not have been achieved and accomplished without his expression of support. He chaired hearing after hearing. In markup, he was a tower of strength. We are fortunate to have the Senator from Tennessee (Mr. SASSER) as a member of our committee in chairing this most important subcommittee.

I also wish to thank the following staff members of our committee for the outstanding efforts on behalf of this legislation:

Richard Wegman, Paul Hoff, Paul Rosenthal, Claude Barfield, and Claudia Ingram of the Governmental Affairs Committee staff; John Childers, Ken Ackerman, and Connie Evans of the minority staff; Knox Walkup, Cindy Anderson, Ed Jayne, and Howard Orenstein of the Civil Service Subcommittee; Carl Fait and Jamie Cowan of Senator STEVENS' staff; Riley Temple of Senator MATHIAS' staff; Brian Conboy and Jackie Abelman of Senator JAVITS' staff; Brian Walsh of Senator CHILES' staff; Emily Eiselman of Senator EAGLETON's staff; Tom Cator of Senator HUMPHREY's staff, and Pamela Haynes of Senator HEINZ' staff.

Mr. PERCY. Mr. President, I have said many times that people in the business community with whom I have worked for many years have said, "Will you ever get any satisfaction in the Senate? Isn't it just frustrating in Washington?" Every time we have brought to a successful conclusion a major piece of legislation throughout the course of the years, I feel that that piece of legislation probably will do more good for more people than another 25 years in business might.

Never in my career have I ever had the privilege and pleasure of working with a colleague such as Senator RIBICOFF. With his sense of decency, his sense of dedication, his tremendous accomplishment, and his immense capacity for work, he could run General Motors, he could run Ford, he could run Chrysler, and he could run them on time and on schedule. That is the way he runs the Governmental Affairs Committee.

The ranking minority member, the Senator from Illinois, attempts always to be in his seat, ready to go, precisely on time. We probably are one of the few committees that tries to stay on time.

Both of us are deeply indebted to our distinguished majority leader, who, together with Senator BAKER, has on occasion probably gotten somewhat weary of talking to Senator RIBICOFF and Senator PERCY about civil service reform; because, as the distinguished Senator from Connecticut indicated, they do have many items of priority, and every committee chairman and every ranking minority member feels that his legislation is the most important and must be done now.

Every commitment made to us has been fulfilled. In scheduling this matter, the distinguished majority leader and the distinguished minority leader, Senator BAKER, have known that it not only is terribly important to those of us in Congress to see that we have a responsive civil service but also very important to the President of the United States.

The President, without hesitation, with tremendous courage and great foresight, has pioneered in this area. He has worked closely with the Chairman of the Civil Service Commission, Chairman Alan Campbell. Together, they have been sufficiently responsive to the individual needs and feelings of Members of the Senate so that their flexibility has made possible this achievement tonight.

I express my deep gratitude to the distinguished majority leader for his words. They mean a great deal to the Senator from Illinois. Speaking as one member of the minority, it is an honor and privilege and a pleasure to work with my distinguished colleague as leader of the U.S. Senate on the majority side. He provides a great deal of inspiration to all of us who want to see a sense of accomplishment and he is backed up ably by our beloved and distinguished colleague from California Senator CRANSTON.

The members of our committee, who have worked so tirelessly on this legislation, all of whom we have mentioned previously today, deserve great credit.

I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, both the distinguished chairman and the distinguished ranking minority member have been very gracious in their comments. It is characteristic of them.

I also take this occasion to express appreciation to Mr. MATHIAS and Mr. STEVENS for the dedication they gave to this work. They worked with the chairman and the ranking minority member in dealing with a great many problems. It is because they were able to work together and resolve many of these problems before the bill was even called up that it was made possible for the bill to pass the Senate.

I am glad the distinguished chairman has called attention to the services of the very able Senator from Tennessee (Mr. SASSER). I have noted how this new Senator has gone about his work. He is self-effacing. He works quietly but effec-

tively and with great dedication. I see in Senator SASSER one of the developing strong Senators in this institution.

He gives any job that is handed to him his best, and he makes a little job big. He distinguished himself by this kind of dedication and by the excellence of the product he brings to the floor. Also, he cooperates well with the leadership.

I take this opportunity to express my thanks to him, as the chairman has done, for the quiet but very dedicated and effective work he has done in making this accomplishment today possible.

Mr. PERCY. Mr. President, I yield to my distinguished colleague from Tennessee. I know the Senator from Indiana wishes to obtain the floor, but I believe the Senator from Tennessee would like to make a comment in this colloquy. Then, after I ask for a unanimous-consent request, I will be happy to yield the floor to Senator BAYH, who has been waiting patiently.

Mr. SASSER. I thank the distinguished Senator from Illinois for yielding.

Mr. President, I thank the able and distinguished majority leader for the kind and generous remarks he has directed toward this Senator this evening. With the help of the majority leader and with the capable and farsighted leadership of the chairman of the Governmental Affairs Committee, the distinguished Senator from Connecticut, and with the able cooperation and able leadership of the ranking minority member of the Governmental Affairs Committee, the distinguished Senator from Illinois, we have produced this evening a significant piece of legislation. We have grappled with a very difficult problem and have done it very well.

I am very hopeful that what we have done in this legislation and what we have produced this evening will be the opening salvo in making the civil service and the Government service of this country more responsive to the constituency it serves.

I thank the distinguished Senator for yielding.

Mr. PERCY. Mr. President, the Senator from Illinois will yield for a final concluding comment by the distinguished Senator from Maryland.

Mr. MATHIAS. I will forego that pleasure for the moment.

Mr. PERCY. Mr. President, the Senator from Illinois wishes to say that this bill would not have been possible without the devotion and dedication of our distinguished colleague from Maryland, who has truly done a momentous job in balancing out the interests of the people of this country with the interests of the Federal employees.

The PRESIDING OFFICER. The Chair recognizes the Senator from Indiana.

Mr. BAYH. Mr. President, I add my commendations to the distinguished Senator from Connecticut and the distinguished Senator from Illinois and my friends from Maryland and Tennessee, and all of those who were responsible for the passage of this very important piece of legislation.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a period for the transaction of routine morning business with Senators allowed to speak up to 10 minutes each.

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

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting the nomination of Stanford G. Rose, of the District of Columbia, to be Commissioner of Social Security of the Department of Health, Education, and Welfare, which was referred to the Committee on Finance.

COMMUNICATIONS

The PRESIDING OFFICER laid before the Senate the following communications, together with accompanying reports, documents, and papers, which were referred as indicated:

EC–4232. A communication from the Commander, Naval Sea Systems Command, Department of the Navy, reporting, pursuant to law, on the claim of Boland Marine & Manufacturing Co., Inc., New Orleans, La., against the United States; to the Committee on Appropriations.

EC–4233. A communication from the Assistant Secretary of Defense (Comptroller), reporting, pursuant to law, on the value of property, supplies, and commodities provided by the Berlin Magistrate, and under German Offset Agreement for the quarter April 1, 1978, through June 30, 1978; to the Committee on Appropriations.

EC–4234. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "U.S. Foreign Relations and Multinational Corporations: What's the Connection?" August 23, 1978; to the Committee on Governmental Affairs.

EC–4235. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Progress and Problems in Improving the Availability of Primary Care Providers in Underserved Areas," August 22, 1978; to the Committee on Governmental Affairs.

EC–4236. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report on a new system of records identified as A1014.08cDAAG, entitled "College Transcript Registry System"; to the Committee on Governmental Affairs.

EC–4237. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, a report on a new system of records identified as A0714.06cDASG, entitled "AMEDD Personnel Management System"; to the Committee on Governmental Affairs.

EC–4238. A secret communication from the Acting Comptroller General of the United States, transmitting, pursuant to law, a report on the numerous uncertainties that exist in the Air Force GBU–15 program on short and long range air-to-ground glide weapons; to the Committee on Governmental Affairs.

EC–4239. A communication from the Acting Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, international agreements other than treaties entered into by the United States within sixty days after the execution thereof; to the Committee on Foreign Relations.

EC–4240. A communication from the Chief Commissioner, U.S. Court of Claims, transmitting, pursuant to law, a report and findings of the Trial Commissioner, dated November 21, 1977, in Sperling & Schwartz, Inc. v. the United States, Cong. Ref. 1–74, and a report of the Review Panel dated July 20, 1978; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. EAGLETON, from the Committee on Governmental Affairs, without amendment:

H.R. 7814. An act to authorize Federal agencies to experiment with flexible and compressed employee work schedules.

H.R. 10126. An act to amend title 5, United States Code to establish a program to increase part-time career employment within the Civil Service.

By Mr. SPARKMAN, from the Committee on Foreign Relations, without amendment:

S.J. Res. 154. A joint resolution authorizing the President to invite the States of the Union and foreign nations to participate in the International Petroleum Exposition to be held at Tulsa, Okla., from September 10, 1979, through September 13, 1979 (Rept. No. 95–1145).

S. Res. 546. An original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 3161. Referred to the Committee on the Budget.

By Mr. SPARKMAN, from the Committee on Foreign Relations, with an amendment:

S. 3161. A bill to provide for a National Commission on the International Year of the Child, and for other purposes (Rept. No. 95–1146).

By Mr. SPARKMAN, from the Committee on Foreign Relations, with amendments:

S.J. Res. 111. A joint resolution to authorize participation by the United States in parliamentary conferences with Japan (Rept. No. 95–1147).

By Mr. ROBERT C. BYRD, from the Committee on the Judiciary, without amendment:

H.R. 2952. An act for the relief of M/Sgt. William E. Boone, U.S. Army, retired (Rept. No. 95–1148).

H.R. 7162. An act for the relief of Stephanie Johnson (Rept. No. 95–1149).

H.J. Res. 773. A joint resolution authorizing and requesting the President of the United States to issue a proclamation designating the 7 calendar days beginning September 17, 1978, as "National Port Week" (Rept. No. 95–1150).

By Mr. DOLE, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. 3460. An original bill to authorize the Secretary of Agriculture to purchase and distribute food as needed to assist other nations meet urgent humanitarian and other food needs, and to authorize owners of 1977 crop sugar to advance the maturity date on price support loans, and for other purposes (Rept. No. 95–1151).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WILLIAMS, from the Committee on Human Resources:

The following-named persons to be Members of the Federal Mine Safety and Health Review Commission:

Jerome R. Waldie, of Maryland;
Richard V. Backley, of Virginia;
Marian Pearlman Nease, of Maryland;
Frank F. Jestrab, of North Dakota; and
A. E. Lawson, of Pennsylvania.

(The above nominations from the Committee on Human Resources were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. TALMADGE (by request):

S. 3456. A bill to amend the Federal Seed Act; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HART:

S. 3457. A bill to amend the Communications Act of 1934 in order to require that licensees keep a public record of requests for broadcast time with respect to propositions and questions in State and local elections; to the Committee on Commerce, Science, and Transportation.

By Mr. SASSER:

S. 3458. A bill for the relief of the Memphis-Plough Community Foundation of Memphis, Tenn.; to the Committee on Finance.

By Mr. TOWER:

S. 3459. A bill to establish a Citizens Commission on Economic Regulatory Oversight to study Federal economic regulation and recommend the elimination of unnecessary regulatory agencies and laws, and for other purposes; to the Committee on Governmental Affairs.

By Mr. DOLE (from the Committee on Agriculture, Nutrition and Forestry):

S. 3460. A bill to authorize the Secretary of Agriculture to purchase and distribute food as needed to assist other nations meet urgent humanitarian and other food needs, and to authorize owners of 1977 crop sugar to advance the maturity date on price support loans, and for other purposes. Original bill reported and placed on the calendar.

By Mr. BROOKE:

S. 3461. A bill to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions and to provide that there shall be no differential with respect to transaction accounts; to the Committee on Banking, Housing, and Urban Affairs.

S. 3462. A bill to provide for the maintenance of reserves by member banks through certificates of deposits issued by the Federal Reserve Banks and to reduce and restructure reserve requirements; to the Committee on Banking, Housing, and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TALMADGE (by request):

S. 3456. A bill to amend the Federal Seed Act; to the Committee on Agriculture, Nutrition, and Forestry.

FEDERAL SEED ACT

● Mr. TALMADGE. Mr. President, I am introducing this bill at the request of the administration. The bill would amend the Federal Seed Act to clarify existing requirements, strengthen existing practices, and repeal obsolete requirements of the act.

One particular provision of significance in this bill would redefine the term "variety" in line with modern concepts of plant breeding so that it would be more clearly understood by plant breeders, seedsmen, regulatory officials and others. No additional appropriations would be required by enactment of this bill.

Mr. President, I ask unanimous consent that the bill and a section-by-section analysis be printed in the RECORD.

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

S. 3456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Seed Act is amended as follows:

(a) Section 101(a)(9)(B) of the Act is amended to read as follows:

"(B) For the purpose of title III, the term 'noxious-weed seeds' means the seeds or bulblets of any kind which after investigation the Secretary of Agriculture prescribes by regulation to be prohibited because the species (i) is perennial and difficult to eradicate once established, (ii) is parasitic, (iii) harbors diseases or insects which constitute a menace to crops, or (iv) is not common in the United States but would constitute a potential menace if introduced.".

(b) Section 101(a)(12) of the Act is amended to read as follows:

"(12) The term 'variety' means a subdivision of a kind which is distinct, uniform, and stable; 'distinct' in the sense that the variety clearly differs by one or more identifiable morphological, physiological, or other characteristics (which may include those evidenced by processing or product characteristics, such as milling and baking characteristics of wheat) as to which a difference in genealogy may contribute evidence, from all prior varieties of public knowledge; 'uniform' in the sense that any variations are describable and predictable; and 'stable' in the sense that the variety when reproduced or reconstituted will remain unchanged with regard to its essential and distinctive characteristics within a reasonable degree of reliability commensurate with that of varieties of the same category in which the same method of plant breeding is employed.".

(c) Section 101(a)(13) of the Act is hereby repealed.

(d) Section 101(a)(17) of the Act is amended to read as follows:

"(17) The term 'pure-live seed' means the product of the percentage of germination (plus the hard seeds or dormant seeds, if present) and the percentage of pure seed, divided by 100.".

(e) Section 201(a)(4) of the Act is amended to read as follows:

"(4) Percentage by weight of weed seeds, including noxious-weed seeds. The percentage of weed seeds shall not exceed the percentage allowed for shipment, movement, or sale by the law of the State into which the seed is offered for transportation or transported;".

(f) Section 201(b) of the Act is amended to read as follows:

"(b) Any vegetable seeds, for seeding purposes, in containers, unless each container bears a label giving the following information in accordance with rules and regulations prescribed under section 402 of this Act:

"(1) The name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each. In the case any such component is a hybrid seed, it shall be designated as hybrid on the label. Any portion of nonhybrid seed resulting from uncontrolled pollination in hybrid production need not be labeled as a variety name but shall be labeled as to kind and, if not labeled as to variety, the statement 'Variety Not Stated';

"(2) The name and address of—

"(A) The person who transports, or delivers for transportation, said seed in interstate commerce, or

"(B) The person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture, under rules and regulations prescribed under section 402 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce;

"(3) For containers of less than 1 pound of seed that germinates less than the standard last established by the Secretary of Agriculture as provided under section 403 of this Act—

"(A) For each named kind and variety of seed—

"(i) The percentage of germination, exclusive of hard seeds;

"(ii) The percentage of hard seeds, if present;

"(iii) The calendar month and year the test was completed to determine such percentages;

"(B) The words 'Below Standard'; and

"(4) For containers of 1 pound or more of seed—

"(A) The lot number of other identification;

"(B) For each named kind and variety of seed—

"(i) The percentage of germination, exclusive of hard seeds;

"(ii) The percentage of hard seeds, if present;

"(iii) The calendar months and year the test was completed to determine such percentages; and

"(C) Kind of noxious-weed seeds and the rate of occurrence of each, which rate shall be expressed in accordance with and shall not exceed the rate allowed for shipment, movement, or sale of such noxious-weed seeds by the law and regulations of the State into which the seed is offered for transportation or transported or in accordance with the rules and regulations of the Secretary of Agriculture, when under the provisions of section 101(a)(9)(iii), he shall determine that weeds other than those designated by State requirements are noxious.".

(g) Section 201(i) of the Act is amended to read as follows:

"(i) Any agricultural seeds or mixture thereof, or any vegetable seeds or mixture thereof, for seeding purposes, that have been treated and bear or contain a toxic substance in an amount considered unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act to humans or other vertebrate animals unless the seeds are colored in a distinctive manner as the Secretary of Health, Education, and Welfare prescribes by regula-

tion, and unless each container bears a label giving the following information and statements in accordance with rules and regulations prescribed under section 402 of this Act:

"(1) A word or statement indicating that the seeds have been treated;

"(2) The commonly accepted coined, chemical (generic), or abbreviated chemical name of any substance used in such treatment; and

"(3) An appropriate cautionary statement approved by the Secretary of Agriculture as adequate for the protection of the public, such as, 'Do not use for food or feed or oil purposes': *Provided*, That the cautionary statement for highly toxic substances, as defined in the rules and regulations, shall be a representation of a skull and crossbones and a statement, such as 'This seed has been treated with POISON', in red letters on a background of distinctly contrasting color.".

(h) Section 201(j)(2)(A) of the Act is amended to read as follows:

"(A) Percentage by weight of weed seeds, including noxious-weed seeds. The percentage of weed seeds shall not exceed the percentage allowed for shipment, movement, or sale under the law of the State into which the seed is offered for transportation or transported;".

(i) Section 202 of the Act is amended to read as follows:

"SEC. 202. All persons transporting or delivering for transportation in interstate commerce agricultural or vegetable seeds subject to this Act shall keep for a period of 3 years a complete record, including samples of each lot of seed handled, of (a) purchases, sales, cleaning, conditioning, treatment, bulking, blending, storage, and labeling; (b) analyses, tests, or examinations for purity, including varietal purity, germination, and weed seeds; and (c) declarations or other records of origin, kind, and variety, so that seed may be correctly labeled and so that the seed may be traced from the grower to the consumer. The Secretary of Agriculture, or his duly authorized agents, shall have the right to inspect such records for the purpose of the effective administration of this Act.".

(j) Section 203 of the Act is amended by adding a new subsection as follows:

"(f) The labeling requirements of sections 201(a), (b), and (j) shall not apply to seed in containers when shipped between wholly-owned branches or subsidiaries of the same wholesale seed company if the invoice or other records accompanying and pertaining to such seed bear the various statements required under sections 201(a), (b), and (j), and if the containers bear the lot number or other identification.".

(k) Section 301(a)(2) of the Act is amended to read as follows:

"(2) screenings of any seed subject to this Act except that this shall not apply to screenings of seeds determined by the Secretary of Agriculture to be useful for other than seeding purposes and which are not imported for seed purposes and are declared not for seeding purposes;".

(l) Section 301(a)(5) of the Act is amended to read as follows:

"(5) any agricultural seeds or mixture thereof, or any vegetable seeds or mixture thereof, for seeding purposes, that have been treated and bear or contain a substance in an amount considered unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act to humans or other vertebrate animals unless such seeds are colored in a distinctive manner as the Secretary of Health, Education, and Welfare prescribes by regulations, and unless each container bears a label giving the following information and statements in accordance with rules and regulations prescribed under section 402 of this Act.

"(A) A word or statement indicating that the seeds have been treated;

"(B) The commonly accepted coined, chemical (generic), or abbreviated chemical name of any substance used in such treatment; and

"(C) An appropriate cautionary statement approved by the Secretary of Agriculture as adequate for the protection of the public such as, 'Do not use for food or feed or oil purposes': *Provided*, That the cautionary statement are highly toxic substances, as defined in the rules and regulations, shall be a representation of a skull and crossbones and a statement, such as 'This seed has been treated with POISON', in red letters on a background of distinctly contrasting color.".

(m) Section 302(d)(3) of the Act is amended to read as follows:

"(3) when seed not meeting the pure-live seed requirements of section 304 of this title will not be sold within the United States and will be used for seeding purposes only by or for the importer or consignee: *Provided*, That the importer or consignee files a statement in accordance with the rules and regulations prescribed under section 402 of this Act certifying that such seed will be used only for seeding purposes by or for the importer or consignee.".

(n) Section 302(e) of the Act is amended to read as follows:

"(e) The provisions of this title requiring certain seeds to be stained shall not apply when such seed will not be sold within the United States and will be used for seeding purposes only by or for the importer or consignee: *Provided*, That the importer or consignee files a statement in accordance with the rules and regulations prescribed under section 402 of this Act certifying that such seed will be used for seeding purposes only by or for the importer or consignee.".

(o) Section 303 of the Act is hereby repealed.

(p) Section 402(c) of the Act is amended to read as follows:

"(c) Prior to the promulgation of any rule or regulation under this Act, due notice shall be given by publication in the Federal Register of intention to promulgate, and interested persons shall be given not less than 30 calendar days to submit data, views, and arguments thereon, in writing, or to request a public hearing. Upon request and a showing of good cause by an interested party, a public hearing shall be held, and announcement thereof shall be published in the Federal Register not less than 30 days prior to the hearing. If a public hearing is held, no rule or regulation may be promulgated until after such hearing. Any rule or regulation shall become effective on the date fixed in the promulgation, which date shall be not less than 30 days after publication in the Federal Register, and may be amended or revoked in the manner provided for its promulgation.".

(q) Section 406(b) of the Act is amended to read as follows:

"(b) Any person who violates any provision of this Act or the rules and regulations made and promulgated thereunder shall forfeit to the United States a sum of not more than $1,000 for each violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States."

(r) Section 501(a) of the Act is amended to read as follows:

"(a) It shall be unlawful in the United States or in interstate or foreign commerce to sell or offer for sale or advertise by variety name seed not certified by an official seed certifying agency when it is a variety for which a certificate of protection issued under the Plant Variety Protection Act specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.".

SEC. 2. This Act shall become effective 90 days after enactment.

SECTION-BY-SECTION ANALYSIS

SECTION 1

Section 1 of the bill would clarify existing requirements, strengthen existing practices, and repeal obsolete requirements of the Federal Seed Act.

Subsection (a) would delete the list of noxious-weed seeds from the Act and authorize the Secretary to establish by regulation the kinds of weed seeds that would be considered noxious when occurring in imported seed. The Secretary now has authority to add kinds to the list included in the Act but not to remove kinds from the list. The present list of noxious-weed seeds would be adopted in the regulations, together with an additional 15 to 20 kinds which are known to be noxious in other countries, do not occur in this country, and will be named in the regulations under the Federal Noxious Weed Act.

Subsection (b) would make the definition of "variety" correspond with the definition in the Plant Variety Protection Act. This provision would not materially change the meaning of the term. A more specific and more uniform definition is needed for use in determining whether new products of plant breeding constitute new varieties.

Subsection (c) would delete the existing definition of "type" and permit the use of any "type" designations that are not false and misleading. Examples of type designations that may be useful are "hard red winter type wheat", "double-cut type red clover", and "winter hardy type alfalfa". Since the Federal Seed Act was enacted in 1939, labeling as to type has become less common and labeling as to variety has become common in the marketing of agricultural seed.

Subsection (d) would broaden the definition of "pure-live seed" so it would be applicable to interstate shipments. Labeling of interstate shipments as to pure-live seed is not required, but the term is used in the marketing of native rangegrasses to indicate quality.

Subsection (e) would prohibit the shipment of agricultural seed into a State if the seed contains weed seeds in excess of the percentage permitted by the seed law of that State.

Subsection (f) would reorganize the current labeling requirements for vegetable seeds into a simple, more orderly arrangement. It would also exempt the labeling as to variety name the nonhybrid seed in hybrid seed. Such nonhybrid seed may not be a "variety" as that term is defined, or it may not be feasible to determine the name or names of the nonhybrid seed. Showing the presence of the nonhybrid seed is necessary to inform the buyer of the components. This provision would also require labeling the rate of occurrence of noxious-weed seeds in vegetable seeds, or would prohibit certain noxious-weed seeds, in packages of one pound or more, the same as it required of agricultural seeds.

Subsection (g) would remove, with respect to interstate commerce, the requirement for labeling treated seed when the seed bears only nontoxic amounts of substances (or no substance at all) and is within the tolerances recognized by the Food and Drug Administration for food or feed, and would add a requirement for coloring the seed a distinctive color if the seed does bear a harmful substance to prevent use as food or feed.

Subsection (h) would prohibit the shipment of lawn and turf seed mixtures into a State if the mixtures contain weed seeds in excess of the percentage permitted by the laws of that State.

Subsection (i) would reword the section to make clear that all handlers of seeds sub-

ject to the Act are required to keep a complete record of each lot of agricultural or vegetable seed handled.

Subsection (j) would add a new subsection to exempt from the detailed labeling requirements seed shipped between branches of the same wholesale seed company.

Subsection (k) would delete the kinds of screenings that are exempt from the Act and authorize the Secretary of Agriculture to establish by regulation the kinds of screenings which are exempt; that is, the kinds that can be imported for other than seeding purposes. One of the purposes of prohibiting screenings is to preclude their use in adulterating seed for planting purposes. Screenings of most of the "food" seeds now are exempt. This provision would also permit the Secretary to exempt all screenings of seeds declared for food, feed, or industrial purposes.

Subsection (l) would remove, with respect to foreign commerce, the requirement for labeling treated seed when the seed bears only nontoxic amounts of substances (or no substance at all) and is within the tolerances recognized by the Food and Drug Administration for food or feed, and would add a requirement for coloring the seed a distinctive color if the seed does bear a harmful substance to prevent use as food or feed.

Subsection (m) would permit importers to foreign commerce, the requirement for regard to the pure-live seed requirements.

Subsection (n) would permit importers to import seed for their own use without regard to the staining requirements.

Subsection (o) would delete a section of the Act which is obsolete. Mixtures can now be imported if declared as mixtures; and when not so declared, an amended declaration is all that is needed for admission.

Subsection (p) would require that before a rule or regulation is promulgated, interested persons shall be given an opportunity to present views in writing or orally or to request a public hearing. The Act now requires a public hearing even for minor promulgations to which there is no objection.

Subsection (q) would change the amount of forfeitures from "not less than $25 or more than $500," to "not more than $1,000" so that forfeitures could be more consistent with the extent of the violation.

Subsection (r) would extend the present prohibition that applies only to the "sale" of seed when the certificate of Plant Variety Protection specifies sale by variety name only as a class of certified seed, to include seeds "offered for sale or advertised".

SECTION 2

Section 2 of the bill provides that the provisions are to become effective 90 days after enactment.●

By Mr. HART:

S. 3457. A bill to amend the Communications Act of 1934 in order to require that licensees keep a public record of requests for broadcast time with respect to propositions and questions in State and local elections; to the Committee on Commerce, Science, and Transportation.

POLITICAL COMMUNICATIONS DISCLOSURE

● Mr. HART. Mr. President, on April 26, 1978, the Supreme Court upheld the right of corporations to make expenditures to express their views on political issues. In First National Bank of Boston against Bellotti, the Court, divided 5 to 4, ruled unconstitutional a Massachusetts statute prohibiting expenditures by corporations for the purpose of influencing a vote on referendum proposals. The Court found that:

There was no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts.

The Supreme Court's decision raises the possibility that not only corporations, but also comparable entities—labor unions, associations, partnerships—will become even more deeply involved financially than they are now in elective politics. The decision is troubling because corporations are, after all, quite different from human beings. As the Washington Post noted in an editorial following the Supreme Court's decision, corporations are not minds that formulate ideas, or even voices that freely express them. Rather, in a political debate, corporations serve as megaphones for the views of those who own or control them.

Mr. President, in more and more States it is becoming common practice for controversial issues to be put directly to voters in the form of initiatives or referendums. Such referendums may relate to nuclear power plant construction, nonreturnable bottles, utility ratemaking rules, and so forth. In the great majority of cases, citizen groups which have petitioned for the ballot measures have been overwhelmingly defeated. In many cases it seems clear that expensive corporate and industry advertising campaigns directly affected the outcome of the balloting.

It might seem apparent that massive corporate spending will influence public opinion and voting behavior during referenda elections, but the Supreme Court's decision underscores the need for most data and public information on this subject. Since corporations may now spend freely to influence voter behavior on noncandidate ballot issues, it is more important than ever that there be meaningful disclosure requirements regarding those expenditures. Disclosure becomes one of the few effective means of guaranteeing full public awareness of such corporate political activity.

Legislation which I am introducing today will require every licensee of the Federal Communications Commission to keep, and permit public inspection of, requests for broadcast time made in behalf of or in relation to any proposition, referendum, or ballot question in any State or local election. The legislation specifies that the public record must include information showing the origin of the request, the disposition made by the licensee of the request, and, if the request is granted, the amount charged for the broadcast or broadcasts, and the number and time of day of such broadcasts. Federal Communications Commission regulations already require every licensee to keep and permit public inspection of advertising contracts relating to electoral candidates. My bill, extending this rule to noncandidate ballot questions, is merely the sound and logical next step in efforts to insure a fair and open political process.

Since the great bulk of advertising during State and local ballot questions is conducted through television and radio, the disclosure requirements mandated by this legislation will play an important role in guaranteeing all interested parties the information necessary to examine and respond to the serious imbalance that exists in access to the media between citizen groups and well-financed industry interests. The information which these disclosure requirements will yield will enable both the legislative and judicial branch more carefully to consider the impact of disproportionate spending on State and local referenda.

The electoral process is, of course, at the heart of our democratic system. When political advertising by corporations for the purpose of influencing State and local referendum elections almost totally dominates the media, such expenditures seriously threaten the first amendment's objective of insuring a free and vigorous exchange of ideas. The courts and the Congress have long recognized the need to guard against corporate domination of the political process. The legislation I introduce today is important if our ideal of a democratic society is to become a reality for all Americans.●

By Mr. TOWER:

S. 3459. A bill to establish a Citizens Commission on Economic Regulatory Oversight to study Federal economic regulation and recommend the elimination of unnecessary regulatory agencies and laws, and for other purposes; to the Committee on Governmental Affairs.

CITIZENS COMMISSION ON ECONOMIC REGULATORY OVERSIGHT ACT OF 1978

Mr. TOWER. Mr. President, I am today introducing a bill to provide a way for the citizens of our country to have a direct voice in the elimination of unnecessary regulatory agencies and oppressive laws. As Edmund Burke told the citizens at Bristol:

BAD LAWS ARE THE WORST SORT OF TYRANNY

The bill would establish a Commission of distinguished citizens from outside Government to review Federal economic regulatory agencies and laws and to recommend to Congress the elimination of those agencies, laws, and regulations which are no longer needed because either their goals have been achieved or circumstances have changed. The emphasis of the Commission would be to go to the people to find the answers. It would be required that the Commission hold town hall meetings in different sections of the country to receive testimony from citizens on the need to eliminate specific regulatory areas. The Commission would also be required to establish a hotline for citizens to register complaints with the Commission. The Commission would be required to make a tentative report on agencies, laws, and regulations to be eliminated in 1 year and a final report in 18 months. Members of the Commission would be appointed by the President and the majority and minority leaders of the House and Senate.

THE COST OF GOVERNMENT REGULATION

Americans' daily lives and work are subject to a huge and growing web of government edicts.

The magnitude of the burden may be seen from a recent study which revealed that the burden imposed on the Ameri-

can economy by Federal regulatory activities in 1976 totaled $66.1 billion. This estimate comprises $3.2 billion in administrative expenditures and $62.9 billion in compliance costs. A comparison breakdown shows this to be the equivalent to: 4 percent of the gross national product; $307 per person living in the United States; 18 percent of the Federal budget; twice the amount that the Federal Government spends on health; 74 percent of the amount devoted to national defense; over one-third of all private investment in new plants and equipment; nor does there appear any surcease in this activity.

Funds allocated in the 1978 Federal budget for regulation total $3.8 billion, an 85-percent increase over the fiscal 1974 figure of $2 billion, which does not take into account compliance costs. A confidential report submitted by the Council on Wage and Price stability to the administration's economic policy group warns that additional costs to U.S. business and the consumer of regulations coming up before the Federal agencies next year could be as high as $35 billion.

Ultimately the cost of Government regulation comes out of the pocket of the consumer and the taxpayer.

Figures contained in a study compiled for the Joint Economic Committee of Congress reveal that the U.S. motorist paid an increase on average of $666 in 1978 for a new car due to federally mandated safety and environmental features. The same report cited Federal, State, and local government regulatory requirements as adding between $1,500 and $2,500 to the cost of a typical new house.

Small business is disproportionately hard hit by paperwork as well as other types of Government regulation. The Commission on Federal Paperwork reports that 5 million small businesses spend $15–$20 billion, or an average of over $3,000 each on Federal paperwork. This is compounded by the fact that most small businesses simply do not have the high-paid legal and accounting staffs to assist in compliance and the completion of these forms.

Too often it costs small business more to comply with regulations than it does larger firms. A good example may be seen in the National Labor Relations Board elections. Figures contained in the Joint Economic Committee study reveal that the cost per employee of an NLRB election for a small firm averages $134.60 whereas large firms with over 1,000 employees have a unit cost of $101.60.

In too many cases, regulation is either counterproductive or has unexpected side effects.

Take for example the Davis-Bacon Act which was established in 1931 to shield local labor on Federal construction projects from the competition of the lower wage rate of nonlocal labor. The major and most obvious disadvantage of this legislation has been to prevent the Government from minimizing costs. It prevents the Government from accepting the lowest bid if the "prevailing wages" are not paid by the contractor. It has been estimated that these additional costs exceed half a billion dollars a year.

Another case of outmoded and counterproductive legislation may be seen in the 24-year-old system of Federal regulation of interstate natural gas. The artificially low Federal price ceilings, together with the excessive delays and regulatory redtape, have succeeded only in discouraging production of gas supplies and crating shortages. This should be contrasted with the unregulated intrastate natural gas markets. Particularly in Texas, which have enjoyed the benefits and security of adequate supplies of this critically important fuel.

Look for a moment at the minimum wage law. This well-intentioned but misdirected legislation has as its purpose the protection of workers. Yet it has priced hundreds of thousands of people out of the labor markets. One increase alone has been shown to have reduced teenage employment by 225,000 with a disproportionately large impact on nonwhite youths. Other victims have been numerous small firms unable to meet the increased costs imposed by the law.

THE GROWTH OF ECONOMIC REGULATION

It would be instructive to look for a moment at the growth of economic regulation in the United States and attempts at reform.

Economic regulation probably began in the United States in 1789, when a Government agency was established to regulate the duties collected on imported goods. Acronyms began to be used in 1887, with the establishment of the Interstate Commerce Commission (ICC). In 1906, the Food and Drug Act produced a regulatory agency to protect public health. The Great Depression produced the Civil Aeronautics Board, the Federal Communications Commission, the Federal Maritime Commission, the Federal Power Commission, the Securities and Exchange Commission, and so forth. This traditional pattern was for Congress to establish a specialized administrative agency to address specific economic problems.

In the 1960's, regulation took a new turn, seeking primarily to meet social objectives rather than economic needs. Thus, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, the Consumer Product Safety Commission, and other such agencies were created.

After almost 200 years of effort, we have created a labyrinth of regulatory agencies that affect every aspect of American life. Paradoxically, major criticisms of the complexity and authority of the regulatory maze were first voiced during the New Deal. At that time, President Franklin Roosevelt established the President's Committee on Administrative Management (the Brownlow Committee), the report of which concludes that the independent regulatory commissions constitute a serious and increasing problem.

The report stated that they obstruct effective overall management in the executive branch of the Government and hinder coordination of policy. Two Hoover Commissions studied the organization of the executive branch under Presidents Truman and Eisenhower. President Kennedy, prior to his inauguration, commissioned James M. Landis to report on the regulatory agencies.

In 1964, President Johnson established the Administrative Conference of the United States to reform the regulatory process, and President Nixon established the President's Advisory Council on Executive Organization (the Ash Council) in 1969.

President Ford took steps toward reform in several areas, and president Carter made regulatory reform a major issue in his Presidential campaign.

The area has not been neglected by Congress. An excellent study on Federal regulatory reforms was completed in 1977 by the Senate Committee on Government Operations and the House Subcommittee on Oversight and Investigations made its comprehensive report a year earlier. One of the best efforts in the area may be seen in the recently issued exposure draft of the American Bar Association's commission on law and the economy.

WHY PAST EFFORTS TO ELIMINATE REGULATION HAVE FAILED

Although there have been numerous commissions and task forces studying and making recommendations for regulatory reform, none of these have had the mandate of coming in with a shopping list of agencies and laws to be eliminated. Many of their recommendations are for a reshuffling of existing agencies. What is really needed is the elimination of unnecessary regulation.

Although there is a broad conscensus that regulation is imperfect and that there is a need for substantive reform, little has been done in the area of elimination of regulation. The truth of the matter is that both this Congress and the Carter administration on balance have increased rather than decreased regulation over the past year. Observers in the area attribute several factors to the failure for national action in this area.

First, the major benefactors—the consumers and taxpayers—are largely unaware of their stake in the outcome of the elimination of outmoded regulation and obsolete agencies and bureaus. On the other hand, those who stand to lose are small but well organized. They are the congressional committees having the oversight responsibility for the agencies, the bureaucrats who administer the laws and regulations, and the groups who benefit from the regulation. Consequently, it is not surprising that the congressional committees and the executive branch have done little in the way of eliminating regulations or agencies. What is really needed is an outside group of impartial citizens who can weigh the costs and benefits of regulations and make recommendations for strengthening or eliminating the laws and the agencies. The Citizens Committee to be established by my bill would go to the people on this issue to fulfill that need.

FUNCTIONS OF THE COMMISSION

The primary role of the Commission is to study and evaluate the functioning of the independent economic regulatory agencies and economic regulation generally. The focus of this study is to be on:

Whether, and to what extent, Federal laws and regulations which provide economic regulation and which have been in effect for 5 years or more accomplish their intended goals in light of the economic and judicial costs which they generate, including estimates of the increase in the cost to the consumer of housing, food, transportatino, and consumer products;

Which regulatory agencies, due to changed conditions or achievement of intended goals, are no longer needed;

Which regulatory agencies need to be strengthened or altered due to changed conditions; and

Whether economic and tax incentives or penalties may be substituted as alternatives to Federal rules, regulations, and standards.

In order that the Commission can complete its work in a timely fashion, it is anticipated that its research efforts will commence where the many excellent reports of Congress and Commissions have left off. Prior work need not be duplicated. The primary effort of the Commission should be on its public hearings in an attempt to develop a national consensus on the appropriate role of the Government in the market.

ALTERNATIVES TO REGULATION

An important role of the Commission is to look at alternatives to classical regulation.

First, it is intended that the Commission analyze the desirability of relying on the competitive marketplace to provide the greatest economic benefit to the American consumer. The early initiatives now being taken in the airline industry give a strong indication that both the consumer and the industry benefit from deregulation. Looking at natural gas regulation, one finds that the nonregulated intrastate markets fare better than the regulated intrastate markets.

Where the market factors are demonstrated to be unable to perform the needed regulatory function and Government intervention in some form appears necessary, the Commission is to look at alternatives to classical regulation. For example, economists have urged that taxes be used to aid in controlling certain kinds of pollution in lieu of regulatory standard setting.

In some instances, the Commission may find that there are areas where classical regulation is needed but outmoded. Most observers feel that safety standards are needed for food and drugs but that these must be updated to keep pace with modern technology.

Mr. President, the piecemeal remedies and incremental intrusion of the heavy hand of Government into our daily lives and work are destroying individual incentives which are the wellspring of economic growth. Immediate steps need to be taken to unravel the hodgepodge of Government bureaus which daily churn out edicts costly to the American consumer and oppressive to the small business firms.

I urge the support of this body for the Citizens Commission on Economic Regulatory Oversight to provide the citizens of this country a clearer voice in the control of their destinies.

Mr. President, I ask unanimous consent that the 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. 3459

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 "Citizens Commission on Economic Regulatory Oversight Act of 1978".

ESTABLISHMENT OF COMMISSION

SEC. 2. There is established a Commission to be known as the Citizens Commission on Economic Regulatory Oversight (hereinafter referred to in this Act as the "Commission").

MEMBERSHIP

SEC. 3. (a) The Commission shall be composed of 12 members appointed, from among distinguished citizens not employed in a full-time capacity by the United States, as follows:

(1) 2 members shall be appointed by the President of the Senate and 2 by the Minority Leader of the Senate,

(2) 2 members shall be appointed by the Speaker of the House of Representatives and 2 by the Minority Leader of the House of Representatives, and

(3) 4 members shall be appointed by the President.

(b) Any vacancy occuring in the membership of the Commission shall not affect its powers, and shall be filled in the same manner as in the case of the original appointment.

(c) Five members of the Commission shall constitute a quorum for the transaction of its business, but the Commission may provide for the taking of testimony and the receiving of evidence at hearings at which there are present not less than three members of the Commission.

(d) The members of the Commission shall elect a Chairman and a Vice Chairman from among its members. It is the duty of the Vice Chairman to serve in the absence of the Chairman and carry out his duties and responsibilities.

(e) The members of the Commission shall be appointed not later than 3 months after the date of the enactment of this Act. If the members of the Commission have not been appointed within the above period, the Commission shall begin to transact business as soon as five members have been appointed and shall have all the powers and authority to act as if the full membership had been appointed.

FUNCTIONS

SEC. 4 (a) It shall be the duty of the Commission to study and evaluate the functioning of the independent economic regulatory agencies in the United States, as well as economic regulation generally, and to present administrative and legislative recommendations to Congress.

(b) In carrying out its duties under subsection (a), the Commission shall conduct a study and analysis—

(1) of whether, and to what extent, Federal laws and regulations which provide economic regulation and which have been in effect for five years or more accomplish their intended goals in light of the economic and judicial costs which they generate, including estimates of the increase in the cost to the consumer of housing, food, transportation and consumer products;

(2) to determine which regulatory agencies, due to changed conditions or achievement of intended goals, are no longer needed;

(3) to determine which regulatory agencies need to be strengthened or altered due to changed conditions; and

(4) of economic and tax incentives or penalties as alternatives to federal rules, regulations and standards.

(c) In carrying out its duties under this section, the Commission shall present to Congress an interim report one year after the time allotted for appointment of members as provided in section 3(e), and shall submit to the President and to the Congress a final report of its findings and recommendations not later than 18 months after the appointment of members pursuant to section 3(e). The Commission shall cease to exist 60 days after its final report is submitted. The Commission shall not be required to obtain the clearance of any Federal agency prior to the submission of any interim or final report.

(d) In carrying out its functions, the Commission shall conduct town hall meetings in different sections of the country to learn the views of citizens of local communities on the topics of inquiry. These meetings may be conducted simultaneously in different sections of the counrty.

(e) In carrying out its functions, the Commission shall establish a toll free telephone number which may be used by citizens to express their views on the topics of inquiry.

POWERS OF THE COMMISSION

SEC. 5. (a) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this Act, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Commission or such subcommittee or member may deem advisable.

(b) (1) Subpenas shall be issued under the signature of the Chairman or any member of the Commission designated by him and shall be served by any person designated by the Chairman or any Members. Any member of the Commission may administer oaths or affirmation to witnesses appearing before the Commission.

(2) The provisions of section 1821 of title 28, United States Code, shall apply to witnesses summoned to appear at any such hearing. The per diem and mileage allowances to witnesses summoned under authority conferred by this section shall be paid from funds appropriated to the Commission.

(3) Any person who willfully neglects or refuses to qualify as a witness, or to testify, or to produce any evidence in obedience to any subpena duly issued under the authority of this section shall be fined not more than $500, or imprisoned for not more than 6 months, or both. Upon the certification by the Chairman of the Commission of the facts concerning any such willful disobedience by any person to the United States Attorney for any judicial district in which such person resides or is found, such attorney may proceed by information for the prosecution of such person for such offense.

(c) The Commission may acquire directly from the head of any department, agency, independent instrumentality, or other authority of the executive branch of the Government, available information which the Commission considers useful in the discharge of its duties. Each department, agency, and independent instrumentality, and any other authority of the executive branch of the Government, shall cooperate with the Commission and furnish all information requested by the Commission to the extent permitted by law.

ADMINISTRATIVE PROVISIONS

SEC. 6. (a) Subject to such rules and regulations as may be adopted by the Commission, the Commission is authorized—

(1) to appoint and fix the compensation of an Executive Director, and such additional personnel as it deems necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification in General Schedule pay rates, but—

(A) in the case of the Executive Director, at a rate equal to that for level V of the Executive Schedule under section 5316 of title 5, United States Code; and

(B) in the case of all other personnel, at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(b)(1) The Commission is authorized to enter into agreements with the General Services Administration for procurement of necessary financial and administrative services, for which payment shall be made by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

(2) The Commission is authorized to make grants and enter into contracts for the conduct of research and studies which will assist it in performing its duties under this Act and all such grants and contracts shall be subject to the time limitations imposed upon the Commission by this Act.

(c)(1) Any Federal employee subject to the civil service laws, rules, and regulations may be detailed to the Commission, and such detail shall be without interruption or loss of civil service status or privilege.

(2) Any staff member of any committee of the Senate or of any committee of the House of Representatives may be detailed to serve on the staff of the Commission by the chairman of the respective committee. Any staff member so detailed shall serve on the staff of the Commission without additional compensation except that such staff member may receive such reimbursement of expenses incurred as the Commission may authorize.

COMPENSATION OF MEMBERS

SEC. 7. (a) The Chairman of the Commission shall receive compensation at a rate equal to the daily rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code, and the Vice Chairman shall receive compensation at a rate equal to the daily rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day the Chairman or Vice Chairman is engaged in the performance of the duties vested in the Commission.

(b) All other members of the Commission who are not officers or employees of the Federal Government shall receive compensation at the rate of $200 for each day such member is engaged in the performance of the duties vested in the Commission.

(c) All members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred in connection with their activities as members of the Commission.

AUTHORIZATION OF APPROPRIATIONS

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

By Mr. BROOKE:

S. 3461. A bill to extend the authority for the flexible regulation of interest rates on deposits and accounts in depository institutions and to provide that there shall be no differential with respect to transaction accounts; to the Committee on Banking, Housing, and Urban Affairs.

S. 3462. A bill to provide for the maintenance of reserves by member banks through certificates of deposits issued by the Federal Reserve Banks and to reduce and restructure reserve requirements; to the Committee on Banking, Housing, and Urban Affairs.

FINANCIAL INSTITUTIONS LEGISLATION

● Mr. BROOKE. Mr. President, on December 15, 1978, authority for the flexible regulation of interest rates on deposits and accounts in depository institutions will expire, and legislation to extend such authority will have to be considered before the Congress adjourns sine die. On other occasions I have expressed my reservations regarding the long range utility of interest rate controls, and I am pleased that the administration has undertaken a review of what are commonly called the Regulation Q ceilings.

I understand that proposals have been made in the House of Representatives to extend Regulation Q authority for 3 years. For my part, I feel that an extention beyond the end of the next Congress is not desirable inasmuch as a longer extension would reduce the likelihood that the recommendations of the administration task force on interest rate ceilings, which should be available within a year, will receive timely consideration.

I am today introducing legislation to extend interest rate setting authority for 2 years, until December 15, 1980. And I am including in this bill a provision which would remove the interest rate differential on time and savings accounts which can be automatically accessed by a third party payment account. This latter provision will promote greater competitive balance among institutions, and it is consistent with the treatment of NOW accounts in New England. I ask unanimous consent that the bill be printed immediately following my remarks.

I hope that the Senate Banking Committee will hold a markup session on this bill in the near future so that we can be prepared to go to conference with the House of Representatives before the end of next month.

A second issue which should be formally considered by the Banking Committee before adjournment is the accelerating decline in membership of the Federal Reserve System.

Since 1970, 430 member banks have withdrawn from the system, resulting in a significant decrease in the amount of commercial bank deposits against which reserves are held at the Federal Reserve. The decline in Federal Reserve membership is of primary concern because it adversely affects the Federal Reserve's ability to achieve monetary policy objectives.

Member banks now are seriously disadvantaged by maintaining substantial noninterest earning reserves. Nonmember financial institutions generally are allowed to hold reserves in the form of low risk, but nonetheless, interest earning assets. The competitive disadvantage to member banks is apparent in the consistently lower average profits of member banks compared to nonmember banks.

This unequal treatment has become particularly important in recent years. First, persistent inflation and generally high interest rates have increased the cost, in lost interest earnings, from keeping reserves with the Federal Reserve System. Second, competition in banking has increased dramatically, especially through the growth of the savings industry and credit unions. I would add that this heightened competition is, to some degree, a direct result of congressional action encouraging formation of these competing financial institutions. I am not suggesting that competition should be curtailed. We must recognize, however, that our actions have increased the attention which financial institutions must give to earnings on all assets, including reserves.

A number of proposals to deal with the Fed membership problem are being considered. These include:

The July 10 proposal of the Federal Reserve Board under which it would reduce reserve requirements for member banks, impose charges for Federal Reserve System services, and either directly pay limited interest on reserves or impose "universal reserve requirements" on all financial institutions with more than $5 million of deposits in transaction accounts. This proposal has been introduced by Senator PROXMIRE as S. 3304 with two changes: First, to explicitly authorize interest payments on reserves and, second, to require charges for Fed services by July 1980.

The proposal of Congressman REUSS in H.R. 13847 which would modify the definition of bank liabilities subject to reserve requirements and would impose a flat uniform reserve requirement set by the Federal Reserve Board between 5½ and 6½ percent on all reservable liabilities in excess of $100 million whether of member or nonmember banks. This $100 million exemption would be indexed to allow for future inflation and growth in the economy.

Finally, the Federal Reserve has proposed modifications to H.R. 13847 which would establish separate reserve requirements on two categories of deposits. Demand and savings deposits in excess of $25 million held by any commercial bank would be subject to a reserve requirement which would range between 7 and 9 percent. Time deposits in excess of $25 million would be subject to reserve requirements set by the Fed at 1 to 6 percent for those with maturities of less than 6 months and at 1 to 3 percent for those with maturities greater than 6 months. No inflation indexing would apply to the $25 million exemptions under the Fed proposal.

Each of these proposals has advantages and disadvantages, but in my opinion each of them may also encounter such significant opposition as to make resolution of the Federal Reserve membership problem unlikely in the near future. But the erosion of Fed membership is a serious and growing problem in New England

and elsewhere in the country, and I think that Congress should consider this issue on a prompt basis. I would hope that when the Senate Banking Committee meets to consider the extension of regulation Q authority next month, it would also consider pending proposals to deal with the Federal Reserve membership problem.

In this regard, I am introducing for discussion purposes a bill which would attempt to resolve the Fed membership problem by providing member banks with an opportunity to cover their reserve obligations by the purchase of certificates of deposit issued by the Federal Reserve Bank in each Federal Reserve district. These certificates would bear interest at a rate ½ percent below the average return on the Federal Reserve System portfolio and it is expected that interest would be payable quarterly. To insure that the funds represented by the certificates remain subject to the Federal Reserve's direct control, they could not be sold or otherwise transferred by a member bank to other than the Federal Reserve Bank which issued the certificate. Since the certificates would be issued by a Reserve Bank, they would of course not be subject to statutory or regulatory provisions applicable to deposits held by member banks, such as interest rate controls or prepayment penalties.

Providing certificates of deposit to members banks will lessen the burden of Fed membership while permitting the Federal Reserve to maintain control over reserve balances.

The present structure of Federal Reserve reserve ratios generally provides lower reserve requirements for smaller member banks. The principal rationale for this is that the larger member banks utilize the presently free Federal Reserve services to a much greater degree than smaller institutions. Although required reserve ratios are currently structured to provide compensation to the Federal Reserve for the services it provides, I believe that with the Federel Reserve's adoption of explicit pricing for services there will be no need to maintain reserve ratios which differentiate among different sized banks. Thus, the bill I am introducing today would require the Federal Reserve to set reserve ratios which are uniform for all member banks.

The principal objection which is likely to be raised to this bill is that it will result in a loss of revenues to the Treasury, since the current earnings on noninterest bearing reserves accrue to the Treasury. From this perspective, noninterest bearing reserves amount to little more than a hidden tax on some of the Nations' banks. We must remember, though, that the Treasury has no claim granted by Congress to take these funds from the banking system. Furthermore, continued erosion of membership is reducing the Reserve System's payments to the Treasury.

However, I do not discount the significance of the potential revenue loss to the Treasury under this bill. It could net out to nearly $500 million after new tax receipts and revenue from explicit Federal Reserve pricing of services are taken into account. But I would note that the administration has testified that losses to the Treasury of up to $350 million are acceptable to solve the membership problem. The approach embodied in the bill which I introduce today would involve only $150 million in greater losses and avoids the complications in the Federal Reserve Board's interest on reserve proposal of choosing the appropriate rate of interest for reserves and of justifying different rates for different sized institutions.

Mr. President, I would ask unanimous consent that the text of this bill be printed in the RECORD immediately following my remarks.

Finally, Mr. President, I would note that the House of Representatives is currently considering H.R. 13471, the Financial Institutions Regulatory Act of 1978, which is a counterpart to S. 71, the Financial Institutions Supervisory Act Amendments of 1977, which passed the Senate a year ago. I hope that the House will act on this bill before Congress adjourns.

However, I must note that the House bill contains a number of titles on which neither the Senate nor the Senate Banking Committee has yet taken final action. These include:

1. Titles VI and VII—Changes in Bank Control: provide for review of changes in control of a Federally supervised bank, bank holding company, or savings and loan by the appropriate financial institutions regulatory agency.

Senate: No bill, hearings, or mark-up.

2. Title VIII—Correspondent Accounts: prohibits preferential treatment in the granting of loans to insiders where correspondent relationships exist.

Senate: No bill, no mark-up. Committee hearings in September 1977 on overdrafts and correspondent banking practices (outgrowth of Bert Lance's bank dealings).

3. Title IX—Disclosure of Material Facts: requires every Federally supervised bank to file with the appropriate bank regulatory agency annual reports containing a list of major stockholders and executive officers and the aggregate amount of loans to such persons, their affiliated companies, and political or campaign committees which are controlled by or will benefit such persons.

Senate: No bill, hearings, or mark-up.

4. Title X—Federal Financial Institutions Examination Council: establishes an examination council composed of top officials of the FDIC, Federal Reserve Board, the Comptroller of the Currency, and the National Credit Union Administration. The Council would develop uniform standards for examination of financial institutions and improve coordination among the agencies on a variety of supervisory matters.

Senate: S. 711, Federal Bank Examination Council bill, Committee hearings on September 16, and 19, 1977; no mark-up session.

5. Title XI—Right to Financial Privacy: gives individuals notice of and an opportunity to challenge Federal government agency requests for their bank records. Access to individual bank records would be governed by the procedures provided in this title and would help ensure that the customer knows who is looking at his records.

Senate: S. 2096, Financial Privacy bill, Committee hearings held on April 18, 20 and May 17, 1978, no mark-up session.

6. Title XIII—Holding Companies: prohibits bank holding companies from selling other than credit-related life and disability insurance. Bank holding companies in communities of less than 5,000 people and holding companies with less than $50 million in assets would be exempt.

Senate: S. 72, Competition in Banking bill (restrictions on a holding company's growth and on its insurance and other nonbanking activities); Committee hearings on March 7, 8 and June 16, 1978; no mark-up session.

S. 3087 and S. 3215, bank holding company insurance activities; no hearings or mark-up sessions.

7. Title XIV—Amendments to the National Banking Laws: repeals the 6 percent dividend limitation on preferred stock offered by national banks and provides the Comptroller with various new powers, including the authority to revoke a national bank's trust powers, to delegate his statutory powers, and to declare national bank holidays when a Governor of a State declares a State bank holiday.

Senate: No bill, hearings, or mark-up sessions.

8. Title XV—Termination of Closed Receivership Fund: provides a procedure under which the Comptroller may terminate the National Bank Closed Receivership Fund which operated prior to the establishment of the FDIC in the 1930's.

Senate: No bill, hearings or mark-up sessions.

9. Title XVII—Regulation Simplification: requires the Federal financial institutions supervisory agencies to review and streamline their regulations.

Senate: No bill, hearings, or mark-up sessions.

10. Title XVIII—Alternative Mortgage Instruments: allows federally chartered thrift institutions to offer alternative mortgage instruments in those States which allow them for State-chartered institutions.

Senate: Committee oversight hearings regarding alternative mortgage instruments held on October 6 and 7, 1977 and on August 21 and 22, 1978.

S. 70, a bill to authorize alternative mortgage instruments; no mark-up sessions.

S. Con. Res. 9, Concurrent Resolution that the Federal Home Loan Bank Board should authorize the use of a wide variety of mortgage instruments; no mark-up sessions.

S. 2455, a bill to authorize reverse annuity mortgages; no mark-up sessions.

11. Title XIX—Prohibition on Credit Card Surcharges: makes permanent the prohibition against charging an extra fee for a consumer who chooses to use a credit card to pay for goods or services. A temporary prohibition enacted 2 years ago on a test basis expires on February 1, 1979.

Senate: No bill, hearings, or markup sessions.

Many of these titles are, I believe, meritorious, and perhaps they should be accepted in conference with the House. However, I feel that members of the Senate Banking Committee should be given an opportunity to consider them. I would hope that when the committee meets to consider an extension of regulation Q authority and the Federal Reserve membership proposals, Members would take the opportunity to express their views on those titles which have not yet been considered by the Senate.

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

S. 3461

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

SECTION 1. Section 7 of the Act of September 21, 1966 (Public Law 89-597), is amended by striking out "December 15, 1978" and inserting in lieu thereof "December 15, 1980".

SEC. 2. Section 102 of Public Law 94-200 (12 U.S.C. 461 note) is amended by inserting at the end thereof the following new subsection:

"(c) In any State where any provision of State or Federal law authorizes any savings and loan, building and loan, or homestead association (including any cooperative bank) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or any mutual savings bank, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813 (f)), to offer any third party-payment account, there shall be no interest rate differential between (1) banks (other than savings banks) the deposits of which are insured by the Federal Deposit Insurance Corporation and (2) savings and loan, building and loan, or homestead associations (including cooperative banks) the deposits or accounts of which are insured by the Federal Savings and Loan Insurance Corporation or mutual savings banks, as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), on savings accounts from which automatic transfers to third-party payment accounts may be made pursuant to the prearranged agreement of depositors or accountholders. Notwithstanding any of the provisions of subsection (b) of this section, the maximum rate of interest payable on such accounts shall be the rate which banks (other than mutual savings banks) insured by the Federal Deposit Insurance Corporation may pay on such accounts."

S. 3462

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

SECTION 1. The last sentence of subsection (b) of section 19 of the Federal Reserve Act (12 U.S.C. 461) is designated as paragraph (5) and that part of subsection (b) that precedes that sentence is amended to read as follows:

"(b)(1) Every member bank shall maintain reserves against its demand deposits in such average ratio, not less than 3 per centum nor more than 10 per centum, as shall be determined by the Board.

(2) Every member bank shall maintain reserves against its savings deposits from which transfers to third parties may be made in such average ratio, not less than 2 per centum nor more than 7 per centum, as shall be determined by the Board.

(3) Every member bank shall maintain reserves against its time and savings deposits other than those referred to in paragraph (2), in such average ratio, not less than 1 per centum nor more than 7 per centum, as shall be determined by the Board.

(4) In setting the reserve ratios under paragraphs (1) through (3) of this subsection, the Board shall establish uniform ratios applicable to all member banks."

Sec. 2. Section 19(c) of the Federal Reserve Act (12 U.S.C. 461) is amended to read as follows:

"(c) Reserves held by any depository institution to meet the requirements imposed pursuant to subsection (b) of this section shall be in the form of

(1) balances maintained for such purpose by such institution at a Federal Reserve Bank, and

(2) the currency and coin held by such institution.

Reserve balances maintained at a Federal Reserve Bank may be used, in their entirety, to purchase certificates of deposits which shall be issued for such purpose by the appropriate Federal Reserve Bank. Such certificates, with interest payable at a rate ½ percent below the average return on the Federal Reserve System portfolio, shall be nontransferable and non-assignable.

ADDITIONAL COSPONSORS

S. 2640

At the request of Mr. RIBICOFF, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of S. 2640, a bill to reform the civil service laws.

S. 2865

At the request of Mr. NELSON, the Senator from Illinois (Mr. PERCY) was added as a cosponsor of S. 2865, a bill to amend the Internal Revenue Code of 1954 to provide a more equitable estate tax treatment of joint interests in farm and closely held business property.

S. 3345

At the request of Mr. NELSON, the Senator from Nebraska (Mr. CURTIS) was added as a cosponsor of S. 3345, a bill to amend the Internal Revenue Code of 1954 with respect to the tax treatment of small business investment companies electing to be taxed as regulated investment companies.

S. 3419

At the request of Mr. CULVER, the Senator from New Mexico (Mr. SCHMITT) was added as a cosponsor of S. 3419, a bill to amend the Internal Revenue Code of 1954 to exclude from gross income a portion of payments made under certain Federal and State cost-sharing programs the primary purpose of which is conservation of soil and water resources, environmental protection or restoration, forest enhancement, or the provision of wildlife habitat.

AMENDMENT NO. 3441

At the request of Mr. RANDOLPH, the Senator from Maryland (Mr. MATHIAS) and the Senator from Minnesota (Mrs. HUMPHREY) were added as cosponsors of Amendment No. 3441 intended to be proposed to S. 2600, the Rehabilitation, Comprehensive Services and Developmental Disabilities Act of 1978.

SENATE RESOLUTION 526

At the request of Mr. DOLE, the Senator from New York (Mr. MOYNIHAN) and the Senator from Florida (Mr. STONE) were added as cosponsors of Senate Resolution 526, commemorating the 10th anniversary of the Soviet invasion of Czechoslovakia.

SENATE RESOLUTION 546—ORIGINAL RESOLUTION REPORTED WAIVING CONGRESSIONAL BUDGET ACT

Mr. SPARKMAN, from the Committee on Foreign Relations, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 546

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 3161. Such waiver is necessary to allow the authorization of $1,360,000 in funds for the National Commission on the International Year of the Child, without fiscal year limitations.

Compliance with section 402(a) of the Congressional Budget Act of 1974 was not possible by the May 15, 1978, deadline, because there had been inadequate time for the newly created National Commission to formulate its plans, programs and budget. Further, the proposed legislation was not submitted by the Administration as a request until May 26, 1978.

The effect of defeating consideration of this authorization will be to handicap programs and activities of the National Commission and to curtail U.S. participation as a national entity in the United Nations International Year of the Child.

The desired authorization will not delay the appropriation process and could be accommodated in a supplemental appropriation.

This authorization is sufficiently small that it will not significantly affect the congressional budget.

SENATE RESOLUTION 547—SUBMISSION OF A RESOLUTION RELATING TO PRESERVATION AND RESTORATION OF RHODES TAVERN

Mrs. HUMPHREY (for herself, Mr. ANDERSON, Mr. HAYAKAWA, Mr. LEAHY, Mr. MATHIAS, and Mr. MATSUNAGA) submitted the following resolution, which was referred to the Committee on Energy and Natural Resources:

S. RES. 547

Whereas Rhodes Tavern, which dates back to 1799, is the oldest building between the White House and the Capitol and the last remaining example of 18th century commercial architecture in the central compass of Washington and is threatened with destruction;

Whereas Rhodes Tavern is the only building to remain on the inaugural route from the day that President Thomas Jefferson began the tradition of the Inaugural Parade;

Whereas Rhodes Tavern is known to have served as the headquarters for the British commanders during the burning of the White House and the Treasury in 1814;

Whereas Senators Daniel Webster and Thomas Hart Benton, and Presidents Andrew Jackson, Martin Van Buren, John Tyler, Theodore Roosevelt, William Howard Taft, and Woodrow Wilson were all associated with Rhodes Tavern in the course of their careers; and

Whereas the 179-year-old tavern is of unquestionable historic value to the Nation and the American people: Now, therefore, be it

Resolved, That the Senate expresses its strong interest and concern in the preservation and restoration, for the benefit and inspiration of present and future generations of Americans, of Rhodes Tavern, a building of unique historical significance located in the District of Columbia near the White House, opposite the Treasury Department Building at the northeast corner of 15th and F Streets, N.W.; and encourages every effort to be made by the National Trust for Historic Preservation, the Commission of Fine Arts, the District of Columbia Historic Preservation Office, the Mayor of the District of Columbia, and the Council of the District of Columbia for the preservation of Rhodes Tavern and its restoration to its original condition, or as near thereto as possible.

SEC. 2. The Secretary of the Senate shall transmit copies of this resolution to the National Trust for Historic Preservation, the Commission of Fine Arts, the District of Columbia Historic Preservation Office, the Mayor of the District of Columbia, and the Council of the District of Columbia.

HISTORIC RHODES TAVERN THREATENED

● Mrs. HUMPHREY. Mr. President, it has come to my attention that a building

in Washington, D.C., which ought to be preserved as a part of our national heritage is in danger of destruction.

It is not just another building whose passing need not concern us. I found the story of this particular building of such interest that I am today introducing a Senate resolution which I hope will contribute significantly to the movement to restore the building that is known as Rhodes Tavern.

Rhodes Tavern, which dates back to 1799, is the oldest building between the Capitol and the White House and very likely the last remaining example of 18th century architecture in the central compass of Washington. Located at 15th and F Streets, it is the only building to remain on the inaugural route from the day that President Thomas Jefferson began the tradition of the inaugural parade.

In August 1814, the British commanders took Rhodes Tavern for their headquarters during the burning of the President's House and the Treasury. Senators Daniel Webster and Thomas Hart Benton, and Presidents Andrew Jackson, Martin van Buren, John Tyler, Theodore Roosevelt, William Howard Taft, and Woodrow Wilson were all associated with enterprises at Rhodes Tavern during the course of their careers. The 179-year-old tavern building may be destroyed to make way for a $55 million office and shopping complex. Also threatened by this development along 15th Street are the graceful Beaux-Arts-style Keith-Albee theater and National Metropolitan Bank Buildings which face the Treasury Building and form a graceful complement to its classic architecture.

Currently, preservation groups and the Citizens Committee to Save Historic Rhodes Tavern are actively engaged in identifying and stimulating public support for the restoration of Rhodes Tavern. I find it difficult to believe that, after spending millions of Federal dollars in the past few years to preserve the ceremonial character of Pennsylvania Avenue, we should lose the only building that has witnessed every one of its ceremonies—Rhodes Tavern.

I urge my colleagues to take a personal interest in the preservation of Rhodes Tavern, a building of unique historical significance.

Mr. President, I ask unanimous consent that two Washington Post articles by Anne H. Oman detailing the history and current dilemma of Rhodes Tavern and a brief history by Richard Squires be printed in the RECORD.

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

HISTORY OF TAVERN THE FOCUS OF MOVE TO SAVE IT

(By Anne H. Oman)

A newly formed committee dedicated to saving Rhodes Tavern last week kicked off its campaign to preserve the city's oldest surviving commercial structure with an inventive bit of public relations.

Members of the Citizens Committee to Save Rhodes Tavern, aware that a large group would be touring Decatur House and Lafayette Square as part of National Historic Preservation Week, milled about the square and buttonholed people to tell them about the tavern. By the end of the afternoon, tavern supporters had rerouted about 50 of the visitors to a tour of their own.

The demolition of the tavern has been proposed by the Oliver Carr Company, which plans to build a $40-million, shopping-hotel-office mall in the block bounded by 14th, 15th, F and G streets.

"I was on one side of the room asking a lot of questions, and (James and Grano) were on the other side of the room asking a lot of questions," said Linder. "After the meeting we looked at each other and decided to form the committee."

The committee, with a nucleus of eight people, hopes to attract support by showing the building to the public and telling them about its history, according to Linder. A reception, open to the public, will be held at 6:30 p.m. May 17 at the historic tavern at 15th and F streets.

One day last week, Grano took visitors on walking tours. Richard Squires, who rented the building's upper two floors as an artist's studio, showed visitors through the tavern and passed out pamphlets describing its history.

"I moved in here in 1974, got interested in the tavern and started doing historical research on it at the Columbia Historical Society," said Squires, who uses the studio to build wooden sculptures. "We're now standing in the part that was added in 1945, on the land that was originally a garden."

The original building, constructed between 1799 and 1801, was a hotel run by William Rhodes. Frequented by people active in civic affairs, the hotel was a meeting place for the Orphans Court and a polling place in the first municipal election June 7, 1802. About 1810, the F Street frontage was converted to stores one of which was run by Roger Weightman, the eighth mayor of Washington. In 1814, the Bank of the Metropolis, of which Andrew Jackson was a stockholder bought the building and set up its headquarters there.

The same year, two British officers, General Ross and Admiral Cockburn, took over the building for their headquarters when the British invaded Washington. Mrs. Barbara Suter, who ran the tavern on the second floor of the building, later recalled serving the two commanders a dinner of roast chicken as their troops burned the White House.

". . . Admiral Cockburn, blowing out the candles, said he preferred the light of the burning Presidential Palace and Treasury," she wrote, whose conflagration hard by illumined the room, outshining the pale moonlight, also beaming in all its silver radiance."

In 1840, the banking firm of Corcoran and Riggs, the forerunner of the Riggs National Bank, was set up in the building. Since that time a variety of shops have occupied the lower floor. From 1909 to 1914, the second and third floors were used by the National Press Club.

The building, now on the National Register of Historic Places, originally had a large wing fronting on 15th Street; the wing was demolished during the 1950's.

"Carr says it will cost $1.5 million to save this building—but that figure includes reproducing the wing that was torn down," said Squires. "But just to renovate the existing building and turn it into a restaurant would cost under half a million and would soon pay for itself. With the history of the place and its beautiful views of the city, it would be very popular."

"We hope to get an architect working on design alternatives," said James.

In March, the Fine Arts Commission, which reviews demolition and building permits for buildings near important federal installations, decided it would not require Carr to save the tavern. The commission, however, ruled that Carr must save two other landmark buildings in the block—the Albee-Keith Theater Building and the Metropolitan Bank Building. The decisions are only advisory, but the District government invariably follows this advice.

The District's State Historic Preservation officer has ordered a 180-day period of negotiations before any of the buildings can be demolished. The Joint Committee on Landmarks is holding a series of negotiations with representatives of the Carr Company, preservation groups and interested citizens. The newly formed Citizens Committee to Save Historic Rhodes Tavern is participating in the negotiations.

DEVELOPER OFFERS DELAY ON TAVERN DECISION

(By Anne H. Oman)

Groups trying to save the historic Rhodes Tavern from the wrecker's ball will have an additional year for their efforts if the city accepts a new proposal from developer Oliver Carr.

The 177-year-old tavern building is located at 15th and F Streets NW, and is part of the Garfinkel block where Carr plans to build a $40 million hotel, office, and shopping complex. As things now stand, Carr could obtain a permit to demolish the tavern building in October. That is when a current 180-day demolition delay would expire.

Carr's proposal calls for suspending negotiations on the fate of the tavern building until he begins work on the first phase of the two-phase project. The first phase, scheduled to begin in April, covers the northern half of the block between 14th and 15th streets and F and G streets. The tavern building is on the south side of the block.

Included in the first phase are two other historic landmark buildings—the Albee Building and the Metropolitan Bank Building. Carr says he intends to save the facades of the two buildings and incorporate them in the new complex if the city provides the financial assistance necessary.

The fate of the tavern building has been under discussion for the past two months during negotiations among representatives of the city, Carr and community groups.

"There is a need to focus attention first," Carr wrote in a letter to State Historic Preservation Officer Lorenzo Jacobs, "on that portion of the project that is to be developed initially, rather than confronting all of the preservation questions at one time. . . ."

Carr said that he would agree to the one-year delay in the negotiations on the Rhodes Tavern if the city, in return, would agree to come up with $1.5 million in benefits, including property tax relief, historic preservation grants and the waiver of alley closing fees.

Carr has previously offered to absorb $2 million in costs to help preserve the facades of the Albee and Metropolitan Bank buildings along 15th Street. The total cost of preserving the facades is estimated by Carr at $3.5 million.

Carr company officials say it would take an additional $1 million to $2 million to save the existing Rhodes building or $4.3 million to reproduce the original Rhodes building, part of which was demolished in the 1950s.

"This gives us more time to identify support for the Rhodes," said a spokesman for the Citizens Committee to Save Historic Rhodes Tavern. "Giving more time does take the pressure off, and we worry about declining interest, but we won't decrease our efforts to inform the public."

Leila Smith, who has represented the Don't Tear It Down organization in the negotiations, said that Carr's proposal "creates confusion and leaves many questions unanswered. It sounds as if there might be some difficulty designing the rest of the block when we don't know what's going to happen to the tavern. And new legislation may be needed to provide the tax relief that Carr is seeking, tax relief for people who preserve low-rise commercial structures like the Rhodes."

Thomas Lodge, chairman of Advisory Neighborhood Council 2C, called Carr's proposal "a good idea. It gives the Rhodes Tavern people another year and it will concentrate efforts on the other two buildings. We have to find the money to save them by October."

Jacobs commented that he is "now studying Mr. Carr's proposals as to whether they can be implemented." Jacobs plans to respond to Carr's letter this week, according to his press secretary, Steve Johnson.

RHODES TAVERN AND THE HISTORY OF WASHINGTON, D.C.

(By Richard Squires)

Many cities on the Eastern Seaboard are blessed with ancient public taverns, where the history of the nation is understood as a continuing and lively enterprise, governed by the inclination of great and small men to come to terms amid an atmosphere of food and drink. Fraunces Tavern is the notable example in New York City, as is City Tavern in Philadelphia. The only candidate for this distinction in Washington is Rhodes Tavern, located since the founding days of the Capital on the other side of the Treasury Building from the White House. It is scheduled to be destroyed in November of this year.

The cornerstone of Rhodes Tavern was laid in 1799, making it the oldest building to remain between the White House and the Capitol, and that area's last remaining example of 18th Century architecture. It is the only building to remain along Pennsylvania Avenue from the day that President Thomas Jefferson first began the tradition of the Inaugural Parade in March 1805.

William Rhodes was one of the Federal City's first businessmen, establishing a tavern in the Little Hotel, next door to the present Rhodes Tavern, as early as 1796. George Washington visited this tavern on 18 December 1798. About 1800 Mr. Rhodes relocated in larger quarters next door, in the present tavern, just in time to greet the administration of President John Adams, moving down to Washington from New York City. With the Capitol and Presidential Palace still under construction, the tavern quickly became a kind of unofficial city hall to the fledgling town, where courts and city councilmen held session, and political parties met to work out their affairs.

In April 1814 General John Van Ness founded the Bank of the Metropolis in part of Rhodes Tavern, the second bank to open in Washington, and soon to be the city's largest. Van Ness, a boyhood friend of Martin Van Buren, was a congressman from New York and ultimately mayor of Washington. General Andrew Jackson was numbered among the bank's original stockholders. On the bank's opening day, General Jackson was fighting the British in Pensacola, Florida.

With Napoleon's abdication in April 1814, the British Army was finally free for combined assaults on Washington and New Orleans in a final attempt to win the War of 1812. In August 1814 the British Command took Rhodes Tavern—Bank of the Metropolis for its headquarters during its invasion of Washington. Setting the Capitol, the Presidential Palace, and the Treasury aflame, Admiral Sir George Cockburn rode into the main room of the tavern on a mule, and dismounting, introduced himself to the startled innkeeper as "the much abused Cockburn, come to sup with you, madam." The company of officers retired to a dining room and ate a dinner of roast chicken, "for which Cockburn, blowing out the candles, said he preferred the light of the burning Presidential Palace and Treasury, whose conflagration hard by illuminated the room, outshining the pale moonlight, also beaming in all its silver radiance." Cockburn's reward for the success of this expedition came in 1815, when he was made Governor of Saint Helena Island, and custodian of Emperor Napoleon Bonaparte.

General Jackson revenged the nation with a stunning victory at the Battle of New Orleans in January 1815, three weeks after the signing of the Treaty of Ghent. Two of the most lasting effects of this war surely came from the burning of the Presidential Palace and the elevation of Andrew Jackson in the public eye. When the reconstruction of the Palace was completed with a final coat of paint, it soon took on a new name—the White House—and its previous association with the royal tradition of England was lost forever. Within a dozen years the dropping of property qualifications prepared the nation for its first fully democratic vote, and its subsequent election of President Andrew Jackson.

The central drama of Jackson's Presidency was his battle to destroy Nicholas Biddle and the Bank of the United States, and the exclusive aristocracy of wealth which he believed they represented. The climax of the Bank War came in 1833, when Jackson pulled the Government's deposits from the B.U.S. and placed them in certain selected "Pet Banks". The Bank of the Metropolis at Rhodes Tavern, a solid friend of the administration, was named the sole depository of Federal funds in Washington, D.C.

With the sudden addition of nearly $1 Million in Government money, the Bank of the Metropolis found that it had outgrown Rhodes Tavern, and left the building in 1836. Its offices were quickly taken by an ambitious young financier named W. W. Corcoran, who understood the value of locating opposite the Treasury at a time when the Government needed private bankers to fill the void caused by the collapse of the Bank of the United States. Philadelphia, having lost political control of the country Washington, now lost financial control of the country to New York, and entered a period of decline from which it has yet to recover. On Wall Street, especially at the Democratic Merchant's Bank and Bank of America, the birth of the Washington-New York political-finance axis was met with whoops of joy, tempered somewhat by the memory of the destruction of Nicholas Biddle in the hands of the politicians. To forestall the repetition of such a calamity, Wall Street engaged the services of Corcoran, whose capitalization amounted to only $2500, but whose contacts included every living President, many of them on intimate terms. As the representative of Wall Street to the U.S. Treasury, and the President's frequent envoy to New York, Corcoran effected a marriage of politics and finance from the rooms of Rhodes Tavern that changed his time. The fortune he acquired through the good offices of Presidents Tyler, Polk, Buchanan, and Senators Daniel Webster and Thomas Hart Benton, was put to good use in the construction of the Washington Monument and the Renwick Gallery. He was Washington's leading citizen of the 19th Century. The firm of Corcoran and Riggs, founded at Rhodes Tavern in 1840 and now known simply as Riggs, was the city's largest bank when it left the tavern in 1845. It remains so today.

The Reconstruction Era and the Gilded Age which followed brought the corruption of almost every public office. James A. Garfield a classics professor turned politician, who was often found immersed in Horace on the Senate floor, received the nomination by a fluke and found himself the President in 1881, promising to reinstate the noble stripe of leadership that had been the ensign of our early years. In May 1881 a disappointed office seeker named Charles Guiteau walked into a gun shop on the ground floor of Rhodes Tavern and tested the revolvers, finally settling on a costly model with a pearl handle, feeling it would look the best in a museum. After stalking the President on Lafayette Square and the White House grounds for the next three weeks, he finally caught Garfield in the railroad station, shooting the President fatally, twice in the back. On the gallows Guiteau sang out, "I have saved my party and my land! Glory Hallelujh!", as the rope was snapped.

The age of free capitalism finally felt the reins in the Progressive Era of Roosevelt, Taft and Wilson, supported by a new brand of independent, investigative writing which Roosevelt dubbed "muckraking" journalism. The National Press Club, the Capital's leading association for the Fourth Estate, was founded in 1908 and had its second home in the upper stories of Rhodes Tavern from 1909–1914. Presidents Theodore Roosevelt, William Howard Taft, and Woodrow Wilson were all members of the Press Club during its years at Rhodes Tavern. President Taft visited the club on the eve of his Inauguration in 1909, and throughout his term in office was a frequent visitor of the club, conveniently located on the path of his weekend strolls in the neighborhood. Woodrow Wilson was a member of the club while still President of Princeton University.

The election of 1912 pitted the three club members against each other for the Nation's highest honor: Wilson for the Democrats, Taft for the Republicans, and Roosevelt for the renegade Bull Moose. All three spoke for their respective platforms at Rhodes Tavern, and were in turn subjected to "interpretative" skits by the lampooning membership. The windows of Rhodes Tavern, considered the best on the parade route, were offered to the public at an average of $1000 apiece for the Inaugural Parade of Taft and Wilson in 1909 and 1913. Sarah Bernhardt was among the many celebrities who visited the Press Club, appearing as an honored guest in 1914.

Fences were constructed to surround the White House during World War I, beginning a process of progressively augmented isolation that has left recent Presidents so removed from the life of the city that they might as well be living in Spokane.

In the days of Henry Adams and Daniel Webster, it was common practice for the President to stroll from home to home in the neighborhood, visting the Ministers, Justices, and Senators who naturally tried to live as close as possible to the seat of power. It was L'Enfant's clear intent to make the Presidential Palace the central residence in town. With everyone of fashion long since emigrated to the older streets of Georgetown, the transition of the White House from home among homes to bureaucratic and electroni, nerve center is now fairly complete.

No one but the President lives in the neighborhood now, and he is increasingly surrounded by office buildings that belie the fact that people lived there in the past, and preclude the chance for people of the future to reestablish the design. The old homes of Lafayette Square, long abandoned by society, were nearly destroyed to make office buildings in 1962. President and Mrs. John F. Kennedy, who knew the buildings from walks in the neighborhood, entreated that they be saved, and so they were. He was, however, the last President to take a stroll beyond the White House grounds.

In this light it is possible to see how an ancient Georgian building with a history that reflects so many of the greatest men of the Republic, can yet be held so easily expendable. The White House and the Capitol are the focal points for the axis around which the city of Washington was built, and the recent decline of the area between them should not blind us to the fact that the history, geometry, and business of the city are all directed to this part of town. People come to Washington to get a sense of what this city has meant to the nation over the whole course of its existence. The more we can tie in to the quest for our national

roots, the more likely they will be to stay longer or come more often.

In a very real sense, history is Washington's stock-in-trade, and we should be diligent in keeping up our inventory and keeping it in good condition. Demolition of buildings of beauty and significance, or even a simple charm that people have grown to love, or of flourishing neighborhoods with local color and activity is often a drastic form of surgery that can prove fatal to the streets, neighborhoods, and ultimately the cities involved.

Rhodes Tavern is Washington's oldest commercial building, continuously active and self-supporting for the past 178 years. It presently houses a newsstand, souvenir shop, fruit stand, coffee shop, and art conservation lab. Its tenants include people of African, English, Irish, Japanese, Jewish, and Palestinian descent. It remains one of the more colorful and charming buildings in the city.

A visit to the National Archives will reveal dozens of photographs and prints depicting the triumphant march of Presidents past the windows of Rhodes Tavern. After spending millions of Federal dollars in the past few years to preserve the ceremonial character of Pennsylvania Avenue, it is difficult to believe that we should lose the only building that has witnessed every one of its ceremonies—Rhodes Tavern.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Energy and Natural Resources Committee be authorized to meet during the session of the Senate today to consider S. 3418, the Pacific Northwest electric power bill.

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

COMMITTEE ON HUMAN RESOURCES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Human Resources be authorized to meet during the session of the Senate on Friday, August 25, 1978 to hold a markup session on the following legislation: S. 2910, the Adolescent Health Services and Pregnancy Prevention and Care Act; S. 3115, Disease Prevention and Health Promotion Act.

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

ADDITIONAL STATEMENTS

SECRETARY BROWN SUPPORTS SALT AND IMPROVED READINESS

● Mr. CULVER. Mr. President, in an address to the American Legion national convention on August 22, our able and articulate Secretary of Defense, Harold Brown, spoke about America's current strengths and the measures necessary to preserve our security in the future.

Noting that our overall strength compared to the Soviet Union depends on more than military forces, Secretary Brown declared that "we outstrip the Soviets in nearly every category"—including economic strength and productivity, political stability and cohesion, technological skill, the appeal of our way of life and our international policies, and our national will. "It is only on the military side that their society has been able to rival us," he said.

In order to maintain a military balance, the United States has been improving and modernizing our own forces. Both now and in the future, we shall maintain a devastating strategic nuclear force. As Secretary Brown assured his audience:

Right now, even after a Soviet surprise attack, we could deliver literally thousands of thermonuclear weapons to targets in the Soviet Union. Despite the improving Soviet offensive and defensive forces, that capability of ours is not going to decline in the future. It is going to increase.

Secretary Brown strongly endorsed arms control agreements as "another and complementary way of dealing with Soviet military efforts." He listed three important advantages of carefully drawn and verifiable agreements:

They can make the achievement of future advantages even more unlikely, while allowing current vulnerabilities to be removed.

They can make future structures more predictable and lower the need for extreme conservatism in our defense planning.

They can contribute to a healthier political environment, an environment in which still further restraints can be imposed on both sides according to the principle of equivalence.

Although most press attention centered on Secretary Brown's statement that we are studying mobile ICBM systems, it is important to note that he linked that option to SALT. "Any mobile ICBM basing system," he said, "would, of course, have to be fully consistent with all provisions—including verification provisions—of a strategic arms limitation agreement." That comment wisely and properly recognizes that mobile ICBM systems can enhance our security only if they are part of a constrained and verifiable arms control regime, one which prevents the U.S.S.R. from making such massive and secret missile deployments as to overwhelm and nullify our own mobile system.

Mr. President, with regard to our conventional forces, Secretary Brown echoed a theme I have made repeatedly since coming to the Senate and joining the Armed Services Committee. He called combat readiness "the most effective counter to the Soviet military threat." He noted that:

Spending money on spare parts, unit training, and field exercises may not grab the headlines. But considering the investment we already are making in hardware, that is the right way at the right time to neutralize the Soviet buildup.

This renewed stress on readiness—with dollars added to do the job—is one of this administration's most important changes and improvements in our defense posture.

Mr. President, I ask that the full text of Secretary Brown's address be printed in the RECORD.

The address follows:

Commander Smith, Distinguished Guests, Ladies and Gentlemen:

It is an honor to speak before this opening session of your Sixtieth Annual National Convention. Discussing defense issues with any audience of American citizens is always a valuable opportunity. But being here with the American Legion is particularly helpful—and challenging. You are well informed and have strong views, views that deserve particular respect because of your own sacrifices in the uniform of our country.

I want to talk with you today about how we are working to assure our military security—both by building balanced and fully adequate armed forces of the kind we most need, and by seeking arms control agreements consistent with the interests of this country.

There is a great deal I don't need to tell this audience. The American Legion already knows that the first duty of government is defense. The Legion already recognizes that, without a sufficient defense, none of our liberties is secure. The President and we in the Defense Department have that same view. We have acted and will act accordingly. President Carter and I intend to do all in our power to see that the defense needs of this country are fully met.

It is for precisely that reason that last week President Carter sent back to the Congress without his approval a defense procurement bill which would have weakened our defense—by taking $2 billion from high priority defense needs in order to pay for one nuclear-powered aircraft carrier. The President and I support the full amount of the Defense budget of $126 billion which he requested. We want no Congressional cut to be made from it. But we do want that money spent wisely, and spent where it is most needed.

The nuclear aircraft carrier costs nearly a billion dollars more than would a future non-nuclear carrier. We plan to build carriers in the future, but we do not need to build this one now at the expense of more urgent needs. And we do not need to add $1 billion to the price tag.

The President is asking the Congress that in the coming year, instead of building a $2 billion carrier with a nuclear power plant, that great amount of money be applied to more urgent needs like the following:

$800 million for helicopters, combat vehicles, and ammunition for the Army.

$200 million for airlift, electronic warfare equipment, and modern electronically guided ordnance for all the services.

Half a billion dollars to upgrade the readiness of all our Armed Forces, by providing spare parts, ship overhauls, training, communications and logistical support.

Several hundred million dollars more for research and development.

More construction of modern general purpose naval ships. For instance, we could build next year two new guided missile frigates, three antisubmarine warfare ships, and a fleet oiler—all for less than one-third the cost of a nuclear-powered carrier.

The President's action is one to enhance our defense, and it certainly is not anti-Navy. We have the strongest Navy in the world, and we intend to keep it that way. We need to have balanced forces to meet all our defense needs, including particularly the need for our forces that are in Europe or are oriented for combat there to combine with the forces of our NATO allies to counter the steady Soviet buildup. The Navy itself needs to bring the ship construction program into balance. It must stop the drift of the past ten years toward a Navy of fewer and fewer ships, each of which costs more and more to build. No ship, no matter how costly and capable, can be in more than one place at a time. We want to keep ours the world's strongest Navy—not to build the world's most expensive ship.

Let me turn now to a broader look at where we stand in the world, and how it shapes our defense decisions.

I should note first, of course, that the overall relative strength of the United States and the Soviet Union depends on more than military forces alone—although those forces are a necessary and crucial element. The total balance includes many parts—economic strength and productivity, political stability and cohesion, our technological skill, the appeal of our way of life and our international policies, and our national will. In these overall terms, there is no doubt in my mind that the United States is the most powerful country in the world. We outstrip the Soviets in nearly every category I have mentioned. It is only on the military side that their society has been able to rival us. But the fact that they have turned so much of their effort to military activities is serious, and has to be troubling to us. We need to do what is necessary to keep a military balance, as well as favorable overall balance of national power.

I noted a moment ago that we are urging the Congress to keep our Defense budget for next year at the full amount the President requested in January. We have also pledged, along with our NATO allies, to increase our defense effort in real terms, after allowing for inflation, with a goal of about three per cent increase per year.

Why are we making this effort to increase our defense? In deciding just how many defense dollars we need, we have to start by looking at the military efforts and capabilities of the Soviet Union. I have examined those Soviet capabilities carefully, with the help and advice of the Joint Chiefs of Staff. They and I meet at least once a week, and I meet daily with General Jones, the Chairman of the Joint Chiefs of Staff. We consider frequently what responses the United States should make to growth in Soviet military power.

We find that the Soviets have been engaged in a substantial military buildup for nearly twenty years. Over that period they have increased their military expenditures by about four per cent each year in real terms, compounded, year in and year out. And their buildup is continuing.

But that does not mean that we and our allies have been sitting on our hands, or that we have suddenly become inferior to the Warsaw Pact. We are not. And it does not mean that, as we continue to improve our forces, we should make them a carbon copy of the Soviet posture, or that we should plan forces simply to match certain Soviet capabilities.

The Soviets must wrestle with a number of problems that we do not now have, especially with respect to China. Their planning has to take into account a difficult geography and a harsh climate—though they do have the advantage of internal lines of communication. They lack willing and effective allies. Our planning should neither forget their burdens, nor assume we have the same problems—we have problems, but ours are different.

Thus, simple comparisons of Soviet and American forces are only the beginning of understanding our military needs. In planning our forces, we need to be careful not to be misled by such comparisons.

Take the case of our strategic nuclear posture. With the warheads we already deploy, we can target all significant military objectives in the Soviet Union, even after undergoing a first strike by the Soviets. Our basic offensive strength, in other words, is adequate today. But as strategic forces have grown more sophisticated in both the Soviet Union and the United States, the requirements of deterrence have become more demanding: not necessarily in terms of missile throw-weight, or megatonnage, or warheads—the sorts of measures one often hears about—but rather in other dimensions.

For example, control and the ability to withhold some offensive forces—to be able to attack some targets and spare others at a particular phase of combat—may be as important as rapid reaction against the entire enemy target system. As a consequence, our offense needs improved communications, command and control, even though such capability tends to be ignored in most simple comparisons of Soviet and American strategic capabilities.

Age also often is ignored in simple comparisons, and some of our offensive forces are growing old. Also, some—particularly the ICBM component—are becoming more vulnerable than is desirable from the standpoint of flexibility, even though we might decide to use those forces under attack before they were destroyed.

We have not been idle in the face of these needs. Aging of the force is being brought under control. The modernization of the submarine and bomber forces—with the Trident missile and with cruise missiles—is well under way. We are moving toward development of a new and more sophisticated ICBM. And we are continuing to examine possible replacements for our B–52 bombers.

We are giving equal priority to our other strategic force needs, even though they are less visible and do not lend themselves to simple, numerical comparisons with Soviet capabilities:

Our warning systems are being improved.

We are developing increased accuracy for all our missiles—ballistic and cruise.

We are upgrading our communications and ability to use those communications selectively.

New warheads soon will be deployed, and advanced avionics systems for our bombers are being tested.

Right now, even after a Soviet surprise attack, we could deliver literally thousands of thermonuclear weapons to targets in the Soviet Union. Despite the improving Soviet offensive and defensive forces, that capability of ours is not going to decline in the future. It is going to increase.

In response to the potential threat new Soviet ICBMs pose to our ICBMs, I have asked the military services and the Joint Chiefs of Staff to consider a number of options to enhance the survivability of that leg of our nuclear deterrence triad—a triad which is composed of bombers and cruise missiles, submarine-launched ballistic missiles, and inter-continental land-based missiles. A number of mobile ICBM basing concepts are being evaluated, including some involving alternate launch points for each missile. This concept envisions moving missiles and their launchers among multiple sites which might themselves be hardened, thus substantially complicating Soviet targeting of our deterrent.

No decision has been made whether or not to deploy mobile ICBM systems, like the alternate launch point system (or multiple aim point system, as it is sometimes called) that I just mentioned. Nor have we decided which particular concept we would implement, if we were to elect to deploy a mobile ICBM system. The current and projected capabilities of our strategic forces give us time to study thoroughly questions of technical feasibility, military effectiveness and cost prior to making decisions about deploying mobile ICBMs.

Any mobile ICBM basing system would, of course, have to be fully consistent with all provisions—including verification provisions—of a strategic arms limitation agreement. The United States will not deploy a mobile ICBM system that would not permit adequate verification of the number of launchers deployed, and other provisions of the agreement. You may be confident that we will insist that any Soviet system meet the same verification standards.

The parts of the joint draft text of the SALT II agreement that have already been agreed allow deployment of mobile ICBM systems of the types we are considering. The draft agreement explicitly permits deployment of mobile ICBM launchers during its term, after the expiration of an interim protocol period which would end well before mobile ICBM systems would be ready for deployment.

I know that some of you are concerned about SALT. I want to assure you that no SALT agreement will be signed unless it is in the interest of the United States to sign it. That means particularly that it must not undermine our military security. An acceptable strategic arms limitation agreement is not going to weaken the U.S. second-strike capability that I have described. We will retain our assurance—and the Soviets will know—that we can deliver such a devastating second-strike blow. And that will remain true despite the current Soviet civil defense program.

Let me turn finally to conventional forces. Here detailed comparisons count even more than in strategic forces. Despite the growth in Soviet theater capabilities, we and our allies already have bought and are paying for the land, naval, and air forces needed to protect our interests in the world. Despite our global responsibilities, we already are well equipped to deal with contingencies that allow ample time for readying and deploying our forces. If NATO could be sure of a month or more to set up its defenses, for example, I doubt that any Soviet marshal would recommend an attack on Western Europe.

Unfortunately, however, we and our allies no longer can count on having that kind of time. The Soviet theater forces have changed most significantly, not in numbers, but in their ability to wage short, intense, nonnuclear campaigns using large, modernized forces, with relatively little advance preparation. In consequence, as General Haig, the Supreme Allied Commander in Europe, recently observed, surprise attack has become more feasible. Our needs have changed accordingly: not toward larger forces, but toward higher combat-readiness, greater short-run sustainability, improved interoperability with allies, and more long-range mobility for the forces we already have.

Don't misunderstand me; I recognize the need for modern weapons. We need improved equipment. But our modern weapons must be fully effective. Therefore, the members of our Armed Forces must be able to maintain them, adequately train on them, and get them into a combat theater before our defenses are overrun.

Combat effectiveness depends on many factors. We must keep the size of our forces, their modernization, their readiness (including their mobility) and their sustainability, in balance—especially when the incentives for surprise attack and short, intense campaigns have gone up. Spending money on spare parts, unit training, and field exercises may not grab the headlines. But considering the investment we already are making in hardware, that is the right way at the right time to neutralize the Soviet buildup. That is what the President had in mind, as I said earlier, when he sent the Defense Authorization Bill back to the Congress last week, with a request to put our dollars where they will provide us the greatest protection from the Soviet military effort.

An adequately and properly balanced Defense budget, then, is one way we assure our security against the Soviet military threat. It is a necessary way, but it is not the only one. Although some may still be skeptical about arms control agreements—and it is a particular responsibility of mine not to be gullible about them—such agreements are another and complementary way of dealing with Soviet military efforts. The interests of the Soviet Union and the United States clearly

diverge in many respects. But the Soviets understand that, as long as we remain strong—and I intend that we will—direct conflict with the United States and its friends could quickly lead to disaster. At a minimum, they share our interest in avoiding such a conflict. And there are other problems of mutual concern on which communication remains necessary and cooperation should be possible. We cannot afford to ignore those possibilities.

I say that because the interests of the United States are best advanced under conditions of peace and orderly change. We need as much stability and predictability as we can manage in our internal relations, consistent with national security. U.S. and allied arms buildups offer one way of obtaining security, stability, and predictability; arms control provides another. What mix of the two works best depends on the circumstances.

As matters now stand, we are well positioned for further competition and an arms buildup. But that is not our preferred path, if we can obtain security, stability, and predictability through precise, equitable, and verifiable arms control. In that case we prefer agreed restraints and reductions to competition and buildups. As a nation, we have no vested interest in arms races.

Our preference for restraint is bound to be especially strong where nuclear forces are concerned. I say this for several reasons. Nuclear weapons represent the only real threat to the survival of the United States and, for that matter, to that of the Soviet Union. Those weapons could destroy in hours all that the two nations have built over centuries.

Both the United States and the Soviet Union already deploy nuclear forces capable of this kind of destruction. As a consequence, it is increasingly unlikely that further buildups by one side will yield a meaningful advantage, providing that the other side takes prudent countermeasures. This is so even though civil defense or exotic technologies may continue to create the illusion of potential advantage.

This is not to say that agreements to limit strategic or other armaments can solve all problems, remove all grounds for fear and suspicion, or bring all competition to a complete halt. But carefully drawn agreements—backed by verification of compliance with them—can accomplish a great deal.

They can make the achievement of future advantage even more unlikely, while allowing current vulnerabilities to be removed.

They can make future structures more predictable and lower the need for extreme conservatism in our defense planning.

They can contribute to a healthier political environment, an environment in which still further restraints can be imposed on both sides according to the principle of equivalence.

I do not see any immediate prospect of achieving a mutual end to competition in military strength. A reasonable objective today is to maintain the modest momentum toward arms control. But arms control as such, I can assure you, is not our sole or even principal objective in SALT. What we want, what we insist on, is that the security of the United States and its allies be at least as assured with a SALT agreement as without it. If an agreement does not meet that test, it will not be signed. If it does, it will be.

But with or without SALT, our Defense programs will—in the main—have to continue. As we proceed with them, the issue is not whether to have as much defense as we need to protect our domestic and foreign interests. Nobody should doubt the absolute priority of that requirement. To the extent that there is an issue, it is over what, in detail, constitutes the necessary defense.

Experts can argue for hours—my own time is heavily involved in such considerations—about how important, absolutely or relatively, it is to add a seventeenth Army division, a twenty-seventh fighter-attack wing, or a thirteenth attack carrier. The fact of the matter is that, with the force structure we already have, individual changes of that order are not going to make much difference to our overall military effectiveness. But changes in our ability to maintain, move, supply, and operate professionally the weapons already in our inventories can make all the difference in the world in our effectiveness, and in our deterrent power. You can recall your own military experiences. You probably remember the difficulties of performing your mission when weapons and equipment were not in adequate supply, or not functioning properly, or down for lack of spare parts.

The President and I want fully effective forces. The competition from the Soviet Union demands it. Real readiness to fight is the most effective counter to the Soviet military threat. Our resources must be spent to assure effectiveness for the kinds of conflicts that are the most likely now and in the foreseeable future. We must not drift back toward the old strategy of sacrificing immediate readiness but counting on a long time for mobilization—a strategy that was barely feasible in the 1930s. Today we do not have luxury of time, and combat-readiness and quick response are what we need. As Secretary of Defense, I with the concurrence of the President intend to shape and provide for our forces to meet those very real requirements. You are a group who because of those very real requirements can understand this. I hope I will have your support.

In closing, let me add that there is another and more fundamental reason why priority should go to combat-readiness, assuring the immediate fighting capability of our people in uniform. It is that only people—professionally trained people with high morale—can make our weapons work. Even pushbuttons have to be pushed.

As the Legion knows better than most, people are the greatest asset we have in defense. Technologically, we have a comparative advantage over the Soviet Union. But it is not nearly as great as the advantage we obtain from being a free people. The Soviets may be able to close the gap in weapons production and to narrow the gap in military technology. They will never come close to the spirit, the dedication, and the initiative of the men and women in the Armed Forces of the United States.

You, our veterans, gave us the margin necessary to victory in the past. The men and women of our Armed Forces today offer us the opportunity for the same decisive margin. As long as I am Secretary of Defense, I intend to make the most of it. I hope to have your support in doing so.

Thank you.●

ERA EXTENSION

● Mr. GARN. Mr. President, Grover Rees III, a New Orleans attorney, has written a very helpful article on the problems involved with extending the time for ratification of a constitutional amendment. Mr. Rees' article appeared in the August 18, 1978, edition of National Review.

Mr. Rees' research and analysis are very helpful, of course. But one of the most enlightening aspects of his article is the spirit in which it is written. Mr. Rees asks us to consider the rules not as they apply to ERA, but as they would apply to the constitutional amendment we would most like to see adopted and the amendment we most fear. Then, to apply the same rules to both situations.

As Mr. Rees says about the current controversy over an extension—

Do not think in terms of the ERA. Instead, think of your very favorite proposed constitutional amendment. Then imagine the constitutional change you fear the most. Examine the several alternative constructions of the technical rules on the amendment process provided in the Constitution itself, keeping in mind that the same rules will apply to the good and the bad proposals. That's what the Framers did when they designed the process.

Mr. President, it is my sincere hope that when the Senate considers House Joint Resolution 638 to extend the time for ratification of the equal rights amendment that each Senator will bear this important fact in mind: that we are dealing with a procedure for the proposal, consideration, and possible ratification of good and bad amendments alike, and that the actions taken by this body during the next several weeks will establish a precedent that may last for decades.

I trust that we will act accordingly.

I ask that Mr. Rees' article be printed in the RECORD.

The article follows:

WHEN THE VOTING SHOULD HAVE STOPPED

(By Grover Rees III)

When Congress proposed the Equal Rights Amendment in 1972, the proposing resolution stated the amendment would become part of the Constitution "when ratified by the legislatures of three-fourths of the several states within seven years from the date of its submission . . ." Those seven years will be over next March. However, Congress and several state legislatures are now considering actions that would create serious doubt, among legal scholars as well as the general public, about what is part of the Constitution and what is not.

Ratifications by 38 state legislatures are necessary for final passage. To date, 35 legislatures have ratified; of these, four have passed resolutions purporting to rescind their ratifications. Congress, meanwhile, is considering a resolution (already passed by the House Judiciary Committee) to extend for another 39 months the period in which states may ratify. In March, we will all—those of us who wish to know for sure what the Constitution says—find ourselves in one of the following situations:

1. Assuming that Congress does not attempt to extend the deadline, and that fewer than three additional states ratify the ERA, the legal situation will be clear. The ERA will be "dead," in the limited sense that the 1972 resolution with its 35 ratifications will be null. ERA supporters say they'll get Congress to re-propose the amendment; opponents say they're not worried.

2. If Congress declares the deadline extended, and if by March fewer than three more states have ratified, the effect of the congressional extension will be unclear. Some ERA supporters argue that all prior ratifications—even by states that later rescinded—will remain valid. Another view is that Congress cannot "carry forward" the prior ratifications, and that 38 new ratifications would be needed. Finally, a few legal scholars take the view that extension is valid, but only if states are permitted to rescind their ratifications. Under this view, the ERA would need six or seven more states. Prognosis: at least 39 more months of uncertainty.

3. If Congress passes no extension resolution, but at least four (but fewer than seven) more states ratify by the March deadline, then the ERA will become law only if the four rescissions are ineffective.

4. If exactly three additional states ratify (assuming, again, no congressional extension), then whether the ERA is part of the Constitution will depend on the rescission issue and on the delightfully arcane question whether Kentucky's lieutenant governor could legally veto a rescission resolution passed by the legislature (the governor was out of the state). Governors have never exercised a role in the ratifying process, since the Constitution provides that state legislatures or conventions—not "states"—ratify amendments, and the Supreme Court has held that a state may not restrict its legislature's ratifying function.

There are other permutations, partaking of the juridical elements of one or more of the above. Don't worry about them. Instead, join me in a brief review of a few legal principles, gleaned from the debate over the adoption of the federal Constitution and from the few occasions on which the Supreme Court has construed the formula for constitutional amendment.

A caveat: Do not think in terms of the ERA. Instead, think of your very favorite proposed constitutional amendment. Then imagine the constitutional change you fear the most. Examine the several alternative constructions of the technical rules on the amendment process provided in the Constitution itself, keeping in mind that the same rules will apply to the good and the bad proposals. That's what the Framers did when they designed the process.

Speaking logically, not historically, the rescission controversy seems artificial. Article V of the Constitution, which provides for amendments, is silent on rescission. The general rule is that states are sovereign: a legislature can do anything not prohibited by the federal or state constitution. In particular, legislatures can undo what they have done. They regularly reconsider and repeal their own prior enactments.

If there is a genuine question about the validity of state rescissions, it is created by a sordid and better-forgotten bit of American history. In 1868, three-fourths of the legislatures had ratified the Fourteenth Amendment; Ohio and New Jersey, however, had rescinded before the last state had ratified. Nevertheless, both houses of Congress passed a resolution declaring the amendment to be part of the Constitution.

The Senate passed the resolution without debate and without a roll-call vote. The House debated only for a minute or two, rejecting a request that the Judiciary Committee consider the resolution. (It was almost referred to the Joint Committee on Reconstruction, but the House opted instead to pass it without any committee consideration whatever.) This was the Reconstruction Congress, and the members who voted—in a near-perfect party-line vote—that Ohio and New Jersey could not rescind were, virtually man for man, those who five months earlier had voted to impeach Andrew Johnson for refusing to obey unconstitutional orders.

A few thoughts on the 1868 resolution. First, it was not framed as a general statement on the right to rescind. Indeed, debate revealed more support for the proposition that these particular rescissions were invalid because the Democratic legislatures of Ohio and New Jersey did not truly represent the citizens of those states. Moreover, up to that moment in history nobody had suggested that Congress had any power over the amending process except to propose amendments and to designate the mode of ratification. The only prior controversy over the validity of an amendment—the Eleventh, in 1798—had been settled by the Supreme Court. The attempt by the Reconstruction Congress to judge whether its own proposal had been duly ratified can best be explained in light of the felt necessities of the time: this Congress not only impeached Johnson, it also proudly regarded several states as "conquered territory" and ruled them accordingly.

Most important, the Reconstruction resolution was never tested in court, not even implicity. On the very day of its passage, Georgia ratified the Fourteenth Amendment, bringing the total to three-fourths without Ohio and New Jersey, and rendering the rescission issue irrelevant. In 1939, three members of the Supreme Court referred to the congressional action, with apparent approval; but the reference was unnecessary to the Court's decision, and was therefore a mere expression of personal opinion.

It should be stressed that the Reconstruction resolution is moot: if the Supreme Court should recognize the validity of the ERA rescissions, it will not be compelled, either logically or practically, to raise questions about the validity of the Fourteenth or any other existing amendment.

Except for the 1868 resolution, with its endorsement by three Justices in 1939, the history of the amending process tends to support the right to rescind. The Constitutional Convention debates reveal the attitude that amendment should be possible only when a broad consensus exists: that a substantial minority of states should be able to block changes favored by a majority, and that frequent amendment would be undesirable. In *The Federalist* No. 85, Hamilton argued that the amending process would ensure that "the will of the requisite number" should prevail; amendment would be possible only when three-fourths of the states "were united in the desire of a particular amendment." Obviously, no state that has rescinded is "united in the desire" with a state that later ratifies. No consensus is achieved.

The Supreme Court has recognized contemporaneous consensus, and not just the formality of a certain number of isolated legislative acts, as necessary for ratification. Consensus was the basis for the Court's holding that an amendment must be ratified within a "reasonable time" to become part of the Constitution: state ratifications must be "sufficiently contemporaneous . . . to reflect the will of the people in all sections at relatively the same period." The "reasonable time" doctrine is based on the mere *possibility* that a ratifying state would lose its enthusiasm for an amendment after a few years. With even more reason, a state that has positively indicated its lack of support for an amendment cannot be counted as part of a consensus.

Not only logic and history, but also fairness, requires a state's right to rescind. It is universally recognized that a state legislature, having rejected an amendment, can later ratify it. To allow such reconsideration of a negative judgment, but not of a positive one, would give those who want to change the Constitution an unlimited opportunity to bounce back from defeat, while denying the same right to those who prefer to keep the Constitution as it is. Does anybody think the Framers intended such a result?

Opponents of the right to rescind—aside from invoking with reverence the two shaky precedents mentioned above—advance two principal arguments:

First, we desperately need the ERA. The women of America have worked so hard and so long that a defeat on this issue would prove that The System Does Not Work.

Second, it is the act of ratification that counts. Once a state has ratified, it has no more power over an amendment. Under this view, if 37 states had ratified in a flurry of enthusiasm for a new proposal, and every ratifying state had later rescinded, any one state could still bind the nation by ratifying, consensus or no consensus. There are, then, two views of the amending process: the consensus theory and the sacramental act theory.

The mind's eye pictures Bella Abzug standing astride the nation with a great sack. Now she plucks up Connecticut, now Indiana, now little Delaware. Each time she bags a new state, a frisky Tennessee or Idaho scrambles out of the sack, only to be jammed back inside. Two views of the amending process: the consensus and the "Gotcha!" theory.

Since Congress can propose a new ERA whenever it chooses, identical to the old but with a new time limit, it could presumably achieve the same result by extending the 1972 resolution for 39 more months. But what effect will this have on states that have already ratified?

Advocates of extension insist that the time limit is a mere procedural matter, and that Congress has the implied power to change it at will, holding onto the prior ratifications. Opponents point to the fact that each ratifying state voted on a specific resolution; which contained the seven-year time limit. Approval of the ERA thus limited—in effect, a statement that "We're for it if 37 other states will ratify within seven years"—cannot be equated with unconditional approval.

Extension supporters place great weight on the location of the seven-year language in the ERA resolution. They generally admit that if the time limitation were in the text of the amendment itself, Congress could not extend without releasing the previously ratifying states. The seven-year limit on the ERA, however, is not in the body of the amendment, but in the preamble. Therefore, the argument goes, in changing the time limit Congress is not tampering with the amendment itself, which is all the states ever voted on.

This technical contention elevates form over substance, ignoring what really happened in the ratifying process. Each state received from Congress a copy of the entire resolution, including the preamble with the seven-year time limit. The whole package was on the bargaining table when the states agreed to ratify.

At a House subcommittee hearing on extension, ERA advocates ridiculed the notion that legislatures actually relied on the time limit and would have opposed the amendment had they thought the limit might be extended. Any doubt about legislative intent, however, has been resolved by the careful research of Professor Jules Gerard of Washington University Law School, who has examined the actual resolutions by which the states ratified the ERA. Professor Gerard reveals that of 35 such resolutions, 26 expressly mention the time limit.

To circumvent this argument, extension proponents invoke the sacramental act theory, arguing that no matter what a legislature thought it was ratifying, it actually did ratify whatever it was that Congress proposed. Like Isaac, a legislature may have been tricked into giving its blessing to a resolution it never loved; but a blessing is a blessing. Gotcha.

Assuming for the sake of argument that state legislative intent is irrelevant, the key inquiry becomes whether the Congress that proposed the ERA intended for the time limit to be subject to change. It did not. The Senate hotly debated the question of a time limit, with several members indicating they could not support an amendment that might be "lingering in limbo for an indefinite number of years." The time limit was inserted on a roll-call vote, with the principal ERA sponsors on the losing side. But why was the limitation put into the preamble, rather than the text?

Several prior amendments did include the time limitation in the body of the amendment itself. Every amendment since the Twenty-Third, however, has had a time limit in the preamble, like the ERA. Extension supporters argue that the switch was in-

tended to make the time limit a procedural detail, not a substantive part of the amendment immune to extension. But there is proof positive to the contrary.

Early proposed drafts of the Twenty-Third Amendment included the time limit in the text. At the request of its author, however, the amendment was rewritten by Professor Noel Dowling, perhaps the most respected constitutional scholar of his time. He had this to say:

"The seven-year limitation is put in the resolution rather than in the text of the amendment. There is no doubt about the power of Congress to put it there; and it will be equally effective. The usual way, to be sure, has been to write the limitation into the amendment; but we hope such an unnecessary cluttering up of the Constitution can be ended." [Emphasis added.]

In other words, the change was purely stylistic. A time limit has no business actually becoming part of the Constitution, since it has outlived its usefulness at the moment the last state ratifies. It was placed in the preamble as a step toward a more elegant Constitution, not a more powerful Congress. A time limit in the preamble was intended to have the same legal effect as a time limit in the text: to be reliable, predictable, tamper-proof.

Extension and rescission are technically unrelated issues. Several scholars have suggested, however, that if Congress extends the deadline, it will be necessary to allow states to rescind. This is more a fairness argument than a legal theory, but as a fairness argument it is compelling. A ten-year deadline would give amendment supporters at least ten chances in most states. Nine rejections followed by one acceptance would put the state squarely in the pro-ERA column. Meanwhile, state legislatures that ratified back in 1972 might be hating themselves for it, and passing annual resolutions rescinding and deploring the ERA, to no avail. Professor Charles Black of Yale Law School, a strong ERA supporter, calls it a "silly lobster-trap." But the House Judiciary Committee is not impressed: in considering the extension resolution, it rejected an amendment acknowledging the states' right to rescind.

The case for congressional power to extend the deadline and bind previously ratifying states, like the case against a state's right to rescind, is so weak that supporters seldom argue the merits. Rather, they assert that matters of constitutional amending procedure are "political questions," in which the Supreme Court will allow judgments of Congress to stand, right or wrong. By the same token, a few zealous ERA supporters are frankly urging Congress to forget the legal niceties and to treat votes on extension and rescission as votes for or against the ERA.

The "political-questions doctrine" originated as a view that the text of the Constitution forbade the courts to review certain actions of the Legislative and Executive branches. The best example is the provision that each house of Congress shall be "the sole judge" of its members' qualifications. In this matter, Congress is said to act as a *court*, and no other court can review its decisions. The political-questions doctrine gradually expanded to include a few areas (notably foreign policy) where there was no clear constitutional mandate for the courts to keep out, but where judicial intervention was regarded as impractical or dangerous.

In 1939 the Supreme Court held in *Coleman* v. *Miller* that some, but not all, matters of amendment procedure are political questions. Four judges stated flatly that the text of Article V commits adjudication of amendment questions to Congress; but they quoted no such language, and in fact there is none. Three others argued that, as a practical matter, Congress is the best judge of certain facts, and so the courts will not interfere. These three judges were the ones who approved the Reconstruction resolution. They did not indicate how courts should decide which congressional judgments to let stand and which to review; indeed, the decision was widely criticized as internally inconsistent.

Coleman would probably be decided differently by the Supreme Court today. The scope of the political-questions doctrine has narrowed considerably. In 1969, Representative Adam Clayton Powell sued the Speaker of the House, asserting that he had been illegally expelled from Congress. The Supreme Court took the case and declared Powell entitled to his seat, despite the explicit provision in the Constitution that Congress is "the sole judge." Since *Powell* v. *McCormack*, scholars have been asking whether there is really anything left of the political-questions doctrine.

Even those who disapprove of *Powell* should welcome its effect on those areas where there is *no* textual commitment of a judicial matter to Congress. Just as the courts ought to leave legislating up to the legislature, it is proper for Congress to leave adjudication to the courts.

John Marshall pointed out that the Supreme Court's first duty is "to say what the law is." The first step in observing that duty is to say what the Constitution contains.

It has been suggested that the Supreme Court has an institutional conflict of interest in matters of amending procedure, because some amendments might limit the Court's power. Congress, however, has a twofold conflict: first, amendments frequently limit or expand congressional power; second, Congress already has a role in the amending process, that of proponent. The ERA spectacle now unfolding is an illustration: Congress proposes the ERA, then votes to extend the time limit on its proposal, then passes a resolution "judging" ratifying states to be bound by the extension, and also "judges" the constitutionality of state rescissions. It's 1978: do you know where your Constitution is?

The impact of declaring amendment procedure to be a political question would extend far beyond the ERA controversy. A model in which the limited role of Congress is boot-strapped into that of general overseer of the amending process—sitting as a "court" in judgment of the success or failure of its own proposals, and free to disregard the clear intentions of the other protagonists—would do unique violence to federalism and to the separation of powers.

A political question, by definition, is one on which Congress cando anything it wishes, no matter how extreme, and be immune from judicial review. Congress could, for instance, propose an amendment on Monday, then pass a resolution on Tuesday "judging" its proposal to have been ratified by 38 states. Everyone could see the congressional resolution was a lie; but the Supreme Court, if it accepted this as a "political question" on which it was powerless to rule, would have to apply the Constitution thus rewritten.

Of course it's unlikely that Congress would pursue the political-questions doctrine to its logical extreme. Nevertheless, at every turn there will be voices urging Congress to disregard legal niceties, to regard procedural votes as expressions of support or opposition to the amendment of the hour. At its best, the Constitution protects the rights of racial, religious, sectional, and other minorities. To entrust the ultimate power over its amendment to a single institution—a highly political, majoritarian, federal-level institution—would be to trust that institution with those rights.

Greasing the skids for the ERA will set a precedent for future amendments which, Professor Black reminds us, could "change the Presidency to a committee of three, hobble the treaty power, make the federal judiciary elective, repeal the Fourth Amendment, make Catholics ineligible for office, and move the national capital to Topeka."

No thoughtful person, liberal or conservative, ERA supporter or opponent, will let his feelings about a particular amendment color his judgment about who shall wield, for all time, the power to rewrite the Constitution.

In response to ERA opponents' entreaties not to "change the rules in the middle of the game," Congressman Barbara Jordan recently replied, with righteous indignation, "This is no game!" She's right. It's a Republic, if we can keep it.●

OVER 750,000 OPPOSE NUCLEAR POWER

● Mr. GRAVEL. Mr. President, I am delighted to report to Congress that an organization dedicated to banning unsafe, unnecessary, uneconomic nuclear fission power has received support, in writing, from over 750,000 Americans.

The Task Force Against Nuclear Pollution, Inc. (P.O. Box 1817, Washington, D.C. 20013) now has over 750,000 signatures on the following, or similar, "Clean Energy Petition," which is endorsed by Ralph Nader:

I petition my representatives in government to sponsor and actively support legislation to: (1) foster wide use of solar (including wind) power NOW, and (2) phase out operation of nuclear powerplants as quickly as possible.

Mr. President, the task force's growing number of petitions is only one indication of the growing number of Americans who are saying "no" to nuclear power. For example, on June 24, 1978, about 25,000 people came to the anti-nuclear rally in Seabrook, N.H. Contrary to some press reports, the participants did not come just to have a good time near the sea; the rally was held in the middle of a dusty garbage dump infested with mosquitoes. The depth of understanding of the nuclear problem exhibited by the people at the rally was remarkable, and even surprised some of the speakers.

When I began having severe reservations about nuclear power several years ago, there was almost no evidence that my opinion was shared by many Americans. But thanks to relentless efforts by what was at first a small number of concerned citizens, the message is finally reaching more and more people: Nuclear powerplants, which each year can produce as much radioactive garbage as 1,000 Hiroshima bombs per powerplant, represent a unique and unmanageable hazard to present and future generations. And further, they are an unmanageable economic burden and are completely unnecessary since all our legitimate energy demands can be met through non-nuclear fission energy sources, like solar energy.

Mr. President, so that my colleagues may see the extent of concern over the nuclear power issue across the country, I submit the August 1978, report of the task force, which lists by congressional district the number of signed petitions, to be printed in the RECORD.

TASK FORCE AGAINST NUCLEAR POLLUTION
REPORT OF AUGUST, 1978

(Representatives listed by last name by Congressional District; those in CAPITAL letters are sponsors of nuclear power mora-

torium legislation. UN: Unidentified by district)

Alabama

1. Edwards	162
2. Dickinson	229
3. Nichols	457
4. Bevill	123
5. Flippo	650
6. Buchanan	508
7. Flowers	574
UN	18
Total	2,271

Alaska

At Large—Young	417

Arizona

1. Rhodes	529
2. Udall	1,226
3. Stump	305
4. Rudd	252
UN	4,539
Total	6,949

Arkansas

1. Alexander	183
2. Tucker	437
3. Hammerschmidt	2,570
4. Thornton	193
UN	44
Total	3,427

California

1. Johnson	1,684
2. Clausen	4,339
3. Moss	2,456
4. Leggett	734
5. Burton (John)	2,935
6. Burton (Phillip)	2,140
7. Miller	976
8. DELLUMS	5,486
9. STARK	766
10. Edwards	778
11. RYAN	862
12. McCloskey	234
13. Mineta	848
14. McFall	1,753
15. Sisk	1,584
16. Panetta	5,410
17. Krebs	2,672
18. Vacant	261
19. Lagomarsino	2,283
20. Goldwater	1,244
21. Corman	611
22. Moorhead	709
23. Beilenson	2,467
24. Waxman	3,936
25. ROYBAL	625
26. Rousselot	764
27. Dornan	2,651
28. Burke	815
29. Hawkins	128
30. Danielson	292
31. Wilson (Charles)	298
32. Anderson	583
33. Clawson	689
34. Hannaford	838
35. Lloyd	599
36. Brown	394
37. Pettis	619
38. Patterson	292
39. Wiggins	613
40. Badham	2,350
41. Wilson (Bob)	1,604
42. Van Deerlin	700
43. Burgener	1,476
UN	1,004
Total	64,502

Colorado

1. Schroeder	1,459
2. Wirth	222
3. Evans	756
4. Johnson	1,343
5. Armstrong	518
UN	181
Total	4,479

Connecticut

1. Cotter	1,810
2. Dodd	3,940
3. Giaimo	3,093
4. McKinney	2,577
5. Sarasin	1,891
6. Moffett	1,699
UN	1,942
Total	16,952

District of Columbia

At Large—Fauntroy	2,205

Delaware

At Large—Evans	7,243

Florida

1. Sikes	253
2. Fuqua	1,680
3. Bennett	157
4. Chappell	407
5. Kelly	289
6. Young	501
7. Gibbons	248
8. Ireland	488
9. Frey	193
10. Bafalis	730
11. Rogers	1,122
12. Burke	358
13. Lehman	452
14. Pepper	448
15. Fascell	1,176
UN	151
Total	8,653

Georgia

1. Ginn	287
2. Mathis	72
3. Brinkley	501
4. Levitas	1,458
5. Fowler	68
6. Flynt	176
7. McDonald	260
8. Evans	201
9. Jenkins	695
10. Barnard	551
UN	551
Total	4,820

Hawaii

1. Heftel	800
2. Akaka	298
Total	1,098

Idaho

1. Symms	700
2. Hansen	319
UN	2
Total	1,021

Illinois

1. Metcalfe	91
2. Murphy	14
3. Russo	65
4. Derwinski	846
5. Fary	8
6. Hyde	548
7. Collins	23
8. Rostenkowski	30
9. Yates	303
10. Mikva	1,727
11. Annunzio	28
12. Crane	1,071
13. McClory	861
14. Erlenborn	487
15. Corcoran	1,560
16. Anderson	914
17. O'Brien	295
18. Michel	137
19. Railsback	431
20. Findley	516
21. Madigan	1,743
22. Shipley	216
23. Price	386
24. Simon	852
UN	3,629
Total	16,781

Indiana

1. Benjamin	230
2. Fithian	444
3. Brademas	1,121
4. Quayle	386
5. Hillis	219
6. Evans	111
7. Myers	1,905
8. Cornwell	247
9. Hamilton	842
10. Sharp	483
11. Jacobs	162
UN	394
Total	6,544

Iowa

1. Leach	3,632
2. Blouin	1,567
3. Grassley	628
4. Smith	2,424
5. Harkin	1,083
6. Bedell	323
UN	70
Total	9,817

Kansas

1. Sebelius	1,694
2. Keys	853
3. Winn	1,007
4. Glickman	2,718
5. Skubitz	1,505
UN	108
Total	7,885

Kentucky

1. Hubbard	172
2. Natcher	392
3. Mazzoli	1,060
4. Snyder	219
5. Carter	377
6. Breckinridge	541
7. Perkins	139
UN	20
Total	2,920

Louisiana

1. Livingston	474
2. Boggs	935
3. Treen	98
4. Waggonner	677
5. Huckaby	44
6. Moore	824
7. Breaux	307
8. Long	178
UN	16
Total	3,553

Maine

1. Emery	2,350
2. Cohen	1,936
UN	28
Total	4,418

Maryland

1. Bauman	631
2. Long	336
3. Mikulski	27
4. Holt	601
5. Spellman	906
6. Byron	425
7. Mitchell	147
8. Steers	1,853
UN	1,431
Total	6,357

Massachusetts

1. Conte	12,166
2. Boland	2,471
3. Early	1,528
4. Drinan	978
5. Tsongas	1,972
6. Harrington	2,325
7. Markey	372
8. O'Neill	1,361
9. Moakley	457
10. Heckler	2,056
11. Burke	492
12. Studds	1,771
UN	3,971
Total	31,920

Michigan

1. Conyers	386
2. Pursell	1,585
3. Brown	681
4. Stockman	618
5. Sawyer	395
6. Carr	749
7. Kildee	205
8. Traxler	366
9. Vander Jagt	388
10 Cederberg	514
11. Ruppe	668
12. Bonior	316
13. Diggs	313
14. Nedzi	464
15. Ford	360
16. Dingell	323
17. Brodhead	629
18. Blanchard	540
19. Broomfield	744
UN	23
Total	10,267

Minnesota

1 Quie	671
2. Hagedorn	713
3. Frenzel	149
4. Vento	1,721
5. Fraser	2,519
6. NOLAN	411
7. Stangeland	453
8. Oberstar	382
UN	77
Total	7,096

Mississippi

1. Whitten	53
2. Bowen	79
3. Montgomery	24
4. Cochran	204
5. Lott	444
UN	3
Total	807

Missouri

1. Clay	711
2. Young	410
3. Gephardt	632
4. Skelton	895
5. Bolling	355
6. Coleman	568
7. Taylor	523
8. Ichord	2,600
9. Volkmer	468
10. Burlison	131
UN	124
Total	7,417

Montana

1. Baucus	608
2. Marlenee	329
UN	3
Total	940

Nebraska

1. Thone	511
2. Cavanaugh	215
3. Smith	146
Total	872

Nevada

At Large—Santini	590

New Hampshire

1. D'Amours	4,562
2. Cleveland	3,472
UN	4,011
Total	12,045

New Jersey

1. Florio	1,587
2. Hughes	5,205
3. Howard	1,673
4. Thompson	1,342
5. Fenwick	3,424
6. Forsythe	2,213
7. Maguire	3,156
8. Roe	1,298
9. Hollenbeck	1,816
10. Rodino	1,198
11. Minish	2,020
12. Rinaldo	1,730
13. Meyner	1,348
14. Le Fante	1,636
15. Patten	1,820
UN	1,072
Total	32,574

New Mexico

1. Lujan	4,192
2. Runnels	323
UN	844
Total	5,359

New York

1. Pike	6147
2. Downey	1881
3. Ambro	3346
4. Lent	2334
5. Wydler	2336
6. Wolff	1647
7. Addabbo	34
8. Rosenthal	103
9. Delaney	31
10. Biaggi	103
11. Scheuer	284
12. Chisholm	19
13. Solarz	58
14. Richmond	41
15. Zeferetti	45
16. Holtzman	37
17. Murphy	1896
18. Green	2941
19. Rangel	1744
20. Weiss	3337
21. Garcia	17
22. Bingham	22
23. Caputo	2980
24. Ottinger	4307
25. Fish	12310
26. Gilman	3377
27. McHugh	12307
28. Stratton	2534
29. Pattison	8932
30. McEwen	6495
31. Mitchell	1629
32. Hanley	4007
33. Walsh	3203
34. Horton	2295
35. Conable	1208
36. LaFalce	6093
37. Nowak	3738
38. Kemp	2288
39. Lundine	2616
UN	10544
Total	119,266

North Carolina

1. Jones	609
2. Fountain	3032
3. Whitley	448
4. Andrews	4449
5. Neal	1347
6. Preyer	732
7. Rose	276
8. Hefner	832
9. Martin	798
10. Broyhill	499
11. Gudger	2769
UN	16
Total	15,807

North Dakota

At Large—Andrews	328

Ohio

1. Gradison	1,263
2. Luken	953
3. Whalen	449
4. Guyer	223
5. Latta	409
6. Harsha	274
7. Brown	591
8. Kindness	168
9. Ashley	1,322
10. Miller	456
11. Stanton	746
12. Devine	445
13. Pease	591
14. Seiberling	2,054
15. Wylie	436
16. Regula	360
17. Ashbrook	350
18. Applegate	174
19. Carney	635
20. Oakar	348
21. Stokes	237
22. Vanik	1,381
23. Mottl	741
UN	683
Total	15,289

Oklahoma

1. Jones	2,269
2. Risenhoover	1,662
3. Watkins	506
4. Steed	967
5. Edwards	584
6. English	92
UN	99
Total	6,171

Oregon

1. AuCoin	6,322
2. Ullman	1,296
3. Duncan	1,695
4. Weaver	6,530
UN	119
Total	15,962

Pennsylvania

1. Meyers	1,039
2. Nix	1,523
3. Lederer	713
4. Eilberg	925
5. Schulze	1,304
6. Yatron	707
7. Edgar	1,160
8. Kostmayer	1,888
9. Shuster	430
10. McDade	3,526
11. Flood	5,925
12. Murtha	870
13. Coughlin	1,218
14. Moorhead	54
15. Rooney	2,137
16. Walker	2,151
17. Ertel	1,912
18. Walgren	120
19. Goodling	1,863
20. Gaydos	209
21. Dent	176
22. Murphy	255
23. Ammerman	1,317
24. Marks	657
25. Myers	340
UN	1,304
Total	33,453

Puerto Rico

At Large—Corrada	11

Rhode Island

1. St Germain	3,789
2. Beard	7,151
UN	50
Total	10,990

South Carolina

1. Davis	301
2. Spence	920
3. Derrick	940
4. Mann	385
5. Holland	549
6. Jenrette	70
Total	3,165

South Dakota

1. Pressler	142
2. Abdnor	94
Total	236

Tennessee

1. Quillen	377
2. Duncan	544
3. Lloyd	422
4. Gore	2,969
5. Vacant	6,905

Tennessee—Continued

6. Beard	924
7. Jones	107
8. Ford	70
UN	226
Total	12,544

Texas

1. Hall	96
2. Wilson	165
3. Collins	587
4. Roberts	159
5. Mattox	409
6. Teague	259
7. Archer	478
8. Eckhardt	12
9. Brooks	188
10. Pickle	6,584
11. Poage	245
12. Wright	220
13. Hightower	49
14. Young	76
15. de la Garza	451
16. White	98
17. Burleson	140
18. Jordan	227
19. Mahon	82
20. Gonzalez	1,748
21. Krueger	834
22. Gammage	185
23. Kazen	593
24. Milford	792
UN	2,723
Total	17,400

Utah

1. McKay	632
2. Marriott	1,006
Total	1,638

Vermont

At Large—Jeffords	7,831

Virginia

1. Trible	557
2. Whitehurst	732
3. Satterfield	369
4. Daniel (Robert)	606
5. Daniel (Dan)	167
6. Butler	267
7. Robinson	1,608
8. Harris	1,028
9. Wampler	559
10. Fisher	1,942
UN	150
Total	7,732

Washington

1. Pritchard	3,662
2. Meeds	4,615
3. Bonker	7,014
4. McCormack	1,338
5. Foley	606
6. Dicks	1,709
7. Cunningham	2,779
UN	715
Total	22,438

West Virginia

1. Mollohan	327
2. Staggers	963
3. Slack	485
4. Rahall	166
UN	3
Total	1,944

Wisconsin

1. Aspin	320
2. Kastenmeier	6,215
3. Baldus	7,041
4. Zablocki	543
5. Reuss	1,281
6. Steiger	1,704
7. Obey	13,493
8. Cornell	2,169
9. Kasten	2,143
UN	48
Total	34,957

Wyoming

At Large—Roncalio	259

Nationwide total: 619,620.

NOTE.—As of August 10, 1978, over 135,000 additional petitions are unsorted by District due to lack of funds to hire sorters.●

WMAL EDITORIAL ON CETA

● Mr. CURTIS. Mr. President, last Monday morning, it was my privilege to hear an editorial over radio station WMAL, here in Washington, concerning the CETA program. I believe it merits the attention of the Congress.

Every time a Government agency wastes money or allows the money to be used in a manner that is not consistent with the intent of the legislation, great damage is done. It lessens the confidence of the taxpayers in their Government, and it can lead to a total ending of some activities which have the possibility of doing good. I commend this editorial to my colleagues.

Mr. President, I wish to submit the editorial for printing in the RECORD.

The editorial follows:

WMAL EDITORIAL

I'm Andy Ockershausen, executive vice-president, with a WMAL radio opinion.

The Comprehensive Employment and Training Act or CETA started out five years ago as a ray of hope to millions of unemployed Americans. It was a shot in the arm for our staggering unemployment picture, but gradually the remedy produced an even greater disease—bigger government.

As was disclosed in the Washington metropolitan area, municipalities are using CETA funds to hire people to fatten local government operations. All the blame for this cannot be placed on local officials. There were enough loopholes in the national legislation to permit the abuses which resulted. That's why we support the measures now being discussed in Congress and suggest a further step. CETA funds should be used exclusively for the training of the hard-core unemployed and the youth that are bulging our jobless rolls. The best way to do this is in the form of direct grants to the private sector. Get government at any level out of the training process.

Let's get this money to the people who know how to use it—and that is private industry.●

PRELIMINARY NOTIFICATION PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million, or in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

Pursuant to an informal understanding, the Department of Defense has agreed to provide the committee with a preliminary notification 20 days before transmittal of the official notification. The official notification will be printed in the RECORD at the conclusion of my remarks in accordance with previous practice.

I wish to inform Members of the Senate that two such notifications were received on August 23, 1978.

Interested Senators may inquire as to the details of these preliminary notifications at the offices of the Committee on Foreign Relations, room S–116 in the Capitol.

The official notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 23, 1978.

DR. HANS BINNENDIJK,
Professional Staff Member, Subcommittee on Foreign Assistance, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a European country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director, Defense Security Assistance Agency.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 23, 1978.

DR. HANS BINNENDIJK,
Professional Staff Member, Subcommittee on Foreign Assistance, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR DR. BINNENDIJK: By letter dated 18 February 1976, the Director, Defense Security Assistance Agency, indicated that you would be advised of possible transmittals to Congress of information as required by Section 36(b) of the Arms Export Control Act. At the instruction of the Department of State, I wish to provide the following advance notification.

The Department of State is considering an offer to a Near Eastern country tentatively estimated to cost in excess of $25 million.

Sincerely,

ERICH F. VON MARBOD,
Acting Director, Defense Security Assistance Agency.●

PROPOSED ARMS SALES

● Mr. SPARKMAN. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $25 million or, in the case of major defense equipment as defined in the act, those in excess of $7 million. Upon such notification, the Congress has 30 calendar days during which the sale may be prohibited by means of a concurrent resolution. The provision stipulates that, in the Senate, the notification of proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is immediately available to the full Senate, I ask to have

printed in the RECORD at this point the two notifications I have just received.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 17, 1978.

In reply refer to: I-6002/78ct.
Hon. JOHN J. SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78-81, concerning the Department of the Air Force's proposed Letter of Offer to Saudi Arabia for other than major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost $1,300 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,
ERICH F. VON MARBOD,
Acting Director,
Defense Security Assistance Agency.

Attachments.

[Transmittal No. 78-81]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Saudi Arabia.
(ii) Total Estimated Value:

[In millions]

Major defense equipment*	0
Other	$1,300
Total	1,300

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: Three (3) year continuation of aircraft maintenance, training and support services provided through US Air Force contract with private industry under the code name of PEACE HAWK program. In addition, the program involves modification and expansion of some existing Saudi Air Force facilities and construction of a small number of new.**

(iv) Military Department: Air Force.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to be Paid: None.

(vi) Date Report Delivered to Congress: August 17, 1978.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, D.C., August 17, 1978.

In reply refer to: I-4922/78ct.
Hon. JOHN J. SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b) of the Arms Export Control Act, we are forwarding herewith, Transmittal No. 78-95, concerning the Department of the Army's proposed Letter of Offer to Saudi Arabia for major defense equipment, as defined in the International Traffic in Arms Regulations (ITAR), estimated to cost $173.5 million and support costs of $46.5 million for a total estimated cost of $220 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,
ERICH F. VON MARBOD,
Acting Director,
Defense Security Assistance Agency.

Attachments.

**Facilities.

[Transmittal No. 78-95]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Saudi Arabia.
(ii) Total Estimated Value:

[In millions]

Major defense equipment*	$173.5
Other	46.5
Total	220.0

*As included in the U.S. Munitions List, a part of the International Traffic in Arms Regulations (ITAR).

(iii) Description of Articles or Services Offered: This notification includes phase one of the follow-on program which is to train and equip one logistics battalion and to maintain the readiness of the four battalions modernized in the original program Saudi Arabian National Guard (SANG) Modernization.**

(iv) Military Department: Army.

(v) Sales Commission, Fee, etc. Paid, Offered or Agreed to the Paid: None.

(vi) Date Report Delivered to Congress: August 17, 1978.

**Program.●

AN AMERICAN DIPLOMATIC OPPORTUNITY

● Mr. HEINZ. Mr. President, "Members of Congress for Peace Through Law," a bipartisan group of my colleagues in the House and the Senate, has recently issued a report on the status of American-Vietnamese relations—and their impact and interrelation with the foreign policy goals of China and the Soviet Union.

I wou'd like to commend to the critical reading of all my Senate colleagues this report entitled: "Vietnam and China: An American Diplomatic Opportunity," and ask that it be printed in the RECORD.

The report follows:

VIETNAM AND CHINA: AN AMERICAN DIPLOMATIC OPPORTUNITY

Allowing the "China Card" global strategy to shape American diplomatic relations with Vietnam may cause the United States to miss a crucial opportunity to lessen Soviet influence in Indochina and to strengthen peace and stability in Southeast Asia.

A cross roads in American policy in the Far East has been reached. Since the end of the Indochina War, the situation in the region has changed dramatically. New political alignments have emerged. The primary conflict in the Far East today is no longer between communist and non-communist states as it was during the 1950's and 1960's. The primary conflict is between China and Vietnam, who are fighting Southeast Asia's new cold war. This realignment presents both dangers and opportunities for American diplomacy.

The danger is that the United States will drift into a de facto alignment with China against Vietnam which could, in turn, force Vietnam into an exclusive alliance with the Soviet Union. This could lead to a long-term Soviet military presence in Southeast Asia and to greater insecurities for the member states of the Association of South East Asian Nations (ASEAN).

The opportunity, on the other hand, arises from the Vietnamese willingness to turn to the United States as the alternative to a dependency relationship with the Soviet Union. Vietnam now seems prepared to work toward closer diplomatic and economic cooperation with the United States as a means of maintaining its independence from both the Soviet Union and China. The question facing Congress and the Administration is whether to provide this alternative to Vietnam.

American-Vietnamese diplomatic relations and a Vietnam equidistant from the superpowers could be the keystone for a more peaceful and stable political order in a Southeast Asia where both Soviet and Chinese influence would be lessened and where the development of each nation could be determined by internal policies rather than external pressures. American influence in the region would increase.

These dramatic changes call for a creative American diplomacy in a region marked by some of the worst American diplomatic blunders in our history. But the Carter Administration has not yet developed a clear-cut policy toward Southeast Asia in general or Vietnam in particular.

Why has this region been moved to the back burner? The absence of a policy may represent a failure to appreciate the full significance of our relations with Vietnam for the future of the entire region. Another explanation may be the domestic political constraints concerning post-war relations. But there are, as well, some disturbing questions which must be raised: Are we letting the Chinese determine our policy for us? Are we recognizing a Chinese "sphere of influence" in the region?

The United States does not now appear to appreciate either the dangers or the opportunities The issue is not whether the U.S. should normalize relations with Peking. Rather, the issue is whether by rushing into China's arms the U.S. will forfeit its potential for influence on the mainland of Southeast Asia and give its de facto approval to Chinese policies which destabilize the old Indochina area. The unfortunate irony may be that the very Soviet influence which the "China card" global strategy is designed to ward off will be increased in Southeast Asia by a shortsighted play of the card, vis-a-vis our relations with Vietnam.

HISTORICAL BACKGROUND: UNITED STATES-VIETNAM POST-WAR RELATIONS

When the war in Vietnam finally ended in April, 1975, the U.S. adopted a policy of hostility and isolation toward Vietnam. Secretary of State Kissinger indicated that Hanoi should be punished for its use of military force to defeat the Thieu government, and refused either diplomatic recognition or trade. The continuation of the trade embargo with the North and its extension to South Vietnam after the war constituted a clear sanction, even though the Executive Branch explained its action as a "wait and see" policy. He opposed Vietnamese membership in the United Nations. Although Hanoi offered to negotiate with the U.S. on post-war relations, Kissinger refused even that much diplomatic contact. The Carter Administration ended these openly hostile policies, stopped vetoing Vietnamese membership in the UN, and offered to exchange Ambassadors without preconditions, although it maintained the trade embargo intact.

On its side, Hanoi began the postwar period demanding postwar reconstruction aid as a condition for diplomatic relations. But after a series of three meetings with U.S. diplomats in Paris in May, June and December, 1977, the Vietnamese were realistic enough to recognize that such a condition was impossible to fulfill given the political atmosphere in Congress. Congress had been willing to lift the trade embargo to improve prospects for an M.I.A. accounting but post-war aid was out of the question. The Vietnamese are now indicating a desire to negotiate with the U.S. a formula which would advance U.S.-Vietnamese relations without reconstruction aid. The open military conflict with Cambodia and the tensions with China have accelerated Vietnamese interest in normalization of relations with the U.S. Deputy Foreign Minister Phan Hien declared recently in Japan that Vietnam is now ready

to begin diplomatic relations with the U.S. without preconditions.

While diplomacy of post-war relations has been entangled in the politics of the war itself, the impact of the China connection on post-war prospects was already visible in Kissinger's attitudes. Kissinger's thinking about post-war relations with Vietnam was very much colored by the whole China link. Understandably, Kissinger saw post-war relations with Vietnam as distinctly secondary to relations with China. But to achieve his China policy, he was willing to foster the growth of China-Vietnam tensions. By withholding an American alternative from Vietnam, he apparently sought to increase China's paranoia about the Soviet's role in Vietnam.

Kissinger had noted as early as 1972, in background press briefings, that the Chinese had indicated a desire for the U.S. to keep its bases in Thailand and the Philippines as a counterweight to the Soviets. He assumed that China would be worried about a unified Vietnam without the U.S. counterweight and that, as a result, China would be motivated to pursue "parallel interests" (i.e. oppose Soviet influence in Southeast Asia) with the United States. Less than one week after the Saigon government was defeated, Kissinger said China "now has 40 million Vietnamese on its border who do not exactly suffer from lack of confidence in themselves," and he suggested that Peking, as a result of its appraisal of this new balance of power, would want to continue normalizing relations with the United States. He also hoped that China would normalize relations with Thailand, strengthen ties with the non-communist Southwest Asian countries and become a force for stability in the region.

This brief review of Kissinger's policy indicates that the "China card" was a prominent feature in America's diplomatic hand throughout the post-war diplomacy. What appears to have changed is that it has become the dominant theme of American diplomatic strategy.

RELATIONS BETWEEN CHINA AND VIETMAM

China and Vietnam have had a tradition of national conflicts. But the primary tensions which now divide them can be traced to the schism in the international communist movement. As far back as 1963, the Chinese tried to persuade the Vietnamese to sign their statement creating a new international communist order which would exclude the Soviet Union. The Vietnamese refused, even though they harbored serious policy disagreements with the Soviet Union and shared certain ideological principles with China. (Similarly, Vietnam later withheld support for Soviet-inspired efforts to read China out of the international communist movement.) China's fears must have increased as the Vietnamese drew closer to the Soviet Union in their quest for military and economic aid during the war against the United States.

Throughout the war, the Chinese apparently were concerned about the potential consequences of a Vietnamese military victory. They opposed a Vietnamese diplomatic settlement early in the war out of fear that the Soviet Union would have a strong influence on the settlement. Many diplomatic observers in the 1965–68 period commented correctly that the "Chinese are willing to fight until the last Vietnamese."

A key turning point came in 1969–70. The Chinese leadership adopted a position advocated by Mao since the mid-1960's that the Soviet Union posed a greater danger to China than the United States. The Russian invasion of Czechoslovakia in August, 1968, and the Sino-Soviet border clashes in March, 1969, had bolstered Mao's line of argument as did the quiet signals emanating from the new Nixon administration that it was interested in improving ties with China. The Chinese were seeking to counter the Soviet Union by opening ties to the U.S. The U.S. hoped that the new relationship with China would exacerbate Sino-Soviet differences and, at the same time, prevent any direct Soviet action against China. This new strategic equation, Washington hoped, would give the U.S. greater leverage with both of Hanoi's main allies and arms suppliers to obtain their help in pressuring North Vietnam to accept U.S. terms.

The Nixon Administration pressed the Chinese to slow the flow of arms to Vietnam and to help find a settlement short of victory for the revolutionary movements in Indochina. The Chinese apparently were responsive to the Nixon request. China opposed the Vietnamese Spring Offensive in 1972 and advised the Vietnamese to pursue a long-term, low level, low cost guerilla war. To the Chinese, a Vietnamese military offensive meant greater military reliance on the Soviet Union as well as greater Vietnamese economic and political indebtedness to the Soviets. However, Vietnam apparently did not accept this Chinese advice and continued to conduct the war on its own terms.

During the war, China could not make known its serious differences with Vietnam nor openly attack Soviet influence in Vietnam. But once the war ended, China took a more aggressive stance, insisting that Vietnam drop its relations with the Soviet Union in order to be accepted as a fully friendly nation. An early manifestation of the new attitude was the Chinese reaction to the disputed islands in the South China Sea, the Paracels and the Spratleys. In December, 1975, a Chinese Communist newspaper in Hong Kong reprinted a People's Republic of China newspaper editorial on the Chinese claims to the islands, along with an editorial accusing the Soviet Union of trying to "stir up" Vietnam against China by backing the Vietnamese claims to the islands. Vietnamese offers to negotiate on the disputed islands brought no reply from the Chinese, who regard it as a non-negotiable issue.

The status of ethnic Chinese in Vietnam is another major issue of contention. Recent events appear to have all the earmarks of a major Chinese polemical campaign against Vietnam and the Soviet Union.

In 1955, the Chinese and Vietnamese communist parties signed an agreement which permitted the Hoa (Chinese origin) people in North Vietnam to choose either to become full Vietnamese citizens or to remain as resident foreigners; most became Vietnamese citizens of Chinese origin. However, this agreement did not extend to South Vietnam, which was ruled by the Diem regime. Diem used coercive measures to force Chinese residents to become Vietnamese and even issued an edict stating that all children of Chinese parents born in Vietnam were to be South Vietnamese citizens. After the war, all the citizens of the old regime automatically became citizens of reunified Vietnam.

The Chinese in Saigon historically have constituted an economically powerful group of rich merchants, businessmen, and middle traders. On March 23, Vietnam's government announced the abolition of "capitalist commerce" in the south. These and subsequent decrees fell most harshly on the Chinese merchant community and it appears that the manner in which the reforms were implemented at the local level by Vietnamese cadres caused some panic. These reforms seem little different, however, from those enforced by other socialist governments, including China after its revolution.

Normally, a dispute of this type involving ethnic residents would be negotiated by the two countries. But what appears most significant in this case is the element of anti-Soviet propaganda which the Chinese inject into the issue. A pro-Chinese Hong Kong newspaper stated in May, for example, that the USSR had instigated Vietnam to expel large numbers of ethnic Chinese from Vietnam and it claimed that Moscow has "pushed Vietnam into an anti-China road." The head of Peking's office for overseas Chinese affairs told a delegation of Japanese politicians in early June that "the Soviet Union is behind the expulsion of Chinese residents from Vietnam . . . Vietnam listens to the Russians on everything these days." *Newsweek* correctly analyzed the problem when it stated "the refugee issue was basically a sideshow; the real problem was China's fear that Vietnam and the Soviet Union were in league to dominate Southeast Asia." (July 3, 1978)

It appears that China is using the issue of the Chinese exodus from Vietnam, whatever its origins, as a means of discrediting Vietnam internationally and as a pretext for making clear moves in the direction of an open break. On May 19, the Chinese announced the withdrawal of aid to Vietnam, which amounts to several hundred million dollars over 5 years and involves at least 72 economic development projects. In May the Chinese ordered three Vietnamese consulates in China to close. In June, China withdrew its nearly 1800 technicians from Vietnam. China's ambassador to Vietnam, Chen Chi-fang, was recalled.

There are also reports of military preparations on the Chinese-Vietnamese border, border clashes and increasing possibilities of armed conflict.

The post-war border conflict between Vietnam and Kampuchea (Cambodia) has roots not only in traditional ethnic rivalries but in the Chinese-Soviet rivalry and in the factional disputes within the Cambodian communist party. Apparently there have been two distinct factions within the community party of Cambodia at least since the nearly 1960's. One favored cooperation with Vietnam while the other faction strongly opposed it, fearing that such cooperation would deny this faction effective control over the party apparatus and lead to Vietnamese domination of the party. The anti-Vietnam faction, led by Pol Pot, won and now rules Cambodia. Many of the Cambodian officials and intellectuals which the regime has been accused of eliminating were members of the pro-Vietnam faction.

The Pol Pot faction, which had allied itself with China during the 1970–75 war, apparently made a critical decision during the war that Cambodia would not cooperate with Vietnam when the war ended. Henceforth, Cambodia would take a distant and unfriendly stance toward Vietnam and would turn to China for material aid to carry out this policy, which included using unilateral force on territorial issues.

The Cambodian government has publicly admitted that it attacked the islands of Phu Quoc and Tho Chu within days of the end of the war. The Vietnamese retaliated by seizing temporarily islands which had been controlled by Cambodia in the Gulf of Thailand. These problems were then negotiated in 1975 and resolved to the apparent satisfaction of both sides. The Cambodians gave up their claims to the Vietnamese islands and the Vietnamese gave up their claims to the Cambodian islands.

The origins of the Vietnamese-Cambodian fighting along the border are obscure, but the diplomatic efforts to resolve the problems are relatively clear. In May, 1976, the two sides met in Hanoi to prepare for higher-level negotiations on the border conflict. Both sides agreed that a 1 to 100,000 scale map printed by the Geographical Service of Indochina, would serve as a basis for the delimi-

tation of the land border between the two countries. But the Cambodians broke off the preparatory talks and refused to go ahead with any further negotiations on the border. It appears to be well established that at the beginning of 1977, Cambodian forces launched stepped-up attacks on Vietnamese settlements in the border area. In June, 1977, the Vietnamese offered once more to undertake high-level negotiations with Cambodia to resolve the problem, but Cambodia replied that they would discuss it only after "a period of time until the situation returns to normal, without further border conflicts." This was of course a refusal to negotiate at all, since it was precisely because of border clashes that the talks were necessary.

Troops along the entire length of the Vietnamese-Cambodian border in late September, 1977, which apparently led the Vietnamese to begin preparations for a major military move into Cambodia, aimed at forcing the Cambodians to reassess their policy. Instead the Vietnamese military response led to the open airing of the seriousness of the conflict by Cambodia, and the beginning of vituperative propaganda by both sides. Cambodia refused Vietnam's offer in February to pull its forces back five miles from the existing border and begin negotiations if the Cambodians would do the same. At the same time, the Cambodians began to use 130mm long-range artillery to devastate the capitals in at least three Vietnamese provinces adjoining the Cambodian border.

The Vietnamese apparently have now responded with moves to encourage Cambodian refugee military groups dedicated to overthrowing the Pol Pot government. Unless there is a major initiative from outside, therefore, the conflict appears not only unresolvable but capable of escalating still further, with potentially serious consequences in terms of Chinese and Soviet involvement.

The anti-Vietnam faction of Cambodian party leader Pol Pot could not have attacked Vietnam without active political and material support from China. China is reputed to have 1,000 military advisors in Cambodia and has supplied the Cambodian military with long-range artillery, tanks, recoiless rifles, heavy mortars and anti-tank weapons, and other military aid since 1975. At the very least, it can be said to a practical certainty that China has done nothing to discourage the Cambodians from assuming a very strong military posture on the border with Vietnam.

Chinese policy of support for Cambodia appears to be a part of its overall anti-Soviet strategy in the Far East: to isolate Vietnam in Southeast Asia while, at the same time, encouraging Cambodia and Thailand to normalize relations; to encourage the U.S. to maintain its bases in Thailand (which the Vietnamese opposed) despite Thai opposition; and to cement ties with ASEAN states. Clearly, polarization between Vietnam and Cambodia serves Chinese interests.

The Chinese view of Vietnam reflects an obsession with the influence of the Soviet Union which is strangely reminiscent of the U.S. attitude during the 1950's Cold War: "if you're not with us, you're against us." China seems to view the world with a rigid and distorted vision which sees overweaning Soviet influence in any country which has economic or military ties with the Soviet Union or is not explicitly anti-Soviet. The ironic outcome of such a rigid and obsessive Chinese attitude may be to mistake potential friends for enemies and to bring into being the very Soviet influence it wants to avoid.

THE AMERICAN OPPORTUNITY

The conflicts between Vietnam, China and Cambodia have had two major implications for Vietnamese policy. First, Vietnam now perceives China as the main threat to its security. It sees China as a threat because of China's policy to treat it as an adjunct of the Soviet Union. Business Week was not underestimating when it stated: "The escalation of propaganda and implied threats by Peking against the Vietnamese regime have created a crisis for Hanoi." (June 19, 1978)

Second, the Vietnamese have responded by recognizing that it is even more urgent than before to develop a cooperative relationship with the United States as a basic element of their security policy.

The combination of these two responses constitutes the opportunity for American diplomacy in the region.

It seems almost inevitable that Vietnam must react to the increased Chinese pressure in the north and from the Cambodians in the south by securing military, political and economic counterweights. One source is the Soviet Union. Vietnam is almost certainly to appeal to the Soviet Union for greater support in order to neutralize the increased Chinese pressure. Chinese allegations of Soviet missile or naval bases in Vietnam have been dismissed as without foundation by American intelligence officials. However, Vietnamese requests for some tangible symbol of Soviet deterrence against Chinese military pressures would seem a serious possibility if the pressures continue to build.

Economic conditions are equally significant. Vietnam faces drastic economic hardships in the wake of its wartime destruction. The devastation is compounded by rice shortfalls caused by unusually severe droughts in 1976–77. The loss of Chinese aid—as much as $500 million over 1976–80—and the withdrawal of Chinese technicians will compound the problems. The continuing border strife with Cambodia will drain manpower and resources away from the civilian reconstruction effort. The unfortunate consequence of these pressures may be to make economic transformation in southern Vietnam more harsh than would otherwise be the case.

The Vietnamese must find replacements for the lost Chinese aid in the form of both project and commodity assistance. The Soviet Union already is giving approximately $3 billion for the 1976–80 5-year plan out of a total of $4.2 billion from all socialist countries. Western and multilateral aid to Vietnam joined the Council for Mutual Economic Assistance (COMECON), the Eastern bloc's equivalent of the Common Market.

In our view, there is a strong danger that a mechanistic playing of the "China card" will create all types of pressure on Vietnam to strengthen its tries to the Soviet Union which could diminish its own independence and increase big-power tensions in the region. Increased Vietnamese dependence on the Soviet Union would be contrary to both American policy interests and the interest of peace and stability in the region.

There are two major consequences of these pressures for American policymakers to consider. First, we may be entering the formative period for an era of international relations in Southeast Asia comparable to the Cold War in which certain alignments were maintained for two decades (i.e. SEATO 1954–75). It should be an important objective of American policy to use whatever influence we may have to prevent the hardening of the new alignments as we have described them.

Second, it should not be forgotten by U.S. policymakers that the Vietnamese would be entering into this new dependency reluctantly. They don't regard the Soviet interests are not necessarily co-extensive with their own. They remember the failure of the Soviet Union to provide sufficiently strong diplomatic support in the mid-1950's to force the implementation of the political provisions of the Geneva Accords of 1954. They also remember that the Soviet Union sold them out diplomatically when President Nixon was received in Moscow at detente's summit while the U.S. was bombing northern Vietnam and mining Haiphong harbor.

This distrust of Soviet motives fits well with the Vietnamese preference for an equidistant relationship among the great powers. As noted by *Business Week*, "Maintaining a balance between Moscow and Peking has always been a fundamental tenet of the Vietnamese Communists." (June 19, 1978). It is this balance which is now threatened.

The opportunity for American diplomacy today is to restore this balance. The U.S. could help maintain a long-term system of peace and stability in Southeast Asia based in part on the ability of Vietnam to maintain its independence from all the great powers. American and Vietnamese interests overlap to the extent that we wish to minimize Soviet dominance, stabilize the region, and at the same time avoid Chinese hegemony over the mainland of Southeast Asia. In the present circumstances, the way to achieve these objectives is to present to Vietnam an alternative source of diplomatic and commercial relations against both the Soviet Union and China. Diplomatic and economic relations with the U.S. would give the Vietnamese additional room to maintain an independent stance equidistant from all the great powers.

Our failure to take advantage of this opportunity would be unfortunate for American diplomacy. Thus far, U.S. diplomatic signals provide no grounds for the Vietnamese to believe that America intends to offer a new relationship as an alternative to a closer reliance on the Soviet Union.

The first cluster of signals has been an implicit if not explicit American acquiescence in China's campaign against Vietnam. This cluster involves:

*the absence of any effort by the U.S. to restrain China or urge a negotiated settlement;

*the endorsement in China by National Security Advisor Brzezinski of the pursuit of "parallel interests" with China in the context of implicit approval of China's position on the Cambodia-Vietnam issue.

National Security Advisor Brzezinski's toast on May 20 at the welcoming banquet in Peking was evidently a signal to the Chinese that the U.S. was sympathetic to its views on the future of Southeast Asia. "Asia needs stability, respect for frontiers, freedom from foreign intervention, for peaceful development," he said. "In many of these areas, we can enhance the cause of peace through consultations and, where appropriate, through parallel pursuit of our similar objectives.

This banquet toast, couched in diplomatic language, certainly encouraged the Chinese to feel that they had U.S.-backing for their policy of arming the Cambodians and thus encouraging a rejection of negotiations for a settlement of the Cambodia-Vietnamese War. The visit to Peking and the toast were signals that the U.S. would support the Chinese interest. According to columnists Evans and Novak, "The U.S. team (to China) was particularly impressed with Chinese recitation of Soviet machinations in unified Vietnam". (June 22, 1978)

It is easy for American officials to plead "no influence" over Chinese policy. Given its passive stance toward Indochina in the past three years, the U.S. has indeed lost much of its political influence. However, we are far from having no influence. In the context of the "parallel interests" which the U.S. proclaims with China, the U.S. has not only the right but the obligation to make known its views where these differ from China's. This is certainly done on the Taiwan and Korean issues; it should also be done on Vietnam. Indeed, the absence of any American intention to dominate the region or to threaten any of the Southeast Asian states should actually lend weight to our views in Chinese eyes.

The second cluster concerns the U.S. response to the direct negotiations between the U.S. and Vietnam in Paris on the normalization of relations. The Vietnamese now have dropped their insistence on a promise of postwar reconstruction aid as a precondition for progress toward normalization of relations with the U.S. U.S. diplomatic officials are aware of this clear change of attitude by Vietnam. The Vietnamese now suggest that a lifting of the trade embargo would be a sufficient indication of an end to U.S. hostility, with the possibility of aid to be discussed subsequently in the context of normal bilateral negotiations. This represents a major shift toward the American position of removing post-war normalization from the diplomatic framework of the Paris Agreement on Ending the War.

Above all, this new Vietnamese attitude removes the outstanding domestic political obstacle in the U.S., since a lifting of the trade embargo in the context of normalization of relations is a far less emotional issue in Congress than was the reparations issue. In contrast to Congressional restrictions imposed recently on direct and indirect U.S. financial aid to Vietnam, Congress actually voted to conditionally lift the trade embargo in 1976 only to have it vetoed by President Ford.

Since normalization remains the official goal of American policy, we believe this new Vietnamese position creates enough common ground for our negotiators at the next round of negotiations to respond affirmatively and to make real progress. By responding affirmatively, we would make clear that our desire for normalization has not been cooled by the decision to play the "China card" in big power relations. Prospects for successful negotiations were improved by recent "goodwill gestures" by the Vietnamese, including the successful visit of a delegation of Vietnamese specialists to the MIA identification center in Hawaii and their letter to Senator Kennedy approving the reuniting of American citizen children holding U.S. passports with their families in the United States.

A NEW AMERICAN DIPLOMACY

We believe that conditions are ripe for a new American diplomacy in Southeast Asia. We should move now to take advantage of the opportunity open to us—and forestall the dangers that might freeze the region's disturbing new alignments for the next generation. Just as we have responded recently to events in Africa by opening a line of communication with Angola, despite our ideological differences, we should similarly move to establish diplomatic communication with Vietnam.

It may seem ironic that we, who strongly opposed the Vietnam War, are now calling for a renewed American interest in the area. American diplomacy can have a constructive impact—but without military intervention or an intent to dominate. We can and should use our influence wisely.

Justification for this new diplomacy begins with the change in the domestic political equation based on the Vietnamese willingness to drop their insistence on post-war aid as a precondition for normalized relations with our country. It now seems politically feasible for an American President to defend normalization on this new basis in exchange for the real and immediate gains for our interests in Southeast Asia.

A second major issue is whether a new American policy of relations with Vietnam would obstruct normalization of our relations with China.

In our view, such a policy toward Vietnam is not contradictory to normalizing relations with China. First, it does not violate any of the 5 principles embodied in the Shanghai Communique, which are the basis for further development of normal relations between the United States and China.

Secondly, normalizing relations with Vietnam does not appear to contradict U.S. policy principles, enunciated by Dr. Brzezinski in Peking recently, that the U.S. approaches relations with China on the basis of "three fundamental beliefs . . . that friendship between the United States and the People's Republic of China is vital and beneficial to world peace; that a secure and strong China is in America's interest; that a powerful, confident and globally engaged United States is in China's interest."

A new Vietnam policy could even further these objectives. It could help stabilize events and reduce the intensification of existing conflicts in the Southeast Asian area. The present policy contains the seeds of intensified military confrontations. Also, it would be a vivid demonstration of American interest in the area and a symbol of our unwillingness to write off the newly independent states to Soviet domination.

The American role in Southeast Asia is another major issue. While we have no major national interests which should lead us to commit military forces in the area, we should not underestimate the importance of an American role to help stabilize Southeast Asia. There already has been a degree of normalization between Vietnam and Southeast Asian nations. But the major influence on the attitudes of Southeast Asian countries towards unified Vietnam will be the American attitude.

Normalized relations between the U.S. and Vietnam would promote a further degree of Vietnamese cooperation and accommodation with the ASEAN countries which would contribute to stability. Similarly, it is important that Vietnam no longer view the United States as a threat to its society. If Vietnam continues to view the U.S. as part of a cabal with China against Vietnam, it may not be possible for accommodation to occur between Vietnam and U.S.-supported states in the region. The main remaining obstacle to close, stable and friendly relations between Vietnam and the ASEAN nations is the lingering fear of American ill-will and bad intentions towards Vietnam. If Vietnam fears the U.S. will use non-communist and anti-communist Southeast Asian states to pressure Vietnam in a hostile manner, then tensions may rise needlessly.

It should be noted that American intelligence analysts agree that Vietnam has rejected the role of supplier or motivator for revolutionary movements in Southeast Asia. The massive stockpiles of U.S. arms captured at the end of the war have not been given or sold to insurgent movements in other states, as had been feared. Vietnam seems to have rejected this policy, in part because the communist parties of Thailand, Malaysia, Indonesia and the Philippines are, as a whole, more sympathetic to China than to the Soviet Union. Vietnam appears to prefer conservative governments which are closer to the U.S. than Chinese-oriented insurgencies, and continues to regard the issue of independence vs. foreign intervention/domination as the central problem in the region rather than the problem of the free market vs. socialism.

As noted by a prominent analyst of Southeast Asian politics, the Vietnamese—

". . . have adopted a conciliatory posture toward their non-communist neighbors. Interviews with a cross-section of military and civilian leaders in all five ASEAN countries conducted during October–November 1977 indicate that Hanoi's efforts have eased regional anxieties about Vietnam's intentions. Approximately 65 interviews with senior foreign ministry officials, military leaders, politicians, journalists, businessmen, academic specialists, and foreign diplomats make it abundantly clear that Vietnam's neighbors do not, at present, feel threatened by Hanoi.

"Earlier fears that the victorious Vietnamese would give a major boost to their communist compatriots elsewhere in Southeast Asia have not materialized.

"The central point is this: if the United States has an interest in the stability and security of Southeast Asia, then it has an interest in persuading Hanoi that its conciliatory policy of seeking cooperative relationships with non-communist states is viable. The normalization of U.S. relations with Vietnam could well be important, if not decisive, in determining whether Hanoi deems its conciliatory policy a success." (Franklin B. Weinstein, *U.S.-Vietnam Relations and the Security of Southeast Asia*, Foreign Affairs, July, 1978, pp. 846–853.)

American links with Vietnam should be established now so as to minimize the future danger that changing conditions would place the Vietnamese more at odds with the Southeast Asian countries.

The opportunity we have in Southeast Asia may not remain open for long, and may not come again for a long time. Taking advantage of the opportunity requires us to act—both to dispel the impression of supporting China against Vietnam and to make a positive diplomatic response to the new Vietnamese offer for normalization. We cannot let the rigid application of the "China card" strategic policy vis-a-vis the Soviet Union blind us to an opportunity to reduce Soviet influence, strengthen an independent tendency in a difficult region and enhance prospects for peace and stability in Southeast Asia for the next generation.●

EDUCATION AMENDMENTS OF 1978—STUDENT LOANS

● Mr. DOLE. Mr. President, the Senator from Minnesota (Mr. ANDERSON) was a cosponsor to amendment No. 1737 to S. 1753, the Education Amendments of 1978. This amendment corrected a technical flaw in the student loan guaranty program under the Higher Education Act, and set the effective date of new loan agencies as the date of enactment. The Senate accepted my amendment.

The Senator from Minnesota (Mr. ANDERSON) was necessarily absent at the time this amendment was considered, but he requested that his statement be reprinted in the RECORD. I ask that his statement be printed in the RECORD, and that in the permanent RECORD, it appear under floor debate on the amendment.●

The statement follows:

STATEMENT BY MR. ANDERSON ON STUDENT LOANS

Mr. ANDERSON. I am pleased to join with Senator DOLE in cosponsoring an amendment to the elementary and secondary education amendments which will allow student loan recipients in Minnesota and Kansas to receive the same assistance as students in other States under the guaranteed student loan program.

Because of a provision in the Education Amendments of 1976, a State guarantee agency established prior to October 1, 1977, does not qualify as a new guarantee agency for purposes of Federal assistance. The Higher Education Assistance Foundation, which serves both Minnesota and Kansas, is the only agency in this category in the country. Without a technical amendment to change the effective date of the 1976 amendments to allow guarantee agency programs initiated between October 1, 1977, to participate, Minnesota and

Kansas will not benefit from the assistance for new agencies provided by the amendments. Failure to receive the assistance for new guarantee agencies will mean that students in these two States will pay higher guarantee premiums for a longer period of time than would otherwise be necessary.

For this reason, I urge my colleagues to adopt this amendment, which simply makes a technical adjustment in the law insuring that students from Minnesota and Kansas are not unfairly penalized.

CONSUMERS AND FOOD POLICY IN NORTH AMERICA

● Mr. BAYH. Mr. President, I would like to share with my colleagues recent remarks by Assistant Secretary of Agriculture Carol Tucker Foreman to the American Agriculture Economics Association and the Canadian Agricultural Economics Society in Blacksburg, Va.

As we all know, the quality and safety of our food supply has been the subject of increasing attention in recent years, and public discussion and debate will likely continue.

Advances in science and technology now enable us to secure with increasing sophistication information on the effects of chemicals and preservatives in our food supply and their potential hazards. And with increasing frequency we are finding that there are enormous economic and social tradeoffs as those charged with making our food supply safe and nutritious go about their job.

Recent reports on the potential health hazards posed by sodium nitrite, used in curing about 70 percent of the pork products on the market illustrate clearly the need for further research on the economic effects of regulation. We know, for instance, that a total ban of nitrite would cause tremendous economic hardship to a large portion of the Nation's farm economy, but specific facts and data on the impact of various regulatory actions in regard to nitrite are lacking.

Ms. Foreman, in her remarks, documents the need for increased research regarding the impact of Government regulation on the affected industries in the food producing, processing, and distribution cycle. We certainly need additional information. I ask that her remarks be printed in the RECORD.

The statement follows:

CONSUMERS AND FOOD POLICY IN NORTH AMERICA

Anything more than a cursory look at our more successful agricultural policies will demonstrate that they have usually been based on the economic and policy research of people such as you. I applaud your past successes. But I come before you today to ask you to help forge new successes: to turn more of your talents to public policy and social science research in the food and nutrition fields.

We meet at an exciting time for you and your profession. I feel relatively certain that none of you chose agricultural economics as a vocation in the fond hope that you would wind up as lead editorials in the New York Times or the Wall Street Journal. The Economics Journal, maybe. Not Wall Street's.

But you may have been wrong. Food is news today. And two interesting and important things are happening right now—both of which involve you.

First, the traditional debate over "agricultural" policy has been expanded into a debate over food and nutrition policy. We are no longer concerned only with the mechanisms for producing, processing and distributing food, and what kinds of economic returns are available to producers, processors and distributors. Within the past few years the traditional agricultural arena has been enlarged to include a debate over food composition, nutritional values, chemical additives, and costs to consumers. And these new issues may have an enormous impact on the economy of production, processing, and distribution.

Second, we have reached a point in our national life when the people of this country, while still willing to use government action to attack a wide variety of problems, are quite rightly unwilling to tolerate unforeseen, unintended and unfortunate consequences of those actions. We are, it seems to me, in desperate search of competence in government.

Both of these developments are of enormous importance to your profession. You, in turn, can play a crucial role in resolving the problems which they present.

First, let's look at the debate over a food and nutrition policy. It's interesting that it is a debate. Does anyone, anywhere raise food for its own sake? Of because the plants look so pretty popping out of fields? We produce, process, package and market food so that people will buy it, eat it, and be nourished by it. In food, more clearly than any other sphere of the economic world, the consumer is the sole end of production.

But, until recently, government food policy has tended to be overwhelmingly concerned with increasing production, improving processing and enhancing distribution. These are good and worthwhile aims. At one time they were the only things we needed to be concerned about. Now they ignore some very current problems. Let me outline some of the most pressing.

We have for years used chemicals at various points in the food system to increase production, retard spoilage and preserve foods. They seemed a stunningly successful solution to those problems. Now they are presenting problems themselves as we learn that some of the same chemicals, which had such beneficial effects on food, treat the human body rather less kindly.

We have become so dependent upon food processing and upon nationwide food distribution systems that the farm value of production bears little relationship to final costs of food.

Although millions of Americans still are unable to get enough to eat without assistance, for millions of others nutritional problems are a result of consuming too much food.

For those who simply cannot afford an adequate diet, nutrition research and education and food safety regulations are irrelevant.

Another problem area is the dramatic change in American lifestyles over the past 15 years. Educators and nutritionists alike are becoming increasingly concerned about the capability of consumers to make food choice decisions that provide nutritionally sound diets.

Finally, government policies encourage certain kinds of production and marketing and discourage others through support prices, research, and regulation. But we know little about the impact of these programs on nutrition and on consumer prices. Government must deal with these problems. The goal that I would seek is the development of policies that will provide an adequate supply of safe, high quality and nutritious food at reasonable prices, while providing a reasonable return on investment to those who produce and distribute food, and assuring some assistance to those at home and abroad who cannot afford an adequate diet even at reasonable prices.

Obviously, no one program will achieve this goal. It requires a mixture of public and private action. Perhaps more than anything it requires wise, rational, well thought out public policies. Which brings me to my second point—the need for competence in government action. You and your professional cohorts hold important keys to competency in government action.

When I look back over some of the issues I have wrestled with since entering the government 18 months ago, the potential for your influence and the need for your expertise is overwhelming. The gaps created by their absence are sometimes appalling.

For example, in food assistance programs, one of the very first issues that confronted us was the debate over President Carter's welfare reform program and whether food stamps should be "cashed out."

We know that food stamps account for about $6 billion a year in federal tax dollars, going to some 16 million people each month. However, with the exception of the work done by my long-time friend, Sylvia Lane, we have little research on the impact of the food stamp program. We have little information on the impact of "cash out" on the nutritional well-being of food stamp families; on the total purchase of food; or on the prices received by farmers.

There isn't much research on school feeding programs either. To a greater and greater degree, schools want processed foods. They don't want whole chickens. They want precut, pre-breaded, pre-cooked frozen chickens because that reduces labor costs for the school. But what impact does that have on the producer? What impact does it have on the budget of the program at the federal level and the state level? What impact does it have on the nutritional adequacy of the school lunch?

Let's talk about superdonut and its friends. There is a perfect example of the need for your expertise. The superdonut is a formulated grain-fruit product. It is used in the school breakfast program to take the place of both the cereal-bread and vegetable-fruit portions of the breakfast. Usually a school must serve a 3-component meal. With this product, only two components are necessary. But, there is no fruit in the grain-fruit product. It is a donut or cupcake fortified with vitamins and iron. It is also high in sugar and fat.

It was originally introduced in order to encourage schools with no cafeteria facilities to take part in the breakfast program. But, we now know that most of the schools which use it have cafeterias. It is a convenient way to save money on school breakfast. But its use means that vitamin C manufactured in a laboratory is substituting for vitamin C manufactured by a citrus farmer. Further, the superdonut may be teaching children that a sugary, high-fat product is an appropriate item to have for a nutritious breakfast. Surely, it increases the child's sugar and fat consumption. These are unintended, unanticipated and unfortunate results of a government action taken to resolve one problem. It didn't resolve that problem. It created potential new ones. The problems could have been and should have been avoided. They might have been if there had been adequate analysis before we started to use them. We never had any kind of analysis until it was done by Bill Boehm and his staff last year.

Is the superdonut a trivial issue? It is typical of child nutrition problems and child nutrition programs cost $3.5 billion per year.

Let's take another example. No issue has been more hotly debated in the agricultural community over the past couple of years than the Senate Nutrition Committee's dietary goals. Nutritionists are debating the scientific validity of the goals. Cattle producers

are screaming that the goals portend their economic ruin. Do they?

I don't know. You haven't told me. I'm not aware that you have written about the potential economic impact on cattlemen if consumers follow the guidelines, and you haven't analyzed whether cattlemen might gain economically from less grain feeding. You haven't written about whether the production of leaner cattle would reduce consumer prices; reduce imports of lean beef, or any of the other myriad possible results. You haven't analyzed the costs to society of time lost from work as a result of diseases that may be diet-related.

Every time new nutritional and dietary information comes to light, tremors run through the affected industry—understandably so. Egg producers, or hog raisers, or cattle feeders are told the government is out to get them and that they are going to be driven out of business. Their very natural reaction is to attempt to refute the scientific data or prevent any attempt to act on it. That's normal and natural. It may also be the wrong reaction in terms of national health. But worst of all, it may be a great waste of energy. Perhaps the recommended changes will not cause great economic dislocation. We won't know if we don't have the research. Even if change must come, public policy can be shaped to reduce the burdens of that change—if we have research and analysis that will provide policy options.

Let me turn for a moment to regulatory decisions and the absence of economic data on which to base our actions. Nitrite is a good example. The USDA and the meat industry have known for 10 years that the sodium nitrite used in curing meat is implicated in the formation of cancer-causing nitrosamines. We know that this causes the meat to be adulterated under the definition in the Meat Inspection Act. The impact on the industry and the public may be very great. But I cannot find any economic or policy research, except a little done by the affected industry, on the extent of that impact, or on policy strategies that will help us comply with the law and reduce the impact on the industry and the public.

I believe strongly that we must act to protect the public health through vigorous enforcement of food safety laws. When the evidence is clear and strong, I am not much persuaded when the economic health of an industry is used as an argument against an action to protect the physical well-being of the public.

However, we can and should choose the public policy alternative which reduces the economic impact, or at least spreads it as broadly and equitably as possible. To do so requires development of policy alternatives based on economic research data.

These problems aren't going to go away. They're going to increase and in the absence of solid research it will be increasingly difficult to make good policy judgments.

Two years ago your former president, Ken Farrell, gave an address to this association in which he urged you to expand your vision of your field. He chided you then for failing to address the most important policy problems in the food system. I frequently seem to follow Ken's lead and so I guess much of what I've said today has the ring of "Amen, Brother." Not without reason. I read your Journal from time to time. And I have looked in vain for results of research relevant to the new food agenda. Perhaps you have expanded your research and analysis projects since Ken's speech, but I must confess I have seen little evidence of it. I was pleased to see some items on your agenda here. I hope you would agree that a 2-year gestation period is long enough.

In the past and even today you might plead that you've lacked sufficient funds to do this work. It is a legitimate complaint. Secretary Bob Bergland, Howard Hjort, Ken Farrell and even I are working to end that.

The USDA's $5 million competitive grants program for human nutrition research includes for the first time a category for funding studies relating to the social science aspects of nutrition. In addition, the Secretary has noted the need to devote increased resources to the various agencies within USDA responsible for economic research and policy analysis of food and nutrition related issues. Clearly, we are committed to do more than has been done in the past to free money for research on such issues.

Recently, Secretary Bergland announced as a goal of the Department of Agriculture to "improve the analytical capabilities in order to determine the cost effectiveness of nutrition research, education, distribution, food safety and quality of regulations and other nutrition programs; as well as the agricultural pricing and stabilization programs as they affect food an nutrition policy within USDA."

Now, you know we need you and you know we're willing to come up with some money. Next comes my "wish list" of the research we need. I hope you will consider devoting resources to some of the following areas.

First, we need to know a lot more than we do about the intricate web of factors which make people decide what to eat. Singly, and in combination, we should evaluate the influence of education, income, race, religion, sex, age, advertising, labeling, and lifestyles on food choice decisions. We should also determine how all these factors and resulting choices relate to health and to farm income. It would also be useful to identify the relationship between the consumer demand for nutrients and the demand for marketing services. Conceptual developments in this area are as old as your profession, but we haven't gotten much beyond a conceptual understanding.

This research can provide the foundation for policy analyses and evaluations of federal programs in nutrition education, food labeling and food quality regulation. It would also help us understand the nutrition-related consequences of federal agricultural production, marketing and income stabilization programs.

Some nutritionists contend that food industry practices, including advertising, are important factors in nutritional decline. In large measure these industry practices are a reflection of, and are encouraged by, technological changes in food processing and retailing. We badly need economic research to evaluate the extent to which these changes actually result in lower per unit costs for consumers. What good is all this technological advance if consumers do not benefit through lower costs?

Economists have long recognized the important trade-off between technical and pricing efficiency. Now we need research to document the magnitude of the relationship. Fritz Mueller and his colleagues believe the effect of inadequate competition in retail food markets is substantial "monopoly overcharges." Others point out the weaknesses of these studies. We must get beyond the point-counterpoint stage.

Research in this area must also deal directly with the economic consequences of such practices as the use of universal product code (UPC) and electronic funds transfer (EFT), vitamin fortification and the proliferation of packaging. It must also deal with the costs and benefits of economic regulation on industry practices. Backhaul regulations would appear to be an obvious case in point.

The third item on my agenda would be analyses to determine the impact of food safety regulations. Surely you can sense that one of the most frustrating aspects of my job at USDA has been the lack of research on the economic impact of various food safety alternatives. Research of this type could help us ease the burden of changing government policies on food system participants.

The fourth item, research in food quality, is probably the one most familiar to agricultural economists. Most of the present food grades and standards are products of the agricultural establishment. But are they meaningful to today's consumers? Do they even know what the grades mean? Evaluation of present regulations is badly needed and I cannot encourage too strongly the initiation of such research.

Finally, it is essential that we know more about how our various domestic food assistance programs actually contribute to nutrition and to farm income, other than encouraging the consumption of surplus products.

"Cash-out" of food stamps appears to be postponed at least for now, but Congress did pass legislation last September to eliminate the purchase requirement for food stamps, and to extend its benefits to an estimated 3 million more needy people.

In addition to the school breakfast and lunch programs, the Women, Infants, Children (WIC) food program has perhaps the greatest potential to use food and nutrition to improve health. It provides prescription food packages to vulnerable persons at nutritional risk during the most critical phase of human growth and development—that is, to pregnant women, nursing mothers and young children.

WIC legislation was not part of the Food and Agriculture Act of 1977, but amendments are pending now in the Congress. It is important that we research the nutritional contributions of all these programs because they affect people who cannot afford an adequate diet, and because they are taxpayer-supported. I don't have to tell you that we need to get the most of our government's money.

That's a pretty hefty agenda. I present it to you because I believe agricultural economists have the tools and the training to resolve many of these complex issues. Or, at the very least, to shed light rather than heat on them.

To do so will, of course, require an investment of human capital. You'll have to learn as much about food and nutrition programs as you already know about commodity prices, income supports, and marketing order programs. But you'll be playing a very large role in a very important decision-making process.

I ask you to seize the moment. If you do not, the work will be relegated to analysts who know little or nothing about agriculture. I don't want that to happen, and I don't think you do either. But surely you understand that we will decide and we will act. The absence of good data to help resolve a problem doesn't make the problem go away.

We in government who carry a responsibility for human nutrition do not like to pull and tug at the scientific community. We would much rather follow you. John Dewey once wrote that "every great advance in science has issued from a new audacity of imagination." Or one could simply say, "Behold the turtle, he makes progress by sticking his neck out."

I hope you will help us proceed in a more rational fashion to deal with food and nutrition issues.●

AFRICA AFTER KENYATTA

● Mr. BAYH. Mr. President, the United States has lost a firm friend committed to peace, justice, and progress with the death of President Jomo Kenyatta of Kenya. For 15 years, President Kenyatta

was a force for these high principles through constructive change in East Africa. People the world over join with the 14 million Kenyans in mourning the loss of a great leader and good man.

I think my colleagues would agree that because Jomo Kenyatta was a giant in the independence movement of his country he has earned a special place in the hearts of our countrymen as well who share a similar heritage. In addition, Kenya's orderly internal economic development and mature conduct in foreign affairs bear the unmistakable imprint of President Kenyatta's steady hand. Let us hope for the people of Kenya, the other nations of Africa and all the world that the good which men do will indeed live after them. If this is the case, then Jomo Kenyatta's legacy is a bright one filled with promise and hope.

Today I read with interest an editorial appearing in the Christian Science Monitor underlining what an outstanding example President Kenyatta established for the rest of Africa to follow. At this time, I ask that this article be printed in the RECORD. In the spirit of "Harambee" we must assist the people of Kenya in renewing our dedication to high goals which President Kenyatta worked so hard to achieve.

AFRICA AFTER KENYATTA

Jomo Kenyatta proved it could be done—that a white-controlled African colony could become a black-controlled African nation without eliminating the whites or turning into tyranny. Kenya's degree of success gives hope that even the tough transition period in southern Africa can have an outcome without the predicted continuing strife. It will require a renewed dedication to the idea of "Harambee" ("let's all pull together"), which the passing of President Kenyatta has recalled as the climactic appeal in so many of his speeches.

Earlier this month it was encouraging to get a report from Zambia that Namibian revolutionary forces were already seeking to include whites in plans for moderation in Namibia (South-West Africa) when the independence process is complete. An official of SWAPO (South-West Africa People's Organization) said, "If we win power, our first interest will be to keep commerce and industry functioning." An expected appeal to whites in the first election campaign would be: "You are welcome in the new state. We want and need you if you are prepared to share our aspirations."

President Kenyatta's Kenya showed that such working with whites was possible. There are said to be twice as many whites in Kenya now as there were at the time of independence. Not only racial but tribal animosities appear to have been muted in a functioning mixed society.

Not that Kenya no longer has problems to solve. A "neocolonial" black elite has risen paralleling the white elite. Economic growth has not been matched by genuine national development. There is maldistribution of resources. Charges of corruption and repression keep coming up.

A test of how soundly Kenyatta built will be how well the country proceeds without him. But the fact remains that, after the bloody independence struggles in which Kenyatta was allegedly involved, a degeneration into chaos was avoided.

In the Rhodesian turmoil now there are reports of the black nationalist guerrilla forces in conflict with each other. There are predictions of power struggles among black factions. Many whites are giving up and leaving the country.

The memorials to Mr. Kenyatta recall that he was confronted with parties in conflict in the early days of independence. But he combined with severity a willingness to forgive and forget, to form coalitions, to stress the pulling together signified by "Harambee."

Of course, each region, each country, of Africa has its particular combination of challenges. Otherwise more of the 1960s wave of independent nations would be more stable and successful in the Kenya sense.

But the Kenyatta legacy cannot be ignored. The newly independent lands—and those where freedom is now so prominent on the horizon—would do well to learn more from him than from the Mobutus or, worse, the Amins.●

THE RAFSHOON VETO

● Mr. HAYAKAWA. Mr. President, I was dismayed by the President's recent veto of the fiscal year 1979 Military Procurement Authorization bill. The President expressed his disappointment with the Congress for its overwhelming support of a fifth nuclear-powered aircraft carrier. I am one of the many Members that supports this carrier. The administration-supported CVV (conventionally powered medium-size carrier) could only carry about two-thirds as many aircraft as the *Nimitz* class. If it were certain to be less expensive, the CVV might be a good choice—current cost is estimated at $1.5 billion, compared to $2.1 billion for the *Nimitz*. However, the *Nimitz* price tag includes a 13-year fuel supply and it is a proven design, the cost of which can be estimated accurately, while the CVV is a new design which is likely to have large costs overruns. Consequently, the CVV could end up costing as much as the *Nimitz*. Since only one more large carrier of any type is planned, I feel the more prudent choice would be to go with the *Nimitz* class carrier.

Today's Wall Street Journal has an editorial entitled "The Rafshoon Veto" which provides an excellent discussion of the President's veto. I think that the points made concerning the distinction between authorization and appropriation and those made concerning the pursuit of cosmetic politics are well taken. I, therefore, ask that this article be printed in the RECORD.

The editorial follows:

THE RAFSHOON VETO

President Carter's veto of the defense procurement authorization is everywhere interpreted as part of a new "get tough" act, the practical incarnation of media adviser Gerald Rafshoon's efforts to massage the President's sagging poll ratings. The veto would have helped Mr. Carter's competency rating more if he had not clouded the issue in monumental confusion, including confusion about what the bill he vetoed actually contained.

To cut through the clouds, it's necessary to keep in mind two simple facts. First: while Mr. Carter objects to the congressional decision to spend $2 billion on a nuclear aircraft carrier, his administration has already announced plans to include a large oil-burning carrier in its next budget request. The whole issue is, merely, this year or next year, and conventional or nuclear? Second: There is a difference between authorization bills, which set programs, and appropriations bills, defense procurement authorization. The Pentagon appropriations bill has not yet been completed by Congress.

This elemental parliamentary distinction was entirely overlooked in Mr. Carter's charge that Congress is building the carrier by "diverting funds away from far more important defense needs." Among the congressional items to which he objected, for example, was a supposed cut of $500 million in military operational funds. But operational funds are not dealt with in the defense procurement bill; if this was the President's problem, he vetoed the wrong bill.

Doing the President one better, Defense Secretary Brown complained that Congress had killed three anti-submarine ships. There is a dispute over the appropriations for these ships, with the House on one side and the Senate on the other. But whatever the eventual appropriation, the ships were included in the defense procurement bill. Secretary Brown complains about Congress killing ships that were in fact in the bill his chief just vetoed.

Now, within the context of the procurement authorization, it's true that despite $1.9 billion for the aircraft carrier, the congressional total was close to the President's original request. About half of the funds came from rather ordinary changes: the Army reporting it would not spend money on its new XM–1 tank as fast as it originally thought; Congress's decision that it could both save money and improve the NATO tank force faster by upgrading more existing M60A1 tanks and producing fewer new M60A3 tanks than contemplated in the original administration request.

The other half of the carrier money came from funds originally requested for the Trident submarine program, but which cannot be spent in this year's bill because of delays. With the Trident program delayed, and with the administration poised to order up a new carrier next year, Congress is merely saying, let's use this idle money and get the carrier started now.

There remains the issue of what kind of carrier. In passing, it should be noted that in light of the latest studies it is far from clear that large carriers are especially vulnerable. They can sustain hits from Soviet cruise missiles that would atomize small carriers, which have their magazines above water line. Large ships also make sense in light of electronic battlefield management, which promises a defense capable of shooting down attacking missiles. But this debate is beside the immediate point, since the White House has requested no small carriers. Indeed, the bill Mr. Carter vetoed provided more research funding for small carriers than he requested.

It is also unclear that oil-powered carriers save money. They are cheaper to build, but more expensive to fuel. Over the lifetime of a ship, it is difficult to see much difference in total cost. Congress prefers the nuclear carrier because it has better performance, being unencumbered by a train of tankers to refuel it every few days. The administration prefers a conventional carrier, saving money on construction now but spending more on operations later. And over this difference the President is willing to veto the entire procurement bill, inviting further controversy and delay that may hinder the improvements on which he and Congress agree.

In order to escalate this minor quarrel to veto proportions, President Carter launched an attack on Congress that seriously distorts the record. Sen. Stennis rose on the floor to complain, in what is for him strong language, of the administration's "false facts." The Senator was too much of a gentleman to say it, but we will: This is not a case of the Congress being soft on national security, but of the President dallying with defense in pursuit of cosmetic politics. The defense procurement bill was vetoed not because of any large difference on substance, but because it was the first bill to come along after Mr. Rafshoon whispered in the President's ear that he could look "strong" by vetoing something.●

NEW PROGRAMS TO HARNESS ENERGY FROM FORESTS, FARMS

● Mr. BAYH. Mr. President, last month I had the honor and privilege of talking with Judd Buchanan, Canadian Minister of Public Works and of State Science and Technology, about Canadian and American efforts to stimulate use of renewable energy sources. As a followup to this conversation, Mr. Buchanan forwarded me some information on Canadian efforts to develop energy from Canada's vast natural resources.

Mr. President, last week I inserted a Wall Street Journal article into the RECORD on Brazil's efforts in this area. I ask that the information on Canadian efforts also be made a part of the RECORD, so that my colleagues and others around the country can familiarize themselves with them.

The material follows:

NEW PROGRAMS TO HARNESS ENERGY FROM FORESTS, FARMS

(Prepared by Canadian Ministry of Energy, Mines and Resources)

New Federal government programs will encourage large-scale development of energy from the forests and other forms of organic material, or biomass, as a substitute for oil, gas and even electricity.

The programs are as follows:

Forest Industry Renewable Energy Program (FIRE).—$143 million for the forest industry to use wood wastes as a fuel source instead of oil or gas. The program covers the period 1978–1985. Fuel savings will be important; job-creation in areas of high unemployment will be substantial. In the longer term, investment of this kind should allow forest industry expansion as a producer of energy and chemical byproducts for home and export markets.

Biomass Energy Loan Guarantees.—Federal government guarantees for loans, worth a total of $150 million to assist in establishing electrical generating facilities using biomass as the energy source. This approach will encourage groups of industries, in cooperation with nearby communities and possibly provincial electrical utilities, to combine efforts on a local level to use wastes for electrical generation. Terms of the program will especially encourage co-generation of electricity and heat.

Expanded Research, Development and Demonstration.—Approximately $40 million will be available from the Federal Government between 1978 and 1984 to help fund research projects and demonstrations of innovative techniques such as biomass plantations and the conversion of biomass to liquid fuels or chemicals. Federal-provincial cost-sharing will be the preferred approach to demonstration activities.

The ready availability of inexpensive oil and gas in the postwar era slowed the use by the forest industry of its own wastes for fuel. Now all that has changed, and the mill wastes and forest residues are being looked on as a pollution problem that can be turned into a solution to soaring energy costs.

Recent assessments have shown that the unused potential in existing logging and milling wastes alone is very substantial, even though 3.5 per cent of Canada's primary energy production—twice that of nuclear energy—now comes from wood wastes. Mill wastes and slash remaining after forest logging operations have an energy potential equal to 2½ times the annual production of the $2 billion Syncrude plant in the Alberta oil sands.

The potential is very much larger if species unsuited to commercial logging operations are harvested along with merchantable species.

In the short term, the forest industry, with the new federal assistance, will be able to step up sharply its use of mill and other wastes. By 1985, biomass could provide 7 per cent of the nation's primary energy—double its current contribution. Our goal is to make the forest industry—Canada's largest—energy self-sufficient as soon as possible.

Federal assistance under the FIRE program will be particularly useful for relatively small forestry operations, who may now find substitution of wood for other fuels attractive but who could encounter difficulties with financing new equipment purchases.

The financial assistance to be provided under the new program will make this less of a problem. Subject to Parliamentary approval, federal contributions will be available to cover 20% of the approved capital cost of certain classes of equipment used to burn, gasify or otherwise make use of the energy content of wood wastes.

New equipment orders will substantially increase business for Canadian based forest equipment manufacturers.

As a result of the program, an estimated 24,000 man-years of employment will be created across the country between now and 1984.

In addition to the federal contribution, private investment by the industry is expected to be about $950 million. Fuel-cost savings should be an important benefit to the industry over the long term. There will also be pollution-control benefits, with the reduction of abandoned wastes, and better forest management practices.

With other fuels increasing rapidly in price, reliance on local wood resources as a source of electricity has become attractive in some regions, for example interior British Columbia, Northern Ontario and Quebec.

In B.C., there are a number of locations where plants with a generating capacity of 50 MW or more would be feasible. Collectively, the identifiable B.C. potential, at present prices, is in excess of 400 MW, and the resulting electricity would be competitive with other sources.

In order to encourage this utility approach, a federal loan guarantee will be provided for the first such project to be undertaken in any province.

With the agreement of the provincial government, a loan guarantee will be provided for up to 50 per cent of the approved capital cost for a biomass-based electrical generation facility. An even more extensive guarantee (66⅔ per cent of the capital cost) will be provided if a project is to achieve the high efficiencies associated with the joint production, or cogeneration, or electricity and heat—either for industrial uses or community district heating.

This type of loan guarantee has proved itself effective in encouraging the construction of nuclear generating plants.

Large-scale growth of biomass energy will require adaptation of a variety of known techniques to Canadian conditions and the development and introduction of new techniques.

An expanded research and development effort will be supported by the federal government.

An estimated $30 million will be allocated for this purpose by the federal government between 1978 and 1983, with further funds available on a cost-sharing basis with the provinces and private industry for the expensive but crucial demonstration phases.

Direct use of wood as an industrial source of heat can be accomplished with a number of different types of equipment. Modified or new designs can expand the potential for wood use in pulp and paper production and other phases of the forest industry. Funding is to be provided on a shared-cost basis for innovative projects to demonstrate this potential.

Conversion of wood to a gas is another process with a wide range of actual and potential applications. The basic process involves applying heat to wood with a deficiency of oxygen. This resulting gas is relatively low in energy but is adequate for some industrial requirements and power generation.

An upgraded gas can also be produced for use in more sophisticated conversion processes. These include production of substitute natural gas and methanol or other synthetic fuels.

These synthetic liquids are capable of becoming a source of fuel for motor vehicles, but continuing research will be required, concerning compatibility of fuels with various engines, safe handling, blending with petroleum fuels and other points.

In future, extensive development of these high-quality products may also be undertaken to provide an alternative feedstock for the chemical industry, which now relies on petroleum for essential hydrocarbons. The potential for wood-based chemical production will be explored as part of the continuing research effort.●

DAN BREWSTER

● Mr. McGOVERN. Mr. President, in today's Washington Post there appeared an article on one of our former colleagues, Senator Daniel Brewster of Maryland. Dan Brewster and I came to the Senate at the same time. He has been my friend ever since. His strong voice and leadership are sorely missed in the Senate, and he is remembered with respect and affection.

I ask that the article be printed in the RECORD as follows:

[From the Washington Post, Aug. 24, 1978]

THE FALL AND RISE OF DAN BREWSTER: LIFE CLOSE TO THE LAND

(By Michael Kernan)

Wasn't it Scott Fitzgerald who said there are no second acts in American lives?

Dan Brewster leaned back from the newspaper-covered picnic table on the lawn between the pool and his sprawling country house. His hands clear up to the wrist were freckled with green sauce from the crabs he was eating. One eye always on his wandering 7-month-old daughter Danielle Lynn, he was listening to a report on a sick colt. Its temperature was down to 100 now, he was told. Great. This morning he'd given it a shot of penicillin.

Farther down the table his teen-age stepdaughter was arguing with her friends about whether to go see "Revenge of the Pink Panther" or "Foul Play," and his third wife, Judy Lynn, was trying to get everyone to move to the patio because the string beans were ready ("picked this afternon") and the corn and fried chicken, and besides it was thundering and Rabbit the near-Labrador was getting frantic.

Those who knew him before say Daniel Baugh Brewster is a different person today. Born to wealth, tall and handsome, he was president of his class in college, captain of the football team, at 19 the youngest officer in the entire Marine Corps, at 26 one of the youngest Maryland state legislators ever, a U.S. Senator at 39 . . . people called him the Golden Boy.

"It all came so easily," he said.

And in 1968 it all came to pieces.

The drinking got out of control. He lost an election to his old college friend Charles McC. Mathias. He was divorced, nearly died the following year after an alcoholic collapse. And then there was the federal in-

dictment, "something I didn't understand and still don't understand." In any case, it broke his career.

"Alcohol began to be a problem in the Wallace campaign of '64," he said, going back to the time when he ran in the Maryland primary for president as a stand-in for Lyndon Johnson to test George Wallace's strength. It was a hard race. He barely won.

For the next four years, though there were long periods of sobriety, the drinking gradually took over. He tried every dodge he could think of: not before 5 p.m., not after 5 p.m., only in Washington, only in Maryland, only at meals, never at meals, and so on.

By 1969, after the defeat for re-election to the Senate—Republican Mathias used a slogan that hurt by its very diffidence, "Reason for Change"—Brewster was "drinking with a vengeance," as he put it.

He didn't get really turned around until 1973.

"First you have to admit to yourself that you're powerless over alcohol. It's a drug, and the alcoholic is an addict, it's as simple as that. You turn over your life to it, and then you go step by step. It's not instantaneous, you don't achieve independence in one day. In my own case I came back [to the sanitarium] several times. I got my master's and doctor's degrees. It took a long time to ruin what seemed a promising career, and it takes a long time to rebuild a life."

Dan Brewster says he has learned to roll with the punches and accept life on its terms. This from a compulsive achiever who won his first 12 elections, from the House of Delegates in 1950, the year he got out of law school, to the Senate in '62. . . .

He was the oldest of six, and his father died when he was 10. Raised in comfort on a beautifully appointed farm in Maryland fox-hunting country, inheritor of the Baugh Chemical fortune, he waltzed through St. Paul's School, started at Princeton and when war came enlisted in the Marines as a private.

Next thing he knew, he was an officer leading assault teams onto Pacific beaches, collecting seven wounds and a chestful of medals (on Okinawa his Raider unit was point for the initial attack and he personally, his own personal body, was point for the unit), coming home a captain. He retired a colonel in the reserves in 1972.

"The Marine years were my most formative years," he said. "I went in a sheltered kid, and at 21, I was a company commander. I came out of the war with a very different sense of values: I was interested in civil rights, politics. Really admired FDR. I joined the American Veterans Committee for awhile. Things happen fast in a war. You stop being a schoolboy in a hell of a hurry."

The military experience influenced his thinking in another way too: For years he was the most hawkish of hawks on Vietnam. "Let's face it, I was always a hawk. I wanted to go in there and do the thing right if we were going to do it at all. Even drop the bomb."

This was, he added, the greatest mistake he ever made on a public issue in his decade in Congress.

"I went over and saw the soldiers, I was given the tour, and I saw that people were getting killed because we didn't have an all-out commitment there. I used to say, if it was worth doing. . . . The fact is, it wasn't worth doing in the first place. Being a world leader doesn't mean you should police the whole world too."

But the issues of world affairs can seem abstract to a man living close to the earth. (And he does that, even if it is a model 150-acre spread. He helped fence it himself, and he works with the horses and handles the veterinary chores. Horses have always been part of his life.)

Brewster says he no longer has ambitions to run for major political office, though some day "it may cross my mind," he admitted with a reflective, gentle smile, to come back to the Maryland legislature as a farmer, to work on the things that concern farmers.

Of course he still keeps in touch, is consulted informally by ex-colleagues, maintains political contact of a sort through the alcoholism commission, to which he was appointed two years ago by Gov. Mandel.

Does he miss the Senate?

"No. No more than I miss the Marines. I think about it sometimes, I remember it all right. But I don't miss it. Life goes on. As a young man I was forever thinking of tomorrow. Then with my defeat and illness I thought only of the past. Idealism turned into ambition which turned into alcoholism."

He blames alcohol, by the way, for his drift into a situation that led to his indictment in 1969 on charges of taking a bribe from a mail-order house, Spiegel Inc., for a vote on postal-rate legislation. Six years later, the original charge reduced to accepting an illegal gratuity of $4,500, Brewster pleaded no contest and was fined $10,000. From the beginning he had denied ever taking a bribe; his lawyers contended that one of his own aides had fabricated the charges.

Today, Dan Brewster lives in the present.

"Each day is a new adventure," he said. "I like simple things, and now I have time for 'em: riding—I ride every day, it's my main exercise—and jogging and tennis, the garden, working at the stables. In the old days my appointments secretary ran my life. Now I do stuff that wouldn't even have made her list."

Last week he helped Judy can beans and tomatoes. Twice a week they go to cattle auctions (he has 70 head), and every now and then they slip away to the track to watch their 2-year-old, Early Double, race.

Two and a half days a week he counsels and lectures on alcoholism at a nearby veterans' hospital, helps with its detoxification program, leads group therapy, runs an informal legal clinic. The job pays $100 a week.

He also heads the Governor's Advisory Council on Alcoholism—"I see it as part of my recovery"—and works with a quarter-way house in Baltimore. At St. John's Episcopal Church, where is a vestryman, he serves on a committee dealing with alcoholism.

He is proud of his trim shape. This spring he dieted down to 185 pounds, which looks just fine on his large-boned, 6–3 frame, and he came in third in the rudgged My Lady's Manor point-to-point steeplechase. He had won that race 30 years ago.

"I tell you, it felt great. Racing at 55 against 20-year-olds."

He is discovering the joys of being old-shoe. He sold the other farm where he held the big political clambakes, impersonal as a PR-man's smile, and in fact no liquor at all is served at his place in the white-fence countryside west of Baltimore.

There are always children around: his own younger son Gerry, 21, and Judy's two, Krista and Kurt Aarsand, 17 and 15, and their friends, and of course the baby, who goes everywhere with them and who now cruised imperturbably through the house and across the lawns, tasting things.

It was time to move to the covered porch. Unceremoniously, Brewster dipped a pail of water from the pool and washed his hands. A crack of thunder made everyone jump, and the big concern was getting Rabbit into the house because she is terrified of thunder and has been known to jump through screen doors in panic. After the fried chicken and beans and corn there would be home-made chocolate-chip ice cream.

He watched the first big drops splatter on the flagstones. "I'm a happy man," he said.●

DECLINE OF THE DOLLAR AND U.S. FOOD EXPORTS

● Mr. BAYH. Mr. President, we have all noted with due concern the decline of the American dollar on the Japanese yen market. While some have pointed to the dampening impact which this process has had on Japanese exports to this country, it has also contributed to making sales of U.S. agricultural commodities in Japan even more difficult. Coupled with restrictive Japanese import policies, the decline of the dollar has made it more expensive for the average Japanese household to buy oranges grown in California, a loaf of bread made from wheat harvested in Kansas or a box of corn flakes the principal ingredient for which was raised in Indiana.

A recent article in the Christian Science Monitor explaining how "Japanese Quotas Work Against U.S. Food Import" provided a clear presentation of the present problem American food exporters face. With a multilateral trade agreement anticipated for consideration next year by the Congress, I believe that we should begin to review the issues raised in the Monitor article. For that reason, I ask that this article be printed in the RECORD.

The article follows:

[From the Christian Science Monitor, Aug. 22, 1978]

BEHIND THE YEN-DOLLAR TUG OF WAR—JAPANESE QUOTAS WORK AGAINST U.S. FOOD IMPORT

(By Norman Sklarewitz)

These days, American tourists in Japan find current food prices as fascinating as the country's ancient cultural heritage. The decline in the value of the U.S. dollar has pushed grocery price tags to record heights.

Checking the cost of fruits, vegetables, and other items of daily household use and then comparing them with the same products back home is a particular source of astonishment to visitors and painful dismay to residents.

For example, shoppers going to neighborhood supermarkets find these prices: five peaches, 950 yen, or at the 192 yen to $1 U.S. exchange rate $4.95; one American honeydew melon, 1,630 yen ($8.48); a can of American fruit juice, 285 yen ($1.48); a 10-ounce jar of instant coffee, 1,390 yen ($7.23); or a can of vegetable soup, 230 yen ($1.19).

Those prices are important to people other than foreigners living in Japan; they play a role in U.S. export deficits. Japan has traditionally been one of the leading markets for U.S. agricultural products. This year, the value of American foodstuffs sold to Japan is expected to hit $4 billion for the first time.

FOOD SALES ENCOURAGED

Last year, the value of American farm exports to Japan was $3.8 billion. That volume represented some 16 percent of total U.S. agricultural exports worldwide. So it is important to American farmers and ranchers that the Japanese continue to buy their commodities. If, however, food prices continue to rise, the market could be threatened or at least kept from expanding as the population warrants.

American trade negotiators are currently trying to increase the volume and variety of American food products permitted into Japan. That effort comes as part of a general effort by the U.S. and Japan to correct the current trade imbalance between the two countries. At midyear, Japan had sold some $10 billion more worth of its goods than it imported from the U.S.

If Japan eased some on its long-standing restrictions against agricultural imports, experts argue, at least some of that trade surplus would be reduced. In addition, increased availability of goods on the marketplace would logically help drive down retail prices.

What concerns American exporters are official Japanese quotas and semi-official prac-

tices which work to limit U.S. agricultural sales. For example, Japan rigidly limits imports of fresh oranges. For years, the quota of 15,000 metric tons was imposed on the argument that Tokyo had to protect the interest of its own farmers who grow mikan-mandarin oranges.

Under heavy U.S. pressures this past January, however, Japan finally increased the quota three times. While this seems large enough a spokesman for Sunkist Growers, Inc., in Los Angeles, figures out the new volume works out to about 2½ more oranges per person per year here.

"There's so little fruit going into Japan that even with the increase, only a small number of oranges is involved," says Bob Harz, a Sunkist marketing expert.

It is not just foreigners who have to pay those steep prices, of course. The Japanese housewife on a budget is being asked to pay the yen equivalent of 75 cents for one orange. And if a tourist should decide to order a glass of fresh-squeezed orange juice in a hotel restaurant for breakfast, he will get a check for close to $4.50.

The high prices are not all going to support American exporters. A 40-pound carton of top-quality oranges is landed in Yokohama for around $14. But the Japanese have a complicated distribution system that involves layer upon layer of middlemen. As a result, the price of that same carton can easily rise to the equivalent of $66, or some 400 percent, by the time it is sold at retail.

OTHER APPLICATIONS

The same situation prevails with other U.S. products such as wheat. Sales here, too, are limited by stiff marketing markups and controls set by the Japanese Government. These tie the market price of imported wheat to the country's rice subsidy program. In other words, U.S. wheat that may be landed in Japan at $3.25 a bushel is immediately marked up by the Japanese to $8 a bushel; the difference supports subsidies to rice farmers. Not surprising, then, a small loaf of white sandwich bread in Tokyo sells for around $1.34.

Beef is another example of how Japanese import restrictions and a single distribution system combine to limit supplies and guarantee high profit margins. A surcharge on about 95 percent of all imported beef permits domestic beef producers who have high unit costs to be sure that imported beef, which may come in cheap, does not compete with them at retail. First, there is a 25 percent duty on all imported beef and then a surcharge of nearly $6.40 per pound. As a result: hamburger patties are around $3.25 a pound; a T-bone steak is around $11.40 a pound and tenderloin or strip-loin steaks are higher. Prices like those effectively limit sales to a comparatively small market of very affluent Japanese.

"If we had complete import liberalization of the 19 agricultural items now under some sort of Japanese controls, we could sell some $500 million more worth of American agricultural products to Japan in from three to five years," says one U.S. Embassy source here.●

FEEDING THE MONSTER

● Mr. GOLDWATER. Mr. President, the Institute for Socioeconomic Studies, a nonprofit foundation in White Plains, N.Y., has published "An Inventory of Federal Income Transfer Programs"—the first such comprehensive research effort. This 220-page volume lists 182 separate programs costing $250 billion of the $360 billion in taxes collected by the Federal Government in fiscal 1977. The Arizona Republic, a newspaper highly regarded in my home State and nationally, has commented editorially on the complexity of current welfare programs. In its editorial, it declares that the Institute report "defines the root of the (welfare) problem." I ask that this editorial be printed in the RECORD.

The editorial follows:

[From the Arizona Republic, Apr. 24, 1978]

FEEDING THE MONSTER

So monstrous has become the federal government's Erector set complex of welfare programs that it defines comprehension.

It is so monstrous it is unmanageable.

The Secretary of Health, Education, and Welfare, Joseph A. Califano Jr., only recently revealed that of the $147 billion spent by HEW last year—more than 35 percent of total federal budget—upwards of $7 billion (five cents on every dollar) was misused or misspent through mismanagement and fraud.

Medicaid—a health-care program Arizona thankfully never has funded—was the largest source of abuse. Of all Medicaid funds spent, upwards of $2.6 billion was illegal or fraudulent, or about 27 cents of every dollar.

To his credit, Califano has begun a crackdown. Using computers to track recipients of HEW funds, Califano's department has turned up tens of thousands of health professionals and recipients who have been siphoning off tax dollars illegally.

Now comes a team of researchers from the Institute for Socioeconomic Studies and Pace University Graduate School of Business with a report which defines the root of the problem.

There simply are so many separate federal programs and agencies involved in welfare, the government has lost track of who is spending what on whom.

The report, "An Inventory of Federal Income Transfer Programs," lists 182 separate programs for income maintenance and poverty prevention.

But the most astonishing finding of the study, according to co-author Dr. William J. Lawrence, is that federal welfare costs now claim 69 percent of all the tax income taken in by the U.S. Treasury.

Of the $360 billion in taxes collected in fiscal 1977, the report says that $250 billion went to the 182 programs.

To meet other non-welfare obligations, the federal government used the remaining $110 billion in tax income and had to borrow billions of other dollars to meet the budget.

Except for HEW's welfare crackdown to recover a billion misspent here and a billion misspent there, there is no sign that Washington has the stomach to reduce the scope of its handouts.

What lies ahead is a continuation of the spending scenario—expansion of existing programs, and introduction of new ones. If President Carter and Congress go along with Sen. Edward Kennedy's national health insurance proposals, today's spending will seem almost painless.

The only way for Washington, and thus the taxpayers, can end this raid on the nation's income is to give up the idea that it can be a savior to those who say they are in need.●

CONFLAGRATION DAY—AUGUST 24, 1814

● Mrs. HUMPHREY. Mr. President, Rear Adm. Sir George Cockburn, Knight Commander of the Bath, his troops, musicians and camp followers will return to Washington for the first time in 164 years to help save the old tavern where the British ate roast chicken as Washington burned in the War of 1812.

The Citizen's Committee to Save the Historic Rhodes Tavern is recreating the British invasion of Washington at noon today, August 24, with a march down Pennsylvania Avenue.

The Rhodes Tavern, 15th and F Streets NW, the oldest commercial structure in Washington and the only building on Pennsylvania Avenue to have witnessed all the inaugural parades since Thomas Jefferson, is scheduled to be torn down to make room for a shopping mall. The building dates from 1799.

I am pleased that Senators ANDERSON, HAYAKAWA, LEAHY, MATHIAS, and MATSUNAGA have joined me today in introducing a resolution relating to the preservation and restoration of this unique historical structure. Rhodes Tavern is the only building to remain between the White House and the Capitol from the founding days of Washington. To suggest that we destroy the oldest building on the city's principal thoroughfare is an idea that would garner dim applause in Boston or Savannah or any city with an active understanding of the past.

I would like to encourage my colleagues to act swiftly to pass this resolution. I do not see the Rhodes Tavern as merely another building whose time has gone, but rather as a visual link between the city's difficult formative years and the present. The Rhodes Tavern has long been associated with personages, institutions, and events of both national and local significance.

Mr. President, the incident of the British dining in Rhodes Tavern, while the White House and other public buildings burned in 1814, is only one small segment of the rich history of this building. I would, however, like to share with my colleagues an informative and enjoyable account of the British invasion of Washington which emphasizes the role Rhodes Tavern played in our Nation's history. I ask that the brief history of "Conflagration Day—August 24, 1814" by Robert Gair be printed in the RECORD.

The material follows:

CONFLAGRATION DAY—AUGUST 24, 1814

(By Robert Gair)

On a golden summer evening one hundred sixty-four years ago, Rear Admiral Sir George Cockburn, KCB, rode into Washington, D.C.—and into American history—on the back of a mule.

Like many people who come to this town, he was looking for fame and fortune—the fame that would come to the British Officer who captured the capital of the United States, and the fortune in booty the city fathers could be expected to offer up in return for sparing Washington from destruction.

Earlier in the afternoon, British troops under Cockburn and General Robert Ross had routed the American army in the nearby battle of Bladensburg, Maryland. It was a terrible defeat. Poorly trained and led, the U.S. forces disintegrated. Hundreds of people from Washington and Georgetown had gone out to watch the fight in carriages, on horseback and on foot, and these same crowds, mixed with stragglers from the battle, stampeded back through town when it became apparent that all was lost.

An eyewitness said later that he saw the Secretary of War in full flight, followed by crowds of gentlemen on horseback, one of whom loudly bawled out as they came on, "Fly, fly, the ruffians are at hand. If you can-

not get away yourselves, for God's sake send off your wives and daughters, for the ruffians are at hand."

London-born Cockburn, the leader of the "ruffians," was one of the youngest admirals in the history of the British Navy. He built his reputation on ruthless ambition, but he is best remembered in America for his twisted sense of humor. His "frolics" or raids on the coastal towns of the Chesapeake Bay during the previous year had earned him the title of "Harlequin of Havoc." The Boston "Gazette" went so far as to call him a "disgrace to England and the human race."

Cockburn never planned to sack the city or burn any of its buildings. He rode into town under a white flag with the 21st Royal Scots Fusileers and rocket batteries which would later be used in the siege of Baltimore. He expected to be met by government officials who would be disposed to make a liberal donation of their money to save the city.

Washington in 1814 had a population of about 8000, but Cockburn found the city almost empty. The citizens had fled in such haste that warm meals still steamed on dining room tables all over town.

Instead of a parley to talk surrender terms and prize money, the British were greeted by a volley of shots from the Sewell House at the corner of Second and Constitution, NE. Bullets shot Ross' horse under him (third that day), killed one soldier and wounded three others. These were the only shots fired in defense of the city, and nobody ever found out who provided the greeting.

Cockburn and Ross argued for awhile about what to do next. Cockburn urged burning the entire city. Ross consented to burning public buildings. They started with the Capitol and worked their way down Pennsylvania Avenue. American congressmen later related that Cockburn began this pyromaniacal night by mounting the speaker's chair in the House of Representatives and putting the question to the assembled redcoats: "Shall this harbor of Yankee democracy be burned? All for it will say, Aye!"

Picking up a bookseller they found in the Rhodes Tavern at 15th and F Streets to act as guide, the small British party went on to the President's house. There Cockburn discovered Dolley Madison's three o'clock dinner, uncleared by household servants in the confusion of the afternoon's panic. Cockburn counted covers for forty, and after taking a short tour of the mansion, sat down with his officers to a cold buffet.

"We found supper all ready," wrote one British officer, "which was sufficiently cooked without more fire, and which many of us speedily consumed, and drank some very good wine also." Cockburn drank a toast to James Madison's health, and then ordered furniture piled up in the drawing room for a bonfire. By the summer of 1814, Cockburn had become an artist at setting fires, and a blaze soon raged which swept up the Jefferson staircase and poured skyward through the roof in a conflagration seen for thirty miles.

Delighted with his visit to what he called "Jimmy's Palace," Cockburn rode back over to the Rhodes Tavern to eat the dinner he had ordered before reaching the White House. The sacking of Washington had become a moveable feast.

Mrs. Suter, the innkeeper in the Tavern, killed some chickens she found in the yard, dressed and roasted them, and warmed some bread. The Admiral rode partly into the tavern on his mule and introduced himself as "the much abused Admiral Cockburn." Mrs. Suter recognized one of his staff as a spy she had seen in the Tavern only a few nights earlier.

Blowing out the table's candles, Cockburn jovially told his companions that he preferred to eat by the light of the burning White House and Treasury Building, which by that time was also wrapped in flames.

As the British dined in the captured city, the Americans made do as best they could in the surrounding countryside. Dolley Madison was riding through the dark of an approaching rainstorm in search of her husband. James Madison was trying to evade capture by British patrols. James Monroe was scouring the countryside in search of troops to cut off the British retreat to their ships, while Washington's citizens "spent the night gazing on fires and lamenting the disgrace of their city."

When the storm finally broke near midnight, Cockburn retired to "the coarse luxury of lust in a brothel."

The British left the next day in another rainstorm, fearful of massive American reprisals. But before leaving, Cockburn burned a few more buildings, exploded the city's arsenal, and ransacked the office of the city's major newspaper, the "National Intelligencer." He warned the troops to be especially sure to destroy all the letter "c"s in the type boxes so that his name could not be defamed after he left town.

The British then returned to their ships under cover of darkness, which were moored 40 miles from Washington on the Patuxent River in Maryland. Cockburn went on to earn a footnote in history as the British officer who escorted Napoleon Bonaparte to his final exile on St. Helena Island. Legend says that the Corsican Emperor and the Harlequin of Havoc became fast friends.●

UNITED STATES-JAPAN TRADE

● Mr. ROTH. Mr. President, over the past year I have spoken out frequently on the need to rectify the United States-Japan trade imbalance.

So far this year, the imbalance in dollar terms is even worse than last year's. The U.S. trade deficit against Japan is expected to be about $12 billion in 1978 compared to $9 billion in 1977. Japan's global trade surplus may reach $24 billion for Japan's fiscal year 1978, compared to $20 billion in fiscal year 1977.

It is important to recognize, however, that in volume terms the quantity of Japan's exports to the United States and worldwide has decreased. According to an article in this week's Economist, MITI is estimating a 10-percent decline in the volume of Japan's exports this fiscal year, even though the value of those exports is increasing. This drop stems from several causes—Japan's efforts to restrain exports, limitations on imports of Japanese goods placed by the United States and other trading partners, and the appreciation of the yen which has made Japanese products more expensive.

Since it is the volume of exports and imports that is most closely related to jobs, the drop in the volume of imports from Japan is good news to American workers.

In Japan, however, the Government will be under considerable political and economic pressure to ease its export restraints. As long as Japan's current account is in surplus, this would be unacceptable to the United States and, I believe, to Japan's other major customers. Despite the drop in the volume of Japanese exports, it is essential to reach equilibrium in value terms.

I have repeatedly said to my Japanese friends that the best way to rectify the trade balance is for Japan to increase its imports of American-made products. In the short term, this can be done on an emergency basis. I have suggested many times that Japan undertake emergency imports of American agricultural goods, either for storage or food aid programs, and I regret that this and other suggested emergency import programs have not been implemented.

As a long-term solution to the problem it is essential that Japan reduce import barriers. Japan continues to have one of the most heavily protected domestic economies in the developed world. In the manufacturing area, for example, this had limited Japan's imports of manufactured goods relative to domestic consumption to half that of the United States and other industrial countries.

Increased Japanese imports from the United States are the best means of correcting the trade imbalance from both the American and Japanese points of view. It would create more jobs in the United States and help Japan not only by providing a wider range and volume of consumer goods and raw materials, but also by partly avoiding the economic difficulties caused by the present contraction in the volume of Japanese exports.

I submit for the RECORD an article entitled "Down Is Up," which was published in the Economist on August 19, 1978.

The article follows:

DOWN IS UP

As the yen rises, Japan is earning more dollars from its exports but exporting less. Overseas sales were down in volume 2.7 percent in April–June, and 8 percent in July from a year earlier. New export contracts of Japanese trading companies were 30 percent down (in yen terms) in June. The ministry of international trade and industry (Miti) is worried. Mr. Toshio Komoto, Miti's boss, reckons a possible 10 percent drop in export volume over the full fiscal year may reduce expected gnp growth from 7 percent to 6 percent. Rather than that, he says, Miti may lift its informal controls on exports by eight key industries (steel, cars, ships, etc.) as early as October.

In fact, Miti's "guidance" has had little to do with lower car sales in America or steel sales in Europe. Nobody is quite sure how much of the export decline is due to the rise of the yen, but the best guess is most, if not all. Miti is therefore unlikely to lift its controls abruptly. That would irk Japan's trading partners as long as Japan continues to run massive surpluses. The eight industries it has kept an eye on since May all show signs of flagging exports. Miti reckons sales of motorcycles, copying machines, cameras and wrist-watches may all decline by about 10 percent this year, and the outlook is uniformly bleak on the four main items:

Ships. In July ship exports were down 55 percent on a year earlier. Japan's shipyards exported 8.5m gross registered tonnes in 1977, and reckoned (optimistically) on a 5.4m grt in 1978. The forecast has now been revised downward to 4.5m.

Cars. Miti informally set a ceiling of 4.56m cars to be exported in 1978. Carmakers were pretty much on target in April–June with exports of 1.19m cars, but in July for the first time car exports fell below the year-ago level. Miti reckons export volume will fall far short of the ceiling, even if dollar earnings on exports to America rise by a quarter (as they did in July).

Steel. With over a dozen blast furnaces idle, Japan's steel industry hoped to contain

the drop in exports in 1978 to 6 percent (from 34.3m tonnes to 32m). Between April and June, shipments were down 10 percent on a year ago, and the industry now reckons it will be lucky to export 30m tonnes this year. In the American market, where steelmakers are having to charge well above the "trigger" prices now that the yen has strengthened, exports in July were nearly 27 percent below a year ago in yen terms, i.e, practically flat in dollar terms.

Television sets. Miti reckons colour television exports to America will be down sharply, well below levels stipulated in the voluntary restraint agreement. Worldwide shipments are expected to fall from 9m units in 1977 to 8.5m in 1978. Volume was down 7 percent in July.

The story in dollars is rather different. Miti officials talk of a current surplus of perhaps $18 billion in 1978 (compared with $14 billion in fiscal 1977 to last March) i.e., triple what Japan was promising the Americans last January. The trade surplus could exceed $24 billion ($20.4 billion last year). Miti wants to cut the surplus by "emergency" imports of now-cheap raw materials and aeroplanes. The government has given the green light for Japan's Eximbank to help finance up to $4 billion of such imports, and Mr. Komoto suggested last week the target be lifted to $12½ billion. This seems preposterous, certainly in fiscal 1978. In practice, virtually no "emergency" imports have yet come in. Big companies are not willing to stockpile many more raw materials than they need.

In July Japan had a $2.7 billion trade surplus on exports of $8.15 billion (which grew 15 percent in dollar terms even while falling in volume). The current-account surplus was $2 billion.●

ARGENTINA

● Mr. HOLLINGS. Mr. President, last year I had the opportunity to chair a Senate delegation visit to several Latin-American countries, including Argentina. What we saw in Argentina was an effort to put the pieces back together again. You will recall that when Mrs. Peron's regime was deposed, the country was only a short distance from total civil collapse. And it was against this background that General Videla's government began its work. Our conclusion was that if Argentina is to make a go of it over the long run, it will be because not just government—but business leaders, labor leaders, and academic leaders—face squarely the decisions which must be made.

The United States cannot, of course, save the day for Argentina nor chart that nation's course. But it can offer encouragement, and it can work quietly to help the Argentine overcome some of its difficulties.

Sad to report, the record of the administration in dealing with Argentina has not been good. Recently I received a letter from Mr. Julio Werthein, who I had the opportunity to meet and talk with during my visit. He reports on what has been happening since that time, and his conclusions do not provide encouraging reading. The administration, the State Department in particular, and the Ex-Im Bank have been throwing up roadblocks instead of tearing down obstacles, and in the process we are only opening the doors to others whose interests in the Argentine are inimical to us. I hope we will wake up to the reality of the situation before it is too late, because here is a country of intrinsic importance, destined to play a far greater role on the world scene in the years ahead. Here, too, is a nation of great potential weight as a friend and ally.

Mr. President, I ask unanimous consent that the letter be printed in today's edition of the RECORD, and I urge all my colleagues to study it and to ponder the implications of the wrongheaded policy our Government has been practicing in its relations with Argentina.

The letter follows:

JULIO WERTHEIN,
Buenos Aires, Argentina, August 3, 1978.

Hon. Senator ERNEST F. HOLLINGS,
Washington, D.C.

DEAR SENATOR: I had the privilege of meeting you during your visit last year to Argentina and at the Embassy we discussed the relationship between our two countries.

I had hopes to see the relationship between our countries improving, but everything looks to the contrary. The problems go further than the eye could see, and this may be part of an organized plan with big roots that you must take into consideration.

The enclosed picture will probably give some thoughts, and should be shown to the champions of Human rights defenders.

Argentina has been a steady friend of USA but since the arrival of President Carter to the White House, we are being pushed to become orientated towards countries whose ideas do not conform to the Americanism which has been part of the Monroe declaration. I must say that your Ambassador here is doing his best, but is not receiving the necessary help from your State Department.

Import Export Bank is punishing American Companies, not authorizing credits for Argentina. i.e. Export of Turbines to Yacireta Apipe, by Allis-Chalmers. Boeing Airplanes to Argentine Airlines, etc. etc.

The State Department is blocking the export of Spare parts to the Argentine Navy. Navy planes are grounded and UNITAS operation will be held without the participation of Argentina.

I will only mention that the turbines for SALTO GRANDE had been furnished by the Russians and in the case of Yacireta Apipe will probably happen the same. Do Americans realize the influx of "TECHNICIANS" to cooperate in that job??? In one side you are fighting Russians, in the other you are pushing your friends in their arms. WHAT IS THE GAME???

With kindest regards and in the hope to see you soon again in our country, I remain

Sincerely yours,

JULIO WERTHEIN.●

A TOUCHING POEM TO THE UNKNOWN SOLDIER

● Mr. CRANSTON. Mr. President, I recently received a very touching and sensitive poem dedicated to the "Unknown Soldier." It was written by a fellow Californian, Mr. Alex Hyman of Los Angeles, and I would like to share it with my colleagues in the Congress.

Mr. President, I ask that the full text of the poem be printed in the RECORD.

THE UNKNOWN SOLDIER

(By Alex Hyman)

They destroyed my body but my soul lives on in another form;
I am waiting to be reborn.
As I wait to enter my new world through this door,
I pray to God we have no more wars.
Here I lie in Arlington with my comrades who have fallen from mortal wounds, but I was very special: I was placed in a tomb.
Once a year they think of me and say to themselves,
"Who in God's heaven could he be?
Was he a friend or foe?"
No one will ever know.
They placed what was left of me in this tomb,
Only God knows that I came from my mother's womb.
Many tears have been shed for my wounds that bled—here I lie in eternal rest.
They placed a wreath of flowers and inscribed a marble stone and lit the eternal light upon my grave:
This is *my country's* greatest *honor* for the life I gave.
Once a year it is read, *here lies the Unknown Soldier, known only to God.*●

THE SOUTH

● Mr. HOLLINGS. Mr. President, it has become very popular these days for the political pundits and the sociologists to speak of the "New South" and the "Sunbelt" as though the Southern States of the Republic had suddenly, and almost by accident, been born again.

We natives of the South have a different perspective entirely, knowing as we do that there has been nothing accidental about the progress we have made in so many areas.

The South, and my State of South Carolina in particular, enjoys a new prosperity because of the dedication and hard work of its people. I cannot think of a better example of this than my good friend George Phinney down in Laurens County, S.C.

George took over as chairman of the Laurens County Development Board 20 years ago. At that time, Laurens County had not had a new industry locate there in 26 years. But George Phinney took time away from his family and from his own business, because he cared about his community, and when he finally retired from that position on July 1 of this year, he could point to a remarkable record of achievement.

George's story is really the story of my entire State. Many would argue that we have a long way to go, but we have certainly come a long way already, and the credit for that must go to people like George Phinney who have worked in the trenches for years and years.

George's hometown newspaper, The Laurens County Advertiser, detailed his accomplishments in an editorial of August 21, and I ask that it be printed in the RECORD for the benefit of my colleagues.

The editorial follows:

RECOGNITION DUE

When George Phinney took over as chairman of the Laurens County Development Board some 20 years ago, Laurens County had not had a new industry in 26 years.

He went to work on American Lava of Chattanooga, then a subsidiary of 3M, to get them to build a plant in Laurens. Phinney and other business leaders contacted American Lava people over a period of two years, sometimes spending one day a month, sometimes three or four days a week.

"I'll believe it when I see it," some people said about the plant. After about two years when American Lava built a small

plant and hired 65 people, those same folks said "It won't amount to anything."

Today the little plant with 65 employees has become two plants of the 3M Technical Ceramics Products Division and is one of the country's largest plants.

That broke the ice and soon the Gilliland Plant came. This was followed by the Clinton Bearings Plant of the Torrington Company, our largest industry. Then Ascoe Felts located in Clinton, the Benjamin F. Shaw Plant in Laurens, St. Joe Paper Company, then Josten's, and the latest industry is Hackney & Sons of the northwestern edge of the county. And of course there is Tavern Sportswear, and possibly others that we have missed.

During the past 20 years there have been between three and four thousand new jobs created, with plant investment of between $30 and $40 million dollars, and that's a conservative figure.

Phinney retired as chairman of the Laurens County Development Board July 1, and he says that "I don't know of anything I have enjoyed any more."

But just because he has retired as chairman doesn't mean that he isn't going to continue working to help the county. "Only today," he said one day last week, "representatives of an industry that has been looking at Laurens for over two years were in my office, and the prospects are very bright for their bringing their industry, a completely diversified one, to Laurens.

"I believe Laurens County has as much to offer new industry as any part of the United States. And it has always been my philosophy of life that every human being should at least have the opportunity to secure a good job with good pay."

Although he has had help from others, Phinney has always been the leader in getting new industry. But it was taking too much of his time from his own business, Southern Research and Development Corporation, to which he plans to devote more of his time.

A lion's share of the credit for Laurens County's growth in the past 20 years is due Phinney and he is to be commended for his long service which was given at great sacrifice of money and time away from his family.●

CAPITAL PUNISHMENT

Mr. THURMOND. Mr. President, on July 31, 1978, an editorial was broadcasted by the Spartan Radiocasting Company of Spartanburg, S.C., urging the reinstatment of the death penalty.

The contents of this editorial are so informative that I was prompted to bring it to the attention of my colleagues.

Many of our citizens have become victims of murder and other horrendous crimes. Yet, since 1967 there has been only one execution in this country.

Even though the U.S. Supreme Court has decided that the death penalty for murder is constitutional, *Gregg* v. *Georgia*, 428 U.S. 153 (1976), legislators are hesitant in enacting legislation to reinstate capital punishment. I have cosponsored legislation, S. 1382, to reinstate capital punishment on the Federal level.

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD.

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

CAPITAL PUNISHMENT

One of the victims in the wave of kidnapping and terror that has spread over Italy in recent months was asked on television recently how law and order could be restored to the Italian people. His reply was brief and to the point: "Reinstate capital punishment."

Cold-blooded murder and atrocious crime of all kinds has been spreading so fast in the United States that unfortunately it is becoming almost an accepted way of life in the world's greatest democracy.

Recently six persons in an Oklahoma City steak house at closing time were robbed, then herded into a walk-in freezer and killed one by one with a bullet through the head. Four of the victims were teen-agers working during the summer months to have money to continue their high school education in the fall. A few years ago, this would have been sensational headline news throughout the entire nation, and the people would have been greatly aroused.

Yet this "horrendous crime" hardly made the front pages, because cold-blooded murder has become so commonplace throughout the country.

If the two gunmen who committed this outrageous crime against society are apprehended, convicted by a jury of their peers, and given the death sentence, a great hue and cry will go up from certain quarters in this country against sending the two men to the electric chair or gallows.

The Supreme Court has enunciated such fuzzy decisions on how and when the death penalty can apply, rather than leaving the punishment for murder to the states where it belongs, that publicly and privately paid lawyers can tie up the trial and conviction of criminals in the courts for months. Then the focus of the public is so centered on taking the lives of murderers that the victims, like the poor six who died in that steak house locker, are all but forgotten.

In every state there are cold-blooded murderers, similar to those who committed the Oklahoma City crime, waiting on death row. Already many have been turned back on society, and in many states there continues a reluctance to invoke capital punishment, even though the Supreme Court has ruled it constitutional under certain conditions.

WSPA believes with the Italian victim that unless capital punishment is reinstated, and done soon, murder and terrorism will increase. Nothing would stop these kinds of crime more quickly than letting this element in society know once and for all that they will forfeit their own lives if they kill and butcher their fellowman.

WALL STREET JOURNAL EDITORIAL ON CARTER VETO OF MILITARY BILL

Mr. THURMOND. Mr. President, there appeared in the Wall Street Journal today an editorial entitled "The Rafshoon Veto" in which the merits of the Presidential veto of the military authorization bill are discussed.

As one Senator who is greatly disturbed about this veto, I certainly view with alarm the charges in this editorial that the President struck down this bill merely to enhance his image.

This is a major bill we are talking about. It took months to develop it in committee, on the floor, and in conference. The administration had its say when it was first submitted, and during each step of the legislative process. I do not think the President's preference for a conventional aircraft carrier over a nuclear carrier was anywhere near sufficient reason to veto this legislation.

Now this editorial from a highly respected newspaper claims the main thrust of the veto is to make the President look strong by casting a veto on which he feels confident of winning the one-third vote necessary to sustain it. If this is the reasoning behind this veto, I cannot believe the House and the Senate are ready to play such games when so much important legislation is piled up here in the Congress. The President himself is calling upon Congress to get various bills out, yet he has added greatly to the workload for what the Wall Street Journal calls promotion of his new "get tough" image.

Mr. President, I ask unanimous consent that this editorial be printed in the RECORD.

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

[From the Wall Street Journal, Aug. 24, 1978]

THE RAFSHOON VETO

President Carter's veto of the defense procurement authorization is everywhere interpreted as part of a new "get tough" act, the practical incarnation of media adviser Gerald Rafshoon's efforts to massage the President's sagging poll ratings. The veto would have helped Mr. Carter's competency rating more if he had not clouded the issue in monumental confusion, including confusion about what the bill he vetoed actually contained.

To cut through the clouds, it's necessary to keep in mind two simple facts. First: while Mr. Carter objects to the congressional decision to spend $2 billion on a nuclear aircraft carrier, his administration has already announced plans to include a large oil-burning carrier in its budget request. The whole issue is, merely, this year or next year, and conventional or nuclear? Second: There is a difference between authorization bills, which set programs, and appropriations bills, which spend money. Mr. Carter vetoed the defense procurement authorization. The Pentagon appropriations bill has not yet been completed by Congress.

This elemental parliamentary distinction was entirely overlooked in Mr. Carter's charge that Congress is building the carrier by "diverting funds away from far more important defense needs." Among the congressional items to which he objected, for example, was a supposed cut of $500 million in military operational funds. But operational funds are not dealt with in the defense procurement bill; if this was the President's problem, he vetoed the wrong bill.

Doing the President one better, Defense Secretary Brown complained that Congress had killed three antisubmarine ships. There is a dispute over the appropriations for these ships, with the House on one side and the Senate on the other. But whatever the eventual appropriation, the ships were included in the defense procurement bill. Secretary Brown complains about Congress killing ships that were in fact in the bill his chief just vetoed.

Now, within the context of the procurement authorization, it's true that despite $1.9 billion for the aircraft carrier, the congressional total was close to the President's original request. About half of the funds came from rather ordinary changes: the Army reporting it could not spend money on its new XM-1 tank as fast as it originally

thought: Congress's decision that it could both save money and improve the NATO tank force faster by upgrading more existing M60A1 tanks and producing fewer new M60A3 tanks than contemplated in the original administration request.

The other half of the carrier money came from funds originally requested for the Trident submarine program, but which cannot be spent in this year's bill because of delays. With the Trident program delayed, and with the administration poised to order up a new carrier next year, Congress is merely saying, let's use this idle money and get the carrier started now.

There remains the issue of what kind of carrier. In passing, it should be noted that in light of the latest studies it is far from clear that large carriers are especially vulnerable. They can sustain hits from Soviet cruise missiles that would atomize small carriers, which have their magazines above water line. Large ships also make sense in light of electronic battlefield management, which promises a defense capable of shooting down attacking missiles. But this debate is beside the immediate point, since the White House has requested no small carriers. Indeed, the bill Mr. Carter vetoed provided more research funding for small carriers than he requested.

It is also unclear that oil-powered carriers save money. They are cheaper to build, but more expensive to fuel. Over the lifetime of a ship, it is difficult to see much difference in total cost. Congress prefers the nuclear carrier because it has better performance, being unencumbered by a train of tankers to refuel it every few days. The administration prefers a conventional carrier, saving money on construction now but spending more on operations later. And over this difference the President is willing to veto the entire procurement bill, inviting further controversy and delay that may hinder the improvements on which he and Congress agree.

In order to escalate this minor quarrel to veto proportions, President Carter launched an attack on Congress that seriously distorts the record. Sen. Stennis rose on the floor to complain, in what is for him strong language, of the administration's "false facts." The Senator was too much of a gentleman to say it, but we will: This is not a case of the Congress being soft on national security, but of the President dallying with defense in pursuit of cosmetic politics. The defense procurement bill was vetoed not because of any large difference on substance, but because it was the first bill to come along after Mr. Rafshoon whispered in the President's ear that he could look "strong" by vetoing something.

CONFERENCE REPORT ON NATURAL GAS PRICING BILL

Mr. TOWER. Mr. President, the Senate will soon begin debate on the conference committee report on the natural gas pricing bill. This compromise bill, the Natural Gas Policy Act of 1978, is the product which has emerged after many months and many long hours of deliberation in the conference committee.

It has, of course, not been easy to fashion a natural gas plan which a majority of the House and Senate conferees were willing to sign. The House and Senate bills were as different from each other as night is different from day, and represented totally divergent philosophies. I know that the Senate conferees in particular have labored long and very hard to complete what has been a very difficult job and to bring the decades-old natural gas pricing controversy to a satisfactory resolution.

I commend the Senate conferees for their efforts. However, having said that much, Mr. President, I must also say that I am constrained to oppose the conference committee report and to oppose it vigorously. It is my considered judgment that final approval of this compromise natural gas bill would not serve the national interest, nor would it be in the interest of Texas gas consumers or producers.

I have been an active participant in the repeated efforts to remove Federal controls on the wellhead price of natural gas sold into the interstate market. I sponsored deregulation bills in 1970, 1971, and 1973, and I cosponsored the deregulation amendments adopted by the Senate in 1975 and 1977. My support for deregulation has stemmed from my long-held conviction that the present system of Federal regulation has succeeded only in encouraging wasteful use of gas while discouraging the exploration and production efforts necessary to add to existing supplies. I therefore believe that enactment of natural gas legislation can be justified only if it will contribute substantially toward the achievement of unregulated, market-determined gas pricing at an early date. The pending natural gas compromise cannot meet that test, in my estimation.

It is true that the conference bill would permit natural gas producers to receive somewhat higher wellhead prices than those permitted for natural gas sold into the interstate market under currently applicable Federal price ceilings. It would also hold out at least the hope of an eventual removal of price controls from certain categories of gas production. In my estimation, however, the proposal is not designed to serve the long-term best interests of the Nation. The bill will not substantially increase the Nation's supply of natural gas, but it will clearly lead to increased Federal regulation.

Because it has been so amply demonstrated that excessive Federal Government regulation has been the principal cause of our current natural gas supply problems, I believe the goal of natural gas pricing legislation must be to achieve unregulated, market-determined pricing for gas at an early date. Enactment of the current gas pricing compromise can be justified only if it will substantially contribute to the achievement of that goal. I must conclude that it will not achieve that goal.

From a national perspective, I believe that proposed natural gas legislation must be judged in relation to its ability to achieve three major objectives: First, the legislation must provide some reasonable promise of adding significantly to the overall nationwide supply of natural gas, not simply shifting around existing supplies. Second, the burdens and benefits of any new law should be borne equitably, to the greatest extent possible. Third, natural gas legislation must minimize Federal control and maximize economic freedom.

Unless these goals are achieved, it is unlikely that any new legislation can contribute significantly to the long-term best interests of the Nation. It is my judgment that the conference bill cannot pass the test of acceptability when measured against these criteria. It will ultimately lead to increased Federal control but will not materially increase gas supply. Further, the conference committee economic analysis has indicated quite plainly that the costs and benefits of the bill will not be distributed equally among regions and classes of consumers.

Even the administration's own analysis, which would have to be considered optimistic, suggests that the compromise would elicit only a modest increase in overall supply. The bill cannot significantly increase incentives in the interstate market, and the extension of controls will create disincentives to expanded production in what are now the major intrastate markets.

It is apparent that the bill is designed not to add to overall supply but rather to shift current shortages around in the markets. To perpetuate the current national shortage in this manner is to continue to rely on OPEC oil and imported liquefied natural gas, at prices well in excess of those which are allowed our domestic energy producers.

From my perspective as a proponent of deregulation, it could be said that in one sense enactment of the conference bill would be a step in the right direction. The bill does—however timidly—appear to endorse the concept of deregulation. It would provide for an increase in ceiling prices now applicable to natural gas sold in the interstate market, and there is widespread recognition of the fact that current controlled prices are inadequate to assure a sufficient supply. Compared to the prices that interstate gas consumers now pay, this proposal would mean somewhat higher prices.

I feel compelled to emphasize, however, that higher gas prices are not an end in themselves, but only a means to an end. Higher prices for natural gas serve a justifiable purpose only to the extent they achieve their proper economic function—that is, to increase the supply of gas while encouraging its most efficient use. An unregulated gas market permits prices to perform that function. but this bill is not designed to achieve an unregulated market.

This conference committee bill provides for a dramatic increase in the scope of Federal regulation and yet it is my conviction that Federal regulation has caused the present problem. Clearly, the prospect of deregulation in this bill is little more than an illusion.

The natural gas conference report would continue an expanded scheme of Federal controls for at least 6 more years and would extend the ugly hand of Federal regulation for the first time to intrastate natural gas. This, despite the fact that on the whole the now unregulated intrastate market, particularly in Texas, has been and continues to be a model of how the economic marketplace can work if permitted to do so.

In contrast, the conference committee bill would create a regulatory maze of

staggering complexity. Sheila Hollis, the Federal Energy Regulatory Commission's Director of Enforcement, has said that, at best,

> Such legislation would require lengthy litigation—including in all likelihood a number of supreme court decisions—before the meaning of the pricing provisions is reasonably settled. Some uncertainty is inherent in passing any piece of new legislation, but the proposed bill is so marred by such uncertainties that it will be literally impossible to administer.

In her August 14, 1978 memorandum to the chairman of FERC, Director Hollis concluded that:

> The proposal is so complex, ambiguous, and contradictory that it would be virtually impossible for this commission to enforce it in a conscientious and equitable manner.

Although it is quite true that changes were made in the bill subsequent to the Hollis memo, the basic problems which led the FERC director to reach her conclusions remain in the conference committee bill. These problems will result in delays and uncertainties in addition to those already present under current law, with FERC now wading through thousands of backlogged cases.

Clearly, the compromise would result in less price certainty than under current law, with pricing determinations being subject to FERC review, remand, reversal, and court appeal.

The bill's numerous and arbitrary pricing categories would mean that exploration and production decisions would increasingly be based on considerations of regulatory gamesmanship, rather than on considerations of geology and economics.

The almost unbelievable complexity and ambiguity involved in the conference bill would make it virtually impossible for producers to avoid serious compliance problems, and the penalties for noncompliance contained in the bill are quite severe.

Enactment of this bill would mean that gas producers, and especially independents, will be hit over the head with the stick of regulation for a minimum of 6 more years, with the prospect that the carrot of deregulation will then be taken away.

For intrastate gas consumers, most of whom are in Texas, it would mean paying billions of dollars more for substantially less natural gas. Yet rather than resulting in any significant additions to the Nation's overall gas supply, this bill would indeed have a chilling effect on gas exploration and production efforts.

Mr. President, the natural gas conference committee bill is a bad bill, plain and simple. It is a compromise crafted ever so carefully with just one goal in mind. That goal is to get a bill, any bill, which a majority of each House of Congress will approve for the signature of the President. However it may soothe the conscience of some—who more than anything else want to be able to declare that they have supported a natural gas bill—this bill does not deserve the support of the Senate.

SEATTLE ANTIARSON CAMPAIGN A NATIONAL MODEL

Mr. MAGNUSON. Mr. President, we are witnessing in this country a growing concern about the crime of arson. Numerous suggestions are made as to how we might succeed in focusing greater public attention on this crime, which accounts for thousands of injuries and deaths together with well over $1 billion in property loss in this country each year.

The most successful local effort combating arson has been developed in Seattle, Wash. Under the direction of Seattle fire chief, Frank Hansen, a broad cross section of the community has cooperated to reduce incidents of arson, at relatively little cost to taxpayers.

A recent article from the Washington Post of July 28, 1978 is entitled "In Seattle if You Start a Fire You Are Going To Get Caught."

Mr. President, I ask unanimous consent that this excellent article on the Seattle arson prevention program be printed in the RECORD at this point.

There being on objection, the article was ordered to be printed in the RECORD, as follows:

IN SEATTLE "IF YOU START A FIRE, YOU'RE GOING TO GET CAUGHT"

(By Neal R. Peirce)

SEATTLE.—While headlines proclaim that arson is spreading like a prairie fire, this city has demonstrated how concerted action can dramatically reduce arson incidents and the losses to property—and often life—that go with it.

Only a handful of other cities—among them Houston, Los Angeles, New York's South Bronx, Boston and Lynn, Mass.—have launched anti-arson compaigns in any way comparable to Seattle's. But the formula, explains City Councilman Randy Revelle, is deceptively simple:

"Make arson a priority crime. Establish a specialized arson unit within the fire department; combine its investigative work with that of the police department. Provide arson investigations training—that's absolutely critical. And involve local insurance companies and the media in anti-arson campaigns."

Richard Hargett, commander of "Marshal 5," the Seattle Fire Department's arson unit, says that by 1975 arson had become "the most serious problem facing the fire forces." Between 1971 and 1974, losses in Seattle had soared from $621,000 to $3.2 million. It was feared they would hit $4.4 million in 1975.

But with its new program, Seattle reduced fire losses to $2.6 million in 1975. Last year the figure was down to only $1.7 million and will probably be less in 1978. Arson incidents went down while arrests and convictions went up: In 1974, there were 622 arson incidents, with only 73 arrests; last year, incidents were down to 518, arrests up to 217, and 196 of those arrests resulted in convictions.

Seattle's turnaround stands in stark contrast to the epidemic-like spread of arson nationwide. The insurance industry estimates that national losses last year were close to $4 billion, up from only $634 million in 1975 and a mere $68 million a decade before. Arson accounts for 40 percent of all property losses, the insurers believe, and now kills about 1,000 people a year and injures 10,000 more.

How did Seattle turn the table on the arsonists?

The credit begins with Fire Chief Frank Hansen, who reasoned that the causes of arson were so complex that no single "cure would work. So he persuaded then-mayor Wes Uhlman to set up a task force including representatives of the city fire and police departments, the mayor and city council, the county prosecutor, Seattle Chamber of Commerce and the state's insurance council.

Early on, the task force discovered arsonists had good reason to believe they would get away with it. Nationally, for every 100 cases of known or suspected arson, only nine persons are arrested, only two are convicted and seldom is anyone actually jailed. The reason: Arson is difficult to detect because incriminating evidence such as fingerprints, is often destroyed in the fire.

But Hansen publicly laid down the guantlet to would-be arsonists. Many city and private agencies would be watching them, he said. "From now on, if you start a fire, you're, going to get caught. And when you're caught, you're going to jail."

Delivering on that promise required tackling a problem that has plagued effective anti-arson work everywhere: lack of cooperation between police and fire departments. Typically both agencies claim authority, but neither gives arson proper attention or manpower.

Fire fighters rarely have the investigative skills to solve the more sophisticated cases, and police find arson "unglamorous" compared with robbery and murder. Jurisdictional confusion means neither department pursues arson to the point of prosecution.

Hansen solved the problem by convincing the police to give the fire department authority over arson from initial investigation through prosecution. But he persuaded the police to assign to the fire department two detectives to assist in investigations. Police/fire department tensions melted away; today, police and fire fighters share tips on arson and other crimes and the police often back up the fire department with assistance in surveillance and stakeouts and use of police helicopters, district patrol cars and communications systems.

Training for all arson-squad members includes basic law-enforcement techniques and sophisticated crime labwork. The Marshal 5 squad investigates all fires causing over $1,000 damage, and can crack seemingly insolvable arson cases. "Arsonists tend to believe they have destroyed all traces of their crime in the flames; what they fail to realize and what gives us the edge is that the very ashes that are left are where we find our clues," says Inspector Jack Higham.

The motives for arson are several: A business competitor or a disgruntled employee or even a shunned lover may seek revenge. A burglar or a murderer may try to cover up another crime. A child playing with matches may be mentally retarded or making a bid for attention. A would-be "hero" may set fires to receive accolades for discovering them. "Arson is just another means of assault." Hargett says. "It's less risky—there's no face-to-face conflict. The chances of being identified are almost nil."

Finally, there's arson for profit by financially troubled businessmen or homeowners seeking to collect insurance money. Despite the publicity surrounding such events as the arrest of 33 "respected" Bostonians in an arson ring last year, the number of fraud fires is actually small. But the dollar losses are great.

Seattle attacked the motives one by one. Since 50 percent of Seattle fires were set by juveniles, reaching them was a top priority. A United Way agency was hired to counsel children who displayed an "unusual" interest in fire; the fire department created an "arson rat" as the symbol of arsonists and received

more than 5,000 entries in a campaign to name him. The winning entry: "Sinder Sid."

Neighborhoods and business districts with high arson rates were identified; each night between 11 p.m. and 3 a.m. fire fighters travel through them in highly visible vehicles, clearly marked "Community Fire Alert/Arson Patrol." The patrol operates on tips from private citizens, employees of failing businesses, or health and liquor inspectors who may learn that a bar or restaurant owner is contemplating arson. "If we've been given a tip a building might burn or see four garbage-can fires in a small area, it's often a way for us to catch arsonists and put out a fire quickly," Hargett says. The presence of vehicles with red lights on top and spotlights make some residents nervous, "but we want everyone to know they're there," he adds.

Insurance companies agreed to withhold payment of large-loss fire claims when the policyholders may have been responsible. And the benefits of the Seattle effort spread statewide when the insurance industry set up a $5,000 pot to reward "secret witnesses" and underwrote a statewide toll-free arson hotline. The program is particularly valuable to small towns where residents often don't know who to call to report information, or are afraid of being traced.

Finally, Seattle newspapers and television stations cooperated in a long-term publicity campaign about the arson problem and the success of investigations. A four-week television series on arson produced by a local station even won an award for investigative reporting.

But the cost to the taxpayers of the entire Seattle effort is only $100,000 a year. It's an investment even the most ferocicus taxpayers' association might find worthwhile.

Mr. MAGNUSON. Mr. President, the National Fire Prevention and Control Administration, which is looked to for Federal leadership and cooperation by local authorities in the arson area, has been directed by the Senate to utilize a minimum of $1,000,000 during fiscal year 1979 on antiarson programs. I sincerely hope that the NFPCA will closely study the Seattle antiarson program as a model for other communities still suffering from the vicious crime of arson.

PROSPECT OF REFORM SLASHES AIR FARES AND INCREASES AIRLINE PROFITS

Mr. PERCY. Mr. President, on April 19, 1978, the Senate passed the Air Transportation Regulatory Reform Act of 1978 which, if enacted into law, will significantly and permanently reduce the amount of Government interference in the airline industry. The mere likelihood of less regulation, added to the earlier prodigious efforts at reform of Civil Aeronautics Board Chairman Alfred Kahn, has created a dramatic boom in air travel.

Millions of Americans are taking advantage of new lower fares offered by airlines—fares brought on by enhanced competition in the airline industry. Last year airlines carried a record 240 million passengers. This year's figures are already showing an enormous 14 percent increase in ridership over that record-breaking year.

Air travel has suddenly become an attractive alternative to many Americans who were never able to afford the earlier fares. In a few short months, the so-called American "jet-set" has come to include middle income families with several children, young married couples, elderly citizens on fixed incomes, and blue collar workers. The ability of more and more Americans to visit distant loved ones and far-off vacation spots is fulfilling one of the great popular dreams of our highly-mobile society.

But the air traveler is not the only beneficiary of the new competitive environment. Travel by air diverts people from using less energy-inefficient automobiles, thereby conserving our scarce natural resources. Regulation also encourages competition among different forms of transportation: bus and rail fares are bound to come down thanks to the new lower air fares. And the burgeoning ridership demands on all forms of transportation will undoubtedly provide a significant economic shot in the arm for the entire transportation industry.

Recent reports have indicated that the sudden increase in air travel has created some unusual strains on the market. Busy phones at reservation centers and long lines at airline terminals have created a certain amount of inconvenience for air travelers. Some airlines are introducing an average of one new low fare a day, and it has become difficult for agents to stay abreast of the changes.

But the history of American enterprise, and this great industry in particular, has shown that when new markets open, well-managed firms will be ready to respond. I am confident that the inconvenience and delays are only temporary and that passenger services will return to their usual high quality after the summer rush.

Mr. President, to illustrate the significant national impact of our recent efforts into regulatory reform, I ask unanimous consent that a sampling of recent articles on this subject from such widely read newspapers and magazines as the Wall Street Journal, Dun's Review, the Chicago Tribune and Chicago Sun-Times, the New York Times, and the Washington Star be entered in the RECORD.

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

[From the Chicago Tribune, July 7, 1978]

THE DISINTEGRATION OF IATA

The International Air Transport Association, the OPEC of the airways, is apparently crumbling, for which we shed no tears. The cartel voted this week to let its members set their own fares on competitive routes without forfeiting their IATA membership. The primary reason for IATA's existence has been to protect its members from competition from one another.

The rigidity of cartel-set fares that the international airlines once found so reassuringly comfortable has quickly turned into a handicap now that free competition is lapping at their departure lounges. They could live with competition as long as it was limited to charter carriers under special conditions. But something funny happened when Freddie Laker invaded the field with his no-frills and no-reservations Laker Airways "Skytrain," offering round trip service from London to New York for about $380 less than the IATA economy class fare.

Mr. Laker did not have to work about violating IATA's rules because his British line is not a member. But his action has forced a half-dozen member lines to break ranks and offer standby New York to London fares of $299. This month Pan American is offering a temporary promotional fare of only $149 from Boston to Amsterdam. And now comes KLM, the Dutch air line, with a proposal to fly a passenger across the ocean for only one guilder [44 cents] if he happens to be on hand when a charter flight is leaving with empty seats.

Mr. Laker has always said that there is a great big market out there waiting to be served by free competition, a market made up of people on both sides of the ocean who would gladly fly overseas if they could only afford it. He gave them something that they could afford.

And now that the established carriers have responded with cut-rate fares of their own, what has happened? Trans-Atlantic traffic is soaring toward a record. Pan Am, TWA, and British Airways are each flying 20 percent more passengers across the Atlantic than last year. And of course the Laker "Skytrain" is filled to capacity almost every day.

Surprising? It may be to stick-in-the-mud backers of IATA and other price-supporting cartels [including, until recently, our own Civil Aeronautics Board]. But it shouldn't be. The lower the fares, the more ordinary people can afford to fly; and the more people fly, the more eagerly carriers will compete to attract them. And the better business is likely to be.

The same thing is being demonstrated in the domestic market since the CAB—under the Ford and Carter administrations—began moving toward the deregulation of air fares.

Credit for this free market, pro-consumer, anti-inflation revolution in air fares goes partly to the Ford and Carter administrations, but perhaps most of all to Freddie Laker, who with some help from the United States government, battled both IATA and the British government [which owns British Airways] to make his Skytrain a reality.

[From the Wall Street Journal, July 3, 1978]

NEW DESTINATION FOR PAN AM

(By Albert R. Karr)

WASHINGTON.—As the award ceremony began to wind down, the honored guest, Civil Aeronautics Board Chairman Alfred Kahn, was getting restless. He told his hosts he would have to hurry off, explaining cheerily: "I have to go back and destroy the airline industry."

The remark typifies Mr. Kahn's breezy manner, but it reflects more than that. In office only a year, the CAB chief has started to strip away his agency's regulation of airline fares and routes; the board has approved big discounts on many flights and has turned more generous in granting new routes. The deregulation pace will soon accelerate—with plans afoot to let airlines slash basic fares as much as 50% without CAB approval and to let them expand onto new routes with little restriction. Eventually, Mr. Kahn envisions free-swinging competition for routes, along with further bargain-fare innovations and an absence of CAB control.

This upheaval at the CAB is part of a current Washington pattern: Chairmen of other regulatory agencies appointed by Jimmy Carter are also acting to promote competition and protect consumers. But Mr. Kahn is moving more boldly than his fellow regulators—and sending tremors through the airline industry.

Though a few airline executives appear to be growing reconciled to Kahn-style deregulation, others have warned that removal of CAB regulation, on which they have relied for protection against too much competition, could destroy or at least badly batter their

industry. Delta Air Lines, in a major challenge to the board, is suing the CAB in a federal court on the ground that the agency is abdicating its responsibilities.

The Kahn deregulation crusade ignores the need for a "sound air transport system" to serve national defense and other public interests, says Thomas Taylor, a Trans-World Airlines vice president.

Mr. Kahn scoffs at such concerns. He predicts that less regulation will mean not only more competition but lower fares, more travel and fatter airline profits. "If I thought that having more competition in the industry, increased flying, more planes, more pilots and more markets is in conflict with our national defense, or with energy considerations, I'd confront that problem," Mr. Kahn says. "But I see no conflict."

If Mr. Kahn's attitude is unusual among government regulators, so is his background. The 60-year-old chairman combines the expertise of an economist with that of a regulator. He taught regulatory and antitrust economics at Cornell University for 30 years and headed New York State's Public Service Commission from 1974 to 1977.

A BLUNT SPEAKER

He also comes equipped with a keen intellect and a ready, self-depreciating wit. During one board meeting, he asked colleagues: "What's wrong with my logic—other than it's dishonest?" In the same meeting, he told agency staffers they could start drafting a CAB order, as they had the "sense" of the board's view; "there may not be any sense but you have it," he added.

The chairman often shows a penchant for blunt speaking. At one CAB meeting, where he backed a new low-fare policy for U.S.-British travel, a veteran CAB staff man warned, "You have just destroyed the North Atlantic fare structure." To which the chairman replied: "That's a good afternoon's work."

On another occasion, irritated by demands that Pan American World Airways was making on the board, he commented at a CAB meeting that he was inclined to tell Pan Am "to get to hell." At the next meeting, feeling compelled to soften the remark, he quipped that Pan Am had called to thank him for granting it an intriguing new route.

IN THE ROCKING CHAIR

Beyond a doubt, the Kahn style is informal. Conferring with a secretary, the chairman braces himself at an angle to her desk and begins doing minipushups. During an interview with a visitor, he takes off his shoes and begins rocking in an old-style wooden rocking chair.

Clearly, he enjoys being CAB chairman. And just as clearly, he is the star performer among the heads of federal agencies that regulate economic activity.

When the President and his staff looked for nominees to those posts last year, they sought movers-and-shakers who would encourage more competition, try to roll back regulation and put consumer interests first. Now that the new chairmen have been on the job about a year, that plan has "largely worked out," says Stuart Eizenstat, Mr. Carter's top domestic-policy adviser.

The Carter selections are generally more activist than their predecessors, as well as more knowledgeable about regulation and about Congress, which keeps a close eye on the regulators. Five of the 1977 choices to head major regulatory agencies came from Capitol Hill staff jobs. One, Michael Pertschuk of the Federal Trade Commission, says he and his counterparts keep "more distance from the regulated." As for promoting competition, the new chairmen are "certainly more sensitive to the kinds of concerns that we have than previous chairmen," says Joe Sims, a deputy assistant attorney general for antitrust.

As an example, Daniel O'Neal, head of the Interstate Commerce Commission, has been trying to roll back some ICC regulation of truck service. He also has been cracking down on fleecing of customers by household-goods carriers that illegally boost reported weights of loads hauled—and their charges to customers.

FTC Chairman Pertschuk, for his part, has advocated a "humanistic" approach to antitrust enforcement, urging consideration of the effects of industrial concentration on jobs and communities. He has also pushed for curbs on television advertising aimed at children, and the FTC has just come out with the first of a series of rules on trade practices; this one will allow eyeglass advertising in all states and permit customers to use their prescriptions to shop for glasses, to help bring prices down.

Chairman Richard Dashbach of the Federal Maritime Commission, though an avid supporter of the U.S. merchant marine and a firm foe of deregulation, has adopted some competition-minded positions that have angered ocean shipping operators. Under his lead, the commission rejected without a hearing a plan in which seven North Atlantic rate-setting conferences would join together in a "super-conference" with more concentrated power over shipping rates. Afterward, the industry "went bananas," Mr. Dashbach says.

And Charles Curtis, chairman of the Federal Energy Regulatory Commission, has sometimes taken tougher stances than his predecessors toward the natural-gas industry. In one instance, his commission refused to let producers pass along to consumers the cost of the planned Alaska gas pipeline.

There isn't a sharp turnabout at all the agencies. Consumer advocate Ralph Nader and others have castigated Mr. Curtis as too deferential, on a few occasions, to regulated industries. ICC Chairman O'Neal lacks Mr. Kahn's zeal for deregulation and has less faith that the marketplace is superior to government controls. Two other chairmen, Harold Williams of the Securities and Exchange Commission and Charles Ferris of the Federal Communications Commission, appear to favor some deregulation but seem reluctant to change the status quo in any hurry.

FIGHTING INFLATION

But even though Mr. Nader finds some of the chairmen disappointing, he rates them, all in all, as "significantly better" than their predecessors. At the U.S. Chamber of Commerce, chief economist Jack Carlson applauds the group's general support for deregulation. He doesn't like their accompanying appetite for consumer protection.

Among these Carter-appointed regulators, CAB Chairman Kahn stands out as the superstar because he has been able to do a lot in little time. He has taken advantage of momentum that was building for airline deregulation when he took command and, in doing so, has emerged as a more effective inflation-fighter than most in Washington. The fare cuts approved under his regime have brought the average air fare below year-ago levels, while retail prices generally have risen nearly 7 percent.

The CAB's plans would allow much deeper fare cuts. Perhaps just as important, they would let new airlines start flying and existing ones expand onto more routes with hardly any restraint. The board wouldn't worry about such questions as whether a new entrant would grab business from another airline.

The plan reflects Mr. Kahn's view that the key to airline competition is the prospect of new entries into a market. Without it, he says, airlines don't compete with prices but with costly offers of additional flights, more flight attendants and fancier foods.

Mr. Kahn hopes to make competition so wide-open that large and widespread fare increases would be impossible, even under some future restriction-minded CAB. Saying that the board has lately swung 180 degrees from an airline-protection policy, Mr. Kahn recently reminded Congress that the CAB could some day turn another 180 degrees, right back to protection. He urged enactment of pending deregulation legislation to "make sure this whirling dervish ends up facing in the direction you want it to face."

OPPONENTS MAY SUE

The legislation would help head off legal challenges to the board's deregulation moves—challenges that appear probable. Associates say Mr. Kahn lets his lawyers tell him what he can't legally do only when he is convinced they're right. Speaking of the CAB's route-policy plans, he himself says, "I don't give a damn about the legal aspects." He really means that he cares about the legalities only when they're forced on him.

Critics in the airline industry insist that the chairman is flouting the 1938 act that created the Civil Aeronautics Board. They say the law requires the agency to select specific carriers for specific routes, picking only those that can provide the necessary service. The airlines are likely to fight Mr. Kahn's route-entry approach in court.

Apart from any legal challenge, aviation executives are accusing him of failing to give due consideration to this unprecedented plan. Arthur Kelly, president of Western Airlines, says Mr. Kahn is "trying to do too much too fast" and thus threatening harm to "a lot of fragile segments" of the industry.

Within the government, too, the Kahn approach arouses some concern. The FTC says the CAB should proceed cautiously in easing route entry to avoid letting large carriers extend their hold on aviation, in the short run, during a free-for-all route scramble. Even Nahum Litt, the CAB's own chief administrative-law judge, has warned Mr. Kahn that the board is acting in haste. He is especially wary of plans to scrap trial-type oral hearings in many cases to speed up decisions.

ONE-SIDED STAFF?

Critics also say that Mr. Kahn listens too much to the deregulation-minded staff he has brought to the board and that it lacks dissenting voices. The chairman concedes his staffers are "all on one side" of the regulation issue, but he says it is his job to raise doubts about his own ideas and theirs.

The new low-fare plans that airlines are coming up with are "answering most of my doubts" about deregulation, Mr. Kahn says. Still, he confesses to some worries. One is that charter carriers will be hurt as scheduled airlines are freed to slash fares. Another concern is how to protect a new, small airline wanting to start an innovative service from fierce competition by existing carriers.

These worries don't mean he is backing off from deregulation, however. "I just admit, Hamlet-like, to some concern," the CAB chief says.

Despite his misgivings, Mr. Kahn can clearly see where he would like to move—toward eventual abolition of the agency he heads. The board's basic functions of awarding routes and approving fares offend him. He concludes: "I don't see any need for a CAB, quite apart from the fact that I have tenure at Cornell and don't need a job."

DISCOUNT AIR FARES PROVE TO BE A REAL HIT

[From the Washington Star, July 7, 1978]

(By Brian Murchison)

For 19 hours a day, seven days a week, 24 shifts of sales agents handle the phones at the United Airlines Reservation Center in McLean, Va.

But that still hasn't been enough to handle the volume of callers who are often shopping

for "Super Saver" tickets and other discount fares.

More than 20,000 people a day have been calling the reservations center, according to Willie Davis, supervisor of reservations sales. Eighty percent or more of the callers are waiting as long as 10, 20 or 30 minutes to get through.

"One man said he watched an entire baseball game on television while he waited for us to answer his call," said Diane Fleming, one of the 341 sales agents taking phone calls at the reservation center.

Fleming said that another man resorted to asking for a reservation by letter because "he'd given up trying to get us on the phone."

There aren't enough phones or sales agents at United, or any of the other airlines, it seems, to take care of the demand these days.

Tens of thousands of people either want to purchase one of the highly publicized new discount fares, have been detoured because of the Northwest Airline strike, or simply want to fly off for summer vacation during the traditional peak of the travel season.

The lower fares are the result of the Civil Aeronautics Board opening up competition among domestic airlines, which has inspired the companies to offer a marketbasket of bargains. The Carter administration is also moving to liberalize international air fares, also likely to create new bargains for travelers going overseas.

"With a board that is certainly working under a mandate from the White House to deregulate the industry by letting management decide fare levels, every fare is being accepted," said William Jackman, assistant vice president for public relations at the Air Transport Association. "You could almost call it a deregulated atmosphere now."

When a caller does get through, according to Gill Periroth, manager of public relations for Eastern Airlines, the conversation often lasts another 10 or 15 minutes while the agent explains the conditions that must be met for each discount fare, or lists the various fares possible for travel between two points.

As one agent put it, "We average one fare change a day, so you can see how confusing it is for everybody."

For example, between Washington and New York there are now 19 possible discount fares, ranging in price from $106 to $40 round-trip.

Braniff International currently leads the scramble for cheapest Washington to New York flight. A customer may jet out of National or Dulles aboard Braniff for $40 round-trip to New York or Newark on any of seven daily non-stop flights.

Dubbed the "Small Potatoes" fare, the lower coach rates will become effective July 15. Only a few of the cheaper seats will be available with each flight, but customers flying "Small Potatoes" will be entitled to all of the services that normally accompany regular coach fare.

In the current fare derby, price depends on the customer's departure date, length of stay, length of time left before departure date, whether the customer plans to travel at night or during the day, whether the customer is a senior citizen, a foreigner, a member of the military, a member of the job corps, a child, or fits into some other special category.

The Super Saver Fare at United is available only for customers who make their reservations 30 days in advance and plan to stay a minimum of seven days and a maximum of 45 days. There are different Super Saver rates, ranging from 30 to 50 percent reductions, for flights during the week, on the weekend, at day and night, for children and adults.

The fine print in advertisements also points out that the airlines "allocate only those seats for discount sale which have been traditionally unsold, therefore insuring adequate space for full-fare demand."

Only a limited number of Super Saver seats, then, are available, and Chuck Kinzie, a reservation manager at the United center in McLean, said that the number ranges from 5 to 35 percent of the total seats on the flight.

There are also about 30 possible fares for flights from Washington to Miami, ranging in price from $268 for a round-trip first-class ticket, to a $103 excursion fare requiring a 30-day advanced booking and traveling at night.

For flights from Washington to Los Angeles, there are about 20 fares, ranging from the first-class round-trip seat at $538, to the $207 night coach, midweek, 30-day advance booking, seven-day minimum stay flight.

As one consumer who spent a half-hour trying to get through to Eastern Airlines last week put it, "They've got fares for every kind of person and trip except for someone who's got green hair and wants to spend a month on Mars."

Travel agents are also feeling the pressure of constantly ringing phone calls and the need to be up on all the latest fares.

Faralyn Leighton, an agent with Global Travel in Rosslyn, says, "It's been an old woman's nightmare. You dial, dial, and dial for a good 20 minutes most of the time," Leighton said. "Then you get a recording which repeats itself 12 times until the poor recording itself gets tired. Then you're put on hold, and sometimes the circuits overload and you get thrown off."

Leighton also finds herself explaining legal points to her clients. Types of fares are often advertised before they are actually approved by the CAB, Leighton said. "This makes it tough on us, because we're the ones who have to tell the people that a particular fare isn't ready yet, hasn't been approved. We tell them to read the small print in the ads."

A typical comment made by irritated customers to agents picking up phones at the McLean center is that United Airlines "ought to hire more than two or three clerks to man the phones." Sales agent Fleming said that "when I tell them that there are 1,002 of agents working here, they're shocked, and they start to understand what we're up against."

Kinzie, the United reservations manager, said there has been a 27 percent increase this year in calls coming into the McLean center. "We were only forecasting a 2 percent rise in calls this year."

Kinzie added that he has had to hire 95 new sales agents since January, and that he expects to add 20 more before the summer is over. United has hired agents for its other reservations centers for a total of about 300 new hires in recent months.

The hiring surge has not been confined to United. In May, Delta Airlines added 400 reservation agents to its central office because "average talk time is up anywhere from 2 to 40 percent," according to J. A. Cooper, senior vice president of Delta.

Eastern has added about 800 agents since January. Periroth said that even those additions "haven't kept us on top of our standard of answering calls within a few seconds."

Continental has hired about 310 agents since March, and TWA says its sales staff has increased by "the hundreds."

The McLean reservation center, which is the third-largest United Airlines center in the country, gets calls from throughout the mid-Atlantic region: Washington, Baltimore, Richmond, Norfolk, Newport News, Allentown, Philadelphia, parts of Ohio, and all of Maryland and Virginia. Kinzie predicts a 25 percent increase this year in passengers flying United from this region.

Even when agents have mastered the rules of the most popular discount fares, they still can't relax. Newly approved fares come in from the airlines each day, keeping the agents under constant pressure to absorb and remember new information.

Between 7 and 8 p.m. on a recent weekday, the United center in McLean received 500 calls. Only 34 percent were answered within 20 seconds, the goal set by United officials.

"The rest probably took between 10 and 20 minutes to answer," Logan said. No more than 2,000 of the 20,000 calls each day are answered within 20 seconds, he estimated.

Flying fever is rampant, despite the difficulty in getting in touch with the airlines. Jackman, of the Air Transport Association, said the airlines are carrying 75,000 more people a day this year than they did last year, or two million more passengers each month.

[From the Chicago Sun-Times, July 9, 1978]

AIRLINE TRAVEL SOARING AS FARES TOPPLE

(By Dennis Byrne)

"Let's fly instead."

More people are doing it these days, and it could signal a major change in how Americans get from here to there.

Record numbers of travelers are heading for the airport. They include families who usually would load the family into the car for a 300-mile vacation trip. Others, instead of leaving the driving to the bus driver, are flying the friendly skies. And regular fliers, such as businessmen, are doing more of it.

People who never have flown before also are trying it, prompting one airline to put out a press release explaining to the neophytes that those "bumps, thumps, groans and squeals" they hear on a plane are normal and no cause for alarm.

The airport is beginning to look more like a bus terminal, with backpackers and "ma and pa and their six little rug rats" waiting for a flight, according to one observer.

The big shift to air travel has astonished even the most optimistic airline executives and stockholders. But it has given travel agents, reservation clerks, airport administrators and seasoned business travelers a huge headache.

Experts thank the wave of discount fares, which can cut the cost of flying in half, and a healthy economy for the increases in airline passengers. Just how long the trend will last is anyone's guess.

For now, the airlines are basking in the figures: More than 3 million passengers flew during the Fourth of July weekend, making it the busiest in aviation history. Domestic revenue-passenger traffic for all airlines was up 14.3 per cent in the first five months of the year compared with the same period in 1977.

At Chicago's O'Hare Airport, volume grew 10.8 per cent in the first five months compared with the same 1977 period. From January to June this year, 18.8 million passengers passed through the airport.

And records are falling with increasing frequency. Take Chicago-based United Airlines, billed as the free world's largest carrier. It recently became the first U.S. airline to carry more than a million passengers and to fly more than 1 billion revenue-passenger miles in a single week. On June 30, the Friday before the Independence Day weekend, United recorded 29,655 boardings at O'Hare, an all-time record. While August usually is the busiest month, United in June already had broken its own systemwide record for the number of daily passenger boardings three times and the record for revenue passenger miles five times.

But not everyone is delighted. Try to phone

an airline reservations desk and you'll probably get a busy signal or a recorded message advising patience until a clerk can come on the line. Because of the confusing array of discount plans—more than a score just between Chicago and New York—the phones are tied up by prospective passengers who are trying to get a clear explanation or who are just shopping around. United, for example, has 444 more reservation clerks and 362 more customer service representatives than it did a year ago to handle the load.

At the airport, parking and the long check-in and baggage lines have become serious problems. Regular flyers, especially businessmen, are bristling not only at the fact that they are not eligible for many discount fares, but also at unaccustomed delays.

"We're seeing an increase in late-hour traveling," O'Hare manager John Carr said. "There's the gypsy backpacker, the folks in blue jeans and what not, standing around and waiting for a flight or sleeping in the corners. We do 60 per cent of the housekeeping between 10 p.m. and 6 a.m., but now with all these bodies around, it's a problem."

"Then you have Mickey the Mope, with nothing to do, and he discovers the employes' washrooms in the basement level," Carr said. Because of the hanky-panky that has been discovered, those washrooms have been locked at 6 p.m. In the meantime, the increased crowds have forced the airport to plan on enlarging its public washrooms.

Also to cope with the crowds, plans are being made to add a second cafeteria. A phone number was established to give travelers information on the parking situation at the airport.

"The volume is good, but the bottom line doesn't look too good. We have to work three to four times as hard as before," said Francis Goranin, president of Vega International Travel Service, 201 N. Wells. "First, it's hard to get ahold of the airlines (for flight information and bookings). Then we have to explain to the client that even if (an airline) says its (bargain fare) has no restrictions, there are some because only so many seats are available on each flight. So we go back and forth between the client and the airline. Then we may have to try a different airline," Goranin said.

"Then you get very unhappy clients because they go to the airport and have to wait a very long time," he said. Goranin said he is advising his customers to arrive 90 minutes before flight time and to try to choose a plane that has a carry-on luggage cabinet. "Take a relatively small suitcase and go immediately to the gate. And if you come too late, you might be bounced. Oh, yes, it's legal—the airline still has a right to oversell."

Increased volume does not necessarily produce more profits for travel agents, he said. Lower fares mean that the agents with their 7-to-8 per cent commission take in less money on each sale. That may explain why a group of travel agents spent part of a recent Chicago meeting making up derisive names for the promotional fares, such as "Go-For-Broke Fares," "Super Ripoff Fares," "Take-It-Or-Leave-It Fares" and "Welfare Fares." A local aviation official was even less subtle, calling one of the plans "Chicken-fares."

Not too long ago, most airlines took a dim view of such fares. But they could not be ignored when huge United Airlines urged government deregulation of the airlines, including fare policies. At the same time, deregulation legislation began looking promising in Congress and the Civil Aeronautics Administration under the new free-wheeling chairman Alfred Kahn decided to espouse a more free-market approach to airline regulation.

The result has been a confusing array of fare plans, with discounts ranging from 20 per cent to 50 per cent depending on the day of the week, time of day and length of stay at the destination. The wave even has swept overseas, where the ultimate cheap fare reportedly is being offered by a Dutch tour operator—an unfilled charter seat on a standby basis for one guilder, about 45 cents.

But the airline industry is taking it all very seriously. Revival of Midway Airport rests on a proposal for cutrate fares that attract persons who normally would drive to other Midwest cities. For instance, while the cost of driving to Detroit is estimated between $33 and $38.60, the fares proposed by the airlines would range from $15 to $32, compared with the standard $41 for a coach seat.

Howard Putnam, United's group vice president for marketing services, said he did not think there "will ever be one simple discount fare, just as there is no one price to buy a television set." The wide variety of plans, he said, allows the tailoring of fares to individual needs. Others point out that the restrictions permit the lower fares because they put passengers in seats that otherwise would have been unoccupied.

But Putnam and Ken Paneral, an analyst for the Chicago's Becker Securities, said the lower fares are not solely responsible for the record number of air travelers. They pointed to an improved "economic environment" and increased disposable income, enabling businessmen and vacationers to take deferred trips.

Putnam said his statistics show a healthy increase in business travel. The median income of the air traveler is $29,500, compared with $27,300 a year ago. He says there is "nothing to prove that we've stimulated a whole new group of travelers. . . . I think that will be the case when we get new figures."

Paneral had a word of caution, though, about the high-flying optimism launched by the increased revenue and passenger figures. At same point it no longer will be profitable to keep cutting fares. The airlines will run out of empty seats to offer at a cut-rate fare and they will have to decide whether to cut into their regular full-fare revenues. They can, of course, buy more planes, but that's a huge capital investment, cutting into profits.

On the other hand, they could raise fares. But now that everyone, including politicians, the consumers, legislators and even the CAB, are on the free market bandwagon, such a move would be hard to swallow. "It will get very interesting," Paneral said.

[From the New York Times, July 3, 1978]

AIR TRAVEL REACHES NEW HEIGHT—CUT-RATE FARES CREDITED WITH PASSENGER SURGE

(By Winston Williams)

Tens of thousands of passengers are crowding the nation's airports over the long holiday weekend, in what many airline experts say is the busiest travel period in American aviation history. For the last year, traffic on United States-flag carriers, spurred largely by a proliferation of cut-rate fares, has surged.

In 1977, a record 240 million passengers boarded planes in the United States, and this year the air-travel pace is running 14 percent higher. Some air carriers expect summer business to improve 20 percent over last year's levels.

Airline executives are pleased with the boom, although some of them are expressing concern over higher costs and the impact of lower fares on profits. Still, they say, conditions have improved markedly since the pre-1977 days when the industry suffered from the double impact of costly fuel and low passenger traffic. The current trend, they add, is helping profits more than it is hurting them, partly because a new class of traveler is flying these days, even if he is buying tickets at bargain prices.

"The lines are longer and the planes are fuller," said Robert Crandall, senior vice president of American Airlines. "We're becoming more like a mass transportation business and less like a customized service."

Passengers by the thousands are taking advantage of the new cut-rate fares. A Queens postal worker who wandered from counter to counter in the airline ticket office on 42d Street the other day, said he had trouble getting through to the airlines on the phone, so he decided to spend his lunch hour at the ticket office shopping for bargain fares to Disneyland. "I don't mind going a little out of my way for these prices," he said.

PROSPERITY AND PROBLEMS

With prosperity have come problems. Passengers like the Queens postal worker are finding it harder to make reservations by phone. They are also encountering longer lines at the check-in counter and more frequent flight delays. Overworked flight attendants and information clerks often are wearing half the usual smile. Hustling skycaps are more impatient with pleas for information.

For their part, the airlines seem divided over the wisdom of cutting rates. Some carriers are characterizing the new policy, fostered by the Civil Aeronautics Board, as "routes for rates." Last week, T.W.A. asked the board's permission to raise rates on its London-to-New York route, contending that the fares were hurting profitability. It said the fares were creating new administrative costs and were not producing enough new traffic to fully offset the added costs.

Lufthansa, the German airline, asserted that fare-cutting by American companies over the Atlantic was "irresponsible" and could have damaging effects on all international airlines.

PROFITS RECOVERING RAPIDLY

Profits are recovering rapidly from the lows reached in 1976. In the first quarter of this year the airlines led American industry in profits growth, reporting earnings of $98 million, ar. 80 percent increase over the previous year. That performance followed a 34 percent improvement for 1977, when industry earnings totaled $754 million. But that was before the heavy rate-cutting began.

The traffic boom comes at a time when the airlines need to spend billions of dollars to modernize their aging fleets, and complicates planning because no one knows whether the growth will continue or traffic will decline if the economy turns down next year as some economists expect. Mr. Crandall of American predicted that the traffic growth rate would decline to 4 percent next year from its current double-digit rate.

And, there are losers in the air boom—mainly the charter operators, who say that the scheduled airlines, with their new low fares, are diverting traffic from the charters. The charter operaters contend that the scheduled carriers will raise fares again when competition from charters has been eliminated.

The metamorphosis of the airline industry has been fostered in part by Alfred Kahn, the activist chairman of the C.A.B. who has encouraged greater competition among the airlines by granting new routes to carriers that promise lower fares. During the late 1960's, when the last such traffic surge occurred, the carriers were bringing jumbo jets into service, making the per seat cost of flying more economical.

The ascendancy of marketing experts to the top of domestic airlines also has fostered the maze of new fares, some more than 50 percent lower than economy-class fares. Hardly a day passes without an airline announcing a new promotional fare or an application for a new route. So-called "sales" are becoming an acceptable way of doing business in the airline industry.

For example, Pan American World Airways, which was recently awarded the right to fly from Boston to Amsterdam, initiated a 30-day opening "sale" of a $149 round trip, the cheapest available fare to Europe. On July 14, the carrier's "no-reservations" fare goes up to $279, still cheaper than the $299 standby fares available between London and New York on scheduled airlines, but more than the $246 "no frills" fare offered by Laker Airways on the same route.

"The response tops anything we ever expected," says a Pan Am spokesman. Travelers have been flying, driving and hitchhiking to Boston's Logan Airport from points around the country to take advantage of the fare. Lines are so long that many prospective passengers wait as long as five days before getting a seat.

Similarly, United says it has had an "overwhelming" response to its introductory fares to various destinations from Kansas City, Mo., the site of a new "mini-hub" the carrier is establishing in its system (considered by some an audacious move since Kansas City is the operating home of Trans World Airways).

Much of the traveling public has found the changing lines on route maps and the variety of "conditional" fares to be confusing. There are 21 different fares, for instance, between New York and Chicago. Some disgruntled travel agents say they spend an inordinate amount of time sorting out cheap fares for customers, and then collect reduced commissions.

Passengers who deal directly with the airlines by telephone often get repeated busy signals before a recording announces that "all lines are busy now" and says the wait could be as long as five minutes.

An increase in the volume of calls is only one reason for the delay. Reservations clerks also concede they have trouble keeping abreast of the changes, and many customers are demanding that all cut-rate possibilities be checked. Comparison shopping among the different carriers is also common and helps overload the systems.

After the wait and the shopping, passengers are frequently told a fare is not available on the desired flight. Airline executives acknowledge that few of the discounts are available on popular flights. Their strategy, they say, is to fill up seats on flights that traditionally have empty seats. Using computer systems, airline planners allot a specific number of discount seats to each flight.

The unavailability of bargain seats has outraged some customers and prompted Gerald H. Trautman, the chairman of the Greyhound Corporation, to denounce the fare cuts and their advertisements as a fraud. Mr. Kahn of the C.A.B. warned the airlines earlier this year that the board would be vigilant against "bait-and-switch" tactics. For their part, airline executives say many cut-rate seats go begging and are available if passengers keep their plans flexible.

Congestion at airports and crowded aircraft are evoking complaints from the airlines' traditional customers, with business travelers the most vocal critics. They have trouble, they say, making last-minute reservations, and find it hard to prepare for meetings during flights because of distractions created by the new breed of flier—described in a recent United survey as a 44-year-old with an annual income of less than $23,500. The same survey found that females, blue-collar workers and infrequent travelers are flying more often, often to visit relatives.

Other seasoned travelers echo the complaints of businessmen. Recently, for example, Carey Anthony, headmaster of a junior high school in Nassau, the Bahamas, stood anxiously at an Eastern Air Lines departure gate wondering whether he and his wife and their four children would be able to get on board a late-evening flight to Orlando, Fla.

Mr. Anthony, himself a former flight engineer for British Airways, travels frequently on the discounts his wife receives as an airline employee. He had hurriedly changed an earlier plan to take his family to London after El Al said it was canceling its London stopover because the plane was filled with passengers bound for Israel.

As Mr. Anthony bemoaned the disappearance of "cologne in the restrooms and champaigne in the cabin," an agent called out his name and told him only one seat was available. Leaving the airport for a hotel, he grumbled, "This has never happened in the 10 years we've been traveling as a family."

THE AIRLINES: FLYING HIGH

(By Thomas J. Murray)

"This summer, every major airport in the country will be like a zoo," predicts Robert Six, the outspoken chairman of Continental Airlines. "Passengers are going to find the crowds so dense and delays so annoying, they'll be hopping mad. And airline personnel will be harassed and overworked like never before."

If Six's scenario materializes, air travel will be a frustrating experience for millions of vacationers. But for the nation's airlines, it will be one more confirmation of their remarkable turnaround in the past two years. Like the fabled Phoenix, the airlines have emerged from the ashes and are flying high again. From a disastrous earnings loss of $84 million in 1975, the eleven major trunk lines set a new profits record of $608 million last year, and flew more passengers—240 million—than ever before. Even perennial big losers like Pan American, Trans World Airlines and Eastern made big gains. Indeed, 1977 was the first year since 1967 that all the major carriers were in the black.

Of course, the airlines have had profitable years before and then crashed. But most industry leaders believe that this upsurge is different and that the good times will continue.

Getting off to a good start this year, the traditionally weak off-season first quarter was profitable for the first time in a decade, with overall industry earnings of $73 million on a surprisingly strong 14% gain in passengers. For such carriers as United, Continental and Western, it was the best first quarter in history. And barring any unforeseen events, Wall Street analysts, who only a few months ago were predicting an earnings decline for the year, are now forecasting another record performance. They expect the carriers to earn $700 million or more on a 10%-or-better rise in traffic.

Helping mightily to pump up the profits is the fact that, for the first time in years, the airlines are running close to full capacity. The industry's load factor (the percentage of available seats filled), its most important yardstick of profitability, is currently up four points over last year to an average 60%, the highest level since 1967. And with little new plane capacity planned for the next five years, analysts expect load factors to remain high. (Airlines consider an average load factor of a little above 60% to be practical full capacity because they fly at all hours of the day and night. Since most passengers want to fly at the most desirable times, light night loads lower the percentage even though day flights may be full.)

One major reason for the high load factors is the healthy state of the economy. Airline traffic is closely aligned with the pace of real Gross National Product, and during the past two years rising employment and expanding disposable income have released a huge pent-up demand for travel stemming from the last recession. Even more important is the recent proliferation of discount fares, which attracted millions of Americans to air travel for the first time. With few exceptions, these heavily promoted special deals have succeeded beyond the airlines' wildest expectations.

Ironically, the discount fares would never have happened if it hadn't been for pressure from Washington to increase price and route competition in the industry. A controversial bill to sharply reduce the federal regulations that govern the airlines is currently making its way through Congress. And even without such legislation, the Civil Aeronautics Board in mid-1976 gave the carriers permission to offer discount rates of up to 45 percent on regular fares.

Afraid that discount tickets would cut heavily into full-fare business, most of the carriers at first resisted the pressure to lower prices. And one early cut-rate plan, the "No Frills' flights introduced by National Airlines on its Florida-New York route and later adopted by competitors Delta and Eastern, was unprofitable from the beginning.

Then early last year, American Airlines introduced its "Super-Saver" plan, which offers discounts of 45 percent to passengers who book seats thirty days in advance and stay at their destination for a minimum of seven days. The other airlines quickly joined the bandwagon with similar programs on a wide variety of routes. And this year, Continental and Western heated up the competition by eliminating all requirements on advance reservations and minimum stays.

PACKING THEM IN

So far at least, the airlines' fears that they would lose money on discounts have proved groundless. In this year's unexpectedly profitable first quarter, not only did millions of unanticipated passengers flock after the cheap rates, but the volume of full-fare passengers held up, and probably even increased over last year. In the airline industry, the key to improving profitability is to fill more seats per plane-mile flown; as a rule, it costs a carrier almost the same to run a flight full or half empty. So packing more people into every flight, even at discount prices, lowers operating costs by spreading them out over a much broader base.

On some routes, the low fares have meant the difference between red and black ink. TWA, for example, had been losing heavily on its Chicago-Los Angeles run before launching its "Super Coach" fare last year, and now claims that it is in the black. On Western's Los Angeles-Florida route, which lost $3 million in 1977, the load factor rose to 53 percent this spring from 32 percent last year, and the company started making a profit in May.

Starting this month, the airlines can slice fares another 5%. But despite the early successes, not all industry leaders are convinced that the low fares will prove beneficial in the long run. Such chief executives as American's Albert V. Casey and United's Richard J. Ferris still fear that they may eventually divert many regular-fare passengers and eat into profits. "If that should happen," says Ferris, "they will be cut back sharply and used more selectively."

On the other hand, Ferris also sees the possibility that as more and more people take to flying, ongoing passenger traffic might increase to the point that discount fares will no longer be necessary on a wide scale. "If they create so much demand that load factors are consistently bumping up against full capacity," he says, "they are likely to be reduced in line with normal market forces."

To cash in on the passenger boom and raise load factors even higher, most of the airlines are increasing the seating density of their planes. United, for instance, has just completed a total reconfiguration of its planes, raising the number of seats an average 5%. And at Continental, the lounge on its DC-10s has been eliminated, allowing the company to expand seating 28%, from 203 to 259, on every aircraft. According to Bob Six, the expanded seating is the equiv-

alent of adding four new DC–10s, a saving in capital outlays of $130 million. The carriers are also buying new planes with denser seating. United is currently taking delivery of 46 new B–727s with 134 seats, versus the 128 in its existing fleet. And Continental is getting ten B–727s with ten more seats.

To be sure, even high load factors have not yet significantly boosted airline profit margins. Last year, the average return was only 3.5%, compared with an average 4% for all industries. As one of the highest-cost industries in the nation, the airlines are strapped by two big expense items: labor, which constitutes roughly 40% of its operating costs; and fuel, which has more than tripled in cost during the past five years and eats up 20 cents of every dollar of revenue. On top of that, more than half the eleven trunk lines are still flying many aging planes, which have inefficient seating capacity, eat up too much fuel and cannot meet the government's new pollution and noise standards.

As a result, it is estimated that at least 75% of the nearly 2,000 commercial planes in the U.S. fleet will have to be replaced through the 1980s. A few carriers, such as Delta, Northwest, National and Continental, have kept pace with changing needs and will not require massive replacements. But United, for example, will require some 300 new planes, American close to 200.

BOEING VS. AIRBUS

Beginning about 1982, the airlines are expected to shell out a whopping $60 billion for new jets—versus the $24 billion they spent in the 1960s and 1970s. The biggest question in the industry is which of the new-generation planes will be selected and how they will be financed. As the carriers learned after their last splurge in the early 1970s, many of the planes they bought proved to be either too big or too small for their most heavily traveled routes. The largest of the narrow-bodied jets in use, the B–707 and DC–8, carry up to 180 passengers, while the wide-bodied B–747, DC–10 and L–1011 carry more than 250. The next time around, the airlines figure they will need a new plane with 200 seats, an 1,800-to-2,000-mile range and, of course, sharp reductions in fuel consumption.

Boeing has designed a family of planes tailored to these specifications. Its proposed twin-engine 767 is in the wide-cabin configuration that has become popular with the public and will carry 180 to 200 passengers. Boeing claims it will also save up to 40% in fuel costs over current narrow-bodied jets. Boeing's major competition in the new-plane stakes is the B–10 Airbus being planned by Airbus Industrie, a French-German consortium, and is similar in size and range.

Both United and American are expected to decide on either the 767 or the B–10 in the next few months. The final decision will turn on a number of factors, says United's Ferris, including not only the technology but the costs of operating the planes and the financing terms offered to buy them. The new jets are expetced to cost at least one-third more than their predecessors, and the Europeans are currently considered to have an edge in the kind of financing offered. This year, for example, Airbus Industrie got a $778 million order for 23 of its current big jet, the A–300, from financially strapped Eastern Airlines. Airbus agreed to lease four of the planes to the carrier at marginal cost and is picking up part of the interest costs in tandem with General Electric, which makes the engines. "With the resources of their governments behind them," says Ferris, "the Europeans can offer easier terms as of now."

But Boeing is counting on the reputation of its planes for high quality and performance to give it the lion's share of the new business. "Moreover," says one industry analyst, "it is unlikely that many of the airlines will risk the political head that would surely result from major purchases abroad. With the balance of payments in such terrible shape, the odds are growing that we'll see more 'Buy American' sentiment in the industry."

HEALTHIER BALANCE SHEETS

Perhaps surprisingly, most of the airlines are in pretty good financial shape as they gear up for the 1980s. With relatively few plane purchases in the past six years, the once-horrific balance sheets have become nearly healthy. The eleven carriers reduced their long-term debt by nearly $1 billion to $4.4 billion in 1977, and improved their average debt-equity ratio to 45–55 at the end of the year from 58-42 in 1975.

Some of the airlines will have to take on extra debt this year due to a new regulation requiring them to capitalize their leased aircraft on the balance sheet. Still, the long-term debt load is considered bearable, and the carriers are expected to continue reducing their debt substantially over the next few years when capital outlays will continue to be relatively light.

In fact, the airlines are beginning to be able to raise money again for the first time in years. To finance plane purchases in the past year, Braniff raised $240 million from a common-stock offering and bank loans, and American raised $95 million through a preferred-stock offering. Industry analysts believe that more sources, including the insurance companies, will open up over the next five years.

One plus for the future, say observers, is that the airlines seem to have learned from the mistakes of the past and will make their new plane purchases in far more orderly and efficient fashion this time around. "Most of us were flying by the seats of our pants seven or eight years ago," says one chief executive. But I think we've all learned that this is a business and that the bottom line is what really counts."

The carriers are also working hard to get a handle on their spiraling operating and labor costs. Besides boosting seating density, they are making an effort to reduce the number of flights on unprofitable routes. TWA, for one, has made its Chicago-Los Angeles route profitable for the first time by cutting the number of daily flights from five to two and taking two big L–1011s off the run.

To keep a lid on personnel, Continental, for example, says it is planning no more than its normal summer increment in hiring despite the anticipated surge in business. And United, the biggest employer with 5,400 pilots and 7,400 flight attendants, has just completed a total rescheduling of its system that is expected to sharply reduce the very costly layover time between flights.

Fuel costs, of course, are largely beyond the airlines' control. And for every penny-per-gallon increase in fuel, expenses for the eleven trunk lines rise $100 million. After tripling in the three-and-a-half years following the 1973 oil embargo, fuel cost increases have slowed to an annual rate of about 12% recently. The airlines hope to keep annual increases to no more than 15% over the next few years, and then are counting on the next generation of aircraft to help reduce the burden.

The one shadow overhanging the industry is the deregulation bill, which recently passed the Senate and is now under consideration in the House. The bill would allow the airlines to add new routes and permit new carriers to enter the business without CAB approval.

The industry is split on the issue. Such smaller carriers as Western and Braniff are adamently opposed to deregulation, while United and Pan American are supporting it. The antis fear that the bigger carriers would swamp the smaller ones with price wars and unfair competition, forcing them out of business or into a merger in order to survive. The proponents, on the other hand, contend that the freedom to choose new routes and drop unprofitable ones would be healthy for the business.

The chances for passage of the deregulation bill appear to be strong. Even some of its opponents seem resigned to its passage, possibly this year and almost certainly by 1979. Moreover, the CAB made an unprecedented move to relax its strict regulation of routes a few weeks ago. After months of considering which airlines should be awarded new routes between Oakland, California, and other cities, it suggested, in effect, that the carriers fight it out among themselves. According to the CAB's proposal, a total of fifteen new routes could be established from Oakland, and any airline would be allowed to enter new routes without the board's approval.

GREATER EFFICIENCY?

Some industry analysts believe that a merger movement is on the way with or without deregulation. The burden of paying for new planes in the 1980s, they say, could be too much for weaker lines such as National. And a number of analysts agree with Robert Joedicke of Lehman Brothers, Kuhn, Loeb Inc., who says: "Properly conceived, mergers could produce a more efficient airline system."

The opening gun may have been fired several weeks ago when Continental and Western announced that they have begun merger talks again. The two Los Angeles-based carriers have long felt that consolidation of their routes—Continental's are mostly East-West, Western's North-South—would create a much stronger single airline, and they came within a hair-breadth of merging in 1970.

But despite the problems deregulation could bring, most airline chiefs are optimistic about the future. The basic economic factors affecting air travel have so improved, they say, that the industry is entering a new era of mass transportation. Even if the economy should falter or discount fares have to be rolled back, they believe that many of the new passengers they have attracted for the first time will continue flying, allowing the carriers to maintain their healthy load factors. Equally important, they expect to reap long-term benefits from their own operational economies. "We haven't completely eliminated the ups and downs that have plagued us," says United's Ferris. "But in the future we expect them to be much more moderate."

THE FORECAST: FLYING HIGHER

Profits for the major U.S. airlines are expected to set another record this year—rising to at least 15% to an estimated $700 million. According to analysts' projections, most of the carriers should share in that improvement. Lower earnings are forecast for Northwest, which was hit by a pilots' strike in May. American is also expected to be down slightly after a loss of $7 million in the first quarter. (American was hit by a huge increase in its fuel bill after the termination of a low-cost contract, and the severe winter weather forced it to cancel more than 2,000 flights.) National is expected to have a huge gain as it continues its comeback from two lengthy strikes.

Earnings per share

Company	1977	1978 est.	Percent change
American	$2.54	$2.50	−1.6
Braniff	1.82	2.30	+26.4
Continental	1.77	2.20*	+24.3
Delta	5.86	6.00	+2.4
Eastern	1.73	2.25	+30.1
National	0.35	2.10	+500.0
Northwest	4.29	3.85	−10.3
Pan American	0.83	1.65	+98.8
TWA	3.83	5.25	+37.1
United	3.72*	5.75	+54.6
Western	1.09	2.50**	+129.4

*Excluding extraordinary gain of $1.32 a share for Continental in 1978 and $1.82 for United in 1977.

**Including $1.28 a share from change in accounting methods. Estimates based on analysts' projections.

JAPAN'S EXPORTS AND OURS

Mr. PERCY. Mr. President, we have heard a great deal this spring about the administration's efforts to expand our exports. The President directed the formation of an interagency export policy task force, for example, giving many businesses the impression that the Federal Government was about to take exports seriously.

Unfortunately we have heard very little of this group since its formation and have been led to believe that its recommendations for export expansion are gathering dust on the President's desk. Some press reports indicated that the task force has recommended retention of DISC—the Domestic International Sales Corporation—provision of the tax laws. It is one of the very few incentives for export we now have, but the President had recommended elimination of it in his tax message earlier this year. In short, the chances for the hard-hitting export program we need seem slim indeed.

What is more, an August 1978 National Journal report on our export position pointed out that:

Between 1974 and 1977, the U.S. share of total OECD exports dropped from 18.5 percent to 16.8 percent—a postwar low—and the share in most major markets dropped, too.

The following chart, from the National Journal article, is very revealing about our long-term slide as an exporter:

U.S. exports to major markets (U.S. share of OECD exports)

[In percent]

	1974	1977
Japan	52.4	48.2
European community	11.0	9.8
Developing countries	27.2	24.6
Communist countries	12.4	8.4

Mr. President, these figures reveal that our slowdown in exporting is attributable to more than just the temporary faster rate of economic recovery in the United States. Our faster growth rate has pulled in more imports in recent months than our major trading partners have been able to buy from us. One clue as to why we have not kept pace was presented in an August 4 Chicago Tribune editorial which I would like to insert for the benefit of my colleagues.

The Tribune editorial shows that our trade partners—especially Japan—are "driven" to export because of the amount of resources imported. We should be mounting the same effort here and I hope the President acts on the export policy task force's recommendations soon.

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

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

A CLOSER LOOK AT JAPAN'S EXPORTS

It's enough to make one bow toward the Orient. The latest six-month figures show our trade deficit with Japan was $6.3 billion, double that of a year earlier. We're reminded of the Japanese auto maker's slogan: "We are *driven*!" The double meaning of the Datsun motto applies to Japan itself. Its products are driven, snapped on, clicked, and buttoned up—by purchasers of cars, stereos, cameras, and clothes, here and abroad.

From advanced electronics to basic steel, Japanese business—in close cooperation with the Japanese government—tailors excellent products for foreign markets which are cultivated with the diligence of a people who are—well—driven. As a result, the Japanese are now the undisputed champions in the global trade-surplus sweepstakes, ahead even of the West Germans.

The surpluses and deficits

[January–June, 1978; in billions of dollars]

Japan	14.2
West Germany	11.2
Canada	1.4
France	0.2
United Kingdom	−1.5
United States	−16.3

In view of the Japanese success as traders, it's surprising to see figures, showing them next to last among big industrial nations in the importance of exports to the national economy.

Dependence on exports

[Exports as percentage of gross domestic product, 1977]

Ireland	48.9
Belgium, Luxembourg	46.8
Netherlands	41.5
Denmark	23.3
United Kingdom	23.3
Italy	23.2
West Germany	22.9
France	16.8
Japan	11.8
United States	6.5

These figures seem to imply that Japan is much less dependent on foreign trade than Europe. Does that account for President Carter's apparent belief that the Japanese can afford to stifle exports voluntarily and to eat up more imports, as he called on them to do at the London economic summit last year and in Bonn this year?

We hope not, because the figures are woefully misleading. We asked the European Economic Community [Common Market] office in Washington to subtract from the figure the value of exports by Common Market nations to each other. The resulting ratios are very similar to Japan's.

Dependence on exports

[Eliminating trade within the Common Market; 1977 percentages of GDP]

United Kingdom	14.8
Belgium, Luxembourg	13.5
Denmark	13.0
West Germany	12.6
Italy	12.4
Netherlands	12.2
Common Market	11.9
Ireland	11.2
France	8.3

This is understandable because the nine Common Market countries trade among themselves through their Customs Union almost as freely as the 50 American states trade with each other.

With respect to exports to the rest of the world Europe differs little from Japan; only the U.S. ranks well below all of them.

The Japanese have a special reason to feel "driven" when it comes to exports. Unlike the Americans and Europeans, Japan has to import practically all its raw materials and energy. It has to pay for these things by selling its products to the rest of the world.

So the Japanese aren't going to roll over and play dead when it comes to export competition. This is worth remembering, because Mr. Carter's domestic policy advisor, Stuart Eizenstat, was quoted recently as saying the government's plan to raise U.S. exports by $15 billion in five years rates a low priority in the administration. If that is correct, then Mr. Eizenstat deserves a gold medal—from the Japanese ministry of trade.

CAPTIVE NATIONS

Mr. PERCY. Mr. President, recently in Chicago the Polish-Hungarian World Federation and Affiliates, under the leadership of my good friend Dr. Karol Ripa, adopted a resolution of support for the captive nations of Europe. The resolution further called on the United States and the United Nations to reaffirm commitments to the peoples of these nations. It asked the United Nations to take proper steps in planning for free elections in these nations now dominated by a foreign power.

The resolution also appealed to the President and to local governments to appoint more members of ethnic groups to high positions. It stated that ethnic Americans are underrepresented in public office and in executive positions in business.

Finally it urged the leaders and members of ethnic groups to unite to oppose communism at home and abroad.

In another resolution the Federation called for an end to discrimination against Hungarians living in Transylvania so that the Romanians and Hungarians may work out their destinies in mutual understanding.

I appreciate the opportunity to bring these positions to the attention of my colleagues.

DOLLAR FALLS, CONGRESS FIDDLES

Mr. PERCY. Mr. President, I would like to bring to the attention of my colleagues an editorial which appeared on August 17, in the Chicago Sun-Times.

The article focuses on an issue of current nationwide concern: inflation. Careless Government spending is one cause of inflation which Congress must rigorously address. As ranking minority member of the Government Affairs Committee, I have consistently sought to streamline the operations of our Federal Government's regulatory agencies, and to eliminate unnecessary programs.

Another important, and potentially expanding, source of inflation is our Nation's dependence upon foreign oil. To combat this source of inflation, it is imperative that we devote greater effort to the exploration, extraction, and broader utilization of domestic fossil fuels.

While we must encourage the further development of our oil and coal resources, it is essential that we look beyond these conventional technologies. In evaluating new technologies, however, we must be wary of apparent panaceas. Over the past three decades, we have pumped billions of Federal dollars into the civilian nuclear power program. Many people within and outside of Government expected nuclear power to fill the supply vacuum created by dwindling fossil fuel supplies. As it has turned out, nuclear fission is likely to fall short of this hope because of technical difficulties, unresolved safety questions, and poor economics.

We must continue to work to resolve the problems associated with nuclear fission, and we can guardedly hope that nuclear fusion—still an infant technology—may someday become a safe and economical energy producer. However, we would be foolish to stake our energy future on these technologies.

Less risky, potentially more economical energy sources include the wind, the sun, and products of the sun such as forest and crop debris. Federal incentives for these promising technologies are essential. On March 13 of this year, I introduced the Small Scale Energy Technology Programs Reorganization Act. In response to this bill, the Department of Energy is in the process of creating an Office of Small Scale Technology, and has expanded its small grants program.

A final aspect of a sound U.S. energy policy is conservation. Many European countries have discovered that energy efficiency can contribute to, rather than detract from, a high standard of living. The Alliance to Save Energy, which the late Senator Humphrey and I started last fall, is one attempt to encourage conservation here in America.

Mr. President, I ask unanimous consent that the article, "Dollar Falls, Congress Fiddles," be printed in the RECORD.

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

DOLLAR FALLS, CONGRESS FIDDLES

Suppose this country got its economic house in order tomorrow. It stopped inflation. It ended its trade deficit. Would the dollar turn from its sickly green to a robust green of good health and renewed value?

Ask 10 experts, and you'll get 10 different opinions. Yet the concensus is a cautious yes: The dollar's slide to postwar record lows—it plunged a shocking 4 percent against the Swiss franc Monday alone—would stop and its value would rise.

But several things must occur to slow down inflation, much less stop it, and to reduce record-high trade deficits. For example, Congress and the public must do more about needless spending (one aspect of rising prices) and energy waste (one aspect of the trade deficit, since America imports almost half the oil it uses, and misuses).

In other words, don't hold your breath waiting for the economy to get well.

For example, Congress still insists on spending needless billions for nuclear aircraft carriers. Never mind that they're outmoded; never mind inflation. But we've mentioned all that before.

Now Congress may sink a modest aspect of President Carter's energy bill—a compromise to deregulate natural gas by stages until 1985. Yet without positive action on energy, this country's reliance on foreign supplies increases, imports increase and—not balanced by increased exports—the trade deficit increases.

Carter has said the "energy crisis is an invisible crisis, which grows steadily worse—even when it is not in the news." He told a press conference last week that the public still doesn't realize how oil imports weaken the dollar's value.

That's a big part of the problem. An understanding public would be an angry public. And an angry public wouldn't tolerate Congress' virtual inaction on energy steps Carter proposed a year and a half ago.

Maybe a public that often drives to the corner drug store and too often shuns public transportation (in the Chicago area, drivers wrongly believe driving is cheaper than L, bus and train service) is counting on things like Princeton University's "breakthrough" on nuclear fusion to bring cheap, abundant energy; or counting on natural gas discoveries in the Baltimore Canyon, 100 miles off the East Coast. That's a mistake.

Fusion power is decades away, if at all. Princeton scientists spoke too soon. And the amounts of offshore gas are unknown. The only sure energy bet is ending energy waste.

If not, see how far the dollar can drop.

THE COSTS OF FEDERAL REGULATION ARE TOO HIGH

Mr. PERCY. Mr. President, on August 12 the National Journal carried a very informative article on regulatory reform, entitled "Carter's Assault on the Costs of Regulation." The article was written by Timothy B. Clark.

Regulatory agencies pay a surprisingly large role in our everyday lives. They regulate virtually everything from television to toys, to trading on the stock market. For the consumers and industries affected, the actions of a particular regulatory agency are sometimes as important as the actions of Congress or the President.

National Journal, which was commended in a recent Wall Street Journal editorial for taking "an uncommon interest in how our Government actually works," underscores in this article the importance of regulatory reform—and the difficulty of enacting it. Special interests are often well-funded, noisy, and powerful. They are only sometimes right. The essence of statesmanship is to look past the clamors of the special interests to the needs of the public interest. And the public interest requires objective assessment of costs and benefits, apart from whose ox is being gored.

Where the public interest is the goal, regulatory reform produces dramatic success stories. Recent airline reform efforts have led to much lower prices, more passengers, and higher profits. In short, everything is turning out exactly as reformers promised.

Most regulation has yet to be reformed. The special interests maintain their reign in some sectors. Meanwhile, every year, according to authoritative estimates, Federal regulation costs the economy from $60 to possibly in excess of $100 billion.

It is time to scrutinize all of Federal regulation. To the extent practicable, we must strive to better assess proposed and existing regulations and determine whether the costs are indeed outweighed by the benefits. I say this with full awareness that it can be exceedingly difficult to calculate the vital benefits of health, safety, and environmental regulation. But that does not mean that we should not make the effort. We should—making improvements in what is admittedly an imprecise art as we go along.

Mr. President, because of the timeliness and thoroughness of Mr. Clark's National Journal article, I ask unanimous consent that it may be printed in the RECORD.

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

[From the National Journal, Aug. 12, 1978]

CARTER'S ASSAULT ON THE COSTS OF REGULATION

(By Timothy B. Clark)

If President Carter seriously expects to cut down on the inflationary consequences of federal regulation, he will have to endure the outrage of important constituent groups, hostility from congressional powers, resistance from the bureaucracy—and a very long wait.

The first three problems may be tolerable, though progressively less so as the 1980 election draws closer. But the last may be a political impossibility. Before Carter reaps any benefits from his efforts, he will antagonize a lot of interest groups.

For reform in the growth industry of federal regulation is a long-term proposition. A noticeable reduction in the rate of inflation directly attributable to changes in the regulatory process will not be achieved in the short term—in fact, the volume of federal regulation and its cost to the economy are virtually certain to grow in the decade ahead.

But if the changes Carter has made in the regulatory process are not likely to reduce the cost of living, they may well provoke controversy by producing a bias within the Administration against federal regulation.

Already, a coalition of labor and environmental groups has complained to Carter that his new regulatory review process represents "a serious threat to . . . the environmental, labor and consumer protection movements." At the same time, the Business Roundtable and other business groups have praised the President for instituting the new process.

Carter's assault on the inflationary impact of regulation got off the ground this spring, when the President became directly involved in a decision on standards to protect textile workers against "brown lung" caused by exposure to cotton dust. The dispute pitted the Labor Department and its Occupational Safety and Health Administration (OSHA) against the President's economic advisers, led by Charles L. Schultze, chairman of the Council of Economic Advisers (CEA).

A compromise was struck between Labor, whose chief concern was safety for the workers, and Schultze, who feared the cost of the proposed regulation. Even if the highly publicized flap, is soon forgotten, the controversy illustrated both the willingness of Carter to become personally involved in regulatory issues and the potential of the new process he has instituted to bring those issues to his attention.

The cotton dust case focused public attention for the first time on the Regulatory Analysis Review Group created by the Administration late last year to improve the quality of the analysis of proposed regulations that will have a significant impact on the economy.

Chaired by the CEA, the group intends to play a formal role in the rule-making process on major regulations. As demonstrated by the cotton dust case, it will also provide a mechanism for less formal involvement of Administration economic aides and the President himself.

Because the regulatory review group intends to examine no more than 10 or 20 regulations a year, it hopes to set examples for the agencies to follow with regulations that escape White House review.

The group represents one effort to implement the executive order that Carter signed on March 23 to ensure more thorough analysis of the consequences of proposed regulations. Agencies must prepare semiannual agendas of regulations under consideration, conduct early economic analyses of proposed regulations, provide for more public participation in rule making and regularly identify existing regulations for review. The order applies to executive branch departments and agencies but not to the independent regulatory agencies.

Among forthcoming regulations likely to go to the Regulatory Analysis Review Group are the following, according to those close to the operations of the group:

Environmental Protection Agency regulations governing the kind of technology new coal-fired power plants must install to reduce air pollution and setting new air quality standards for lead;

Interior Department regulations on reclamation of lands ravaged by strip mining;

Agriculture Department decisions on price supports for major commodities—wheat, feed grains and cotton;

Transportation Department rules on auto safety and fuel efficiency. Already under review is a proposed regulation, costing $2.8 billion, on access for the handicapped to public transit;

Energy Department regulations on conversion of power and industrial facilities from oil and natural gas to coal, and proposals for mandatory efficiency standards for equipment;

A Council on Environmental Quality proposal to make major exports subject to a requirement for preparation of environmental impact statements;

A variety of Labor Department issues, most notably OSHA's attempt to establish a general framework for regulating cancer-causing substances in the workplace. The regulatory review group, in its first formal comment, has criticized OSHA's economic analysis on control of exposure to the chemical acrylonitrile;

Treasury Department regulations on treatment of the handicapped under the revenue sharing program.

REGULATION AND INFLATION

By itself, Carter's regulatory reform effort can hardly make a dent in the double-digit inflation that has returned in recent months. But the President hopes his campaign will symbolize his determination to do everything in his power to control inflation, and he is doing his best to publicize it.

"We must cut inflationary costs which private industry bears as a result of government regulations," he said in his April 11 speech on inflation. "I am determined to eliminate unnecessary regulations and to ensure that future regulations do not impose unnecessary costs to the American economy."

It sounds simple: reduce the costs of regulation borne by industry, and industry will cut the costs of the goods and services it provides to the public. However, it may not be so simple.

There is no question that the costs imposed by regulation on the private sector have multiplied in recent years, although estimating the actual costs is a very imprecise science.

The most widely cited figures are those of Murray L. Weidenbaum, director of the Center for the Study of American Business at Washington University in St. Louis, and his associate, Robert DeFino. They estimate that in fiscal 1979, the cost of complying with the regulations of 41 federal agencies will total $98 billion—and Weidenbaum says his estimate is probably understated.

A recent analysis by Warren B. Buhler, former director of the defunct Federal Paperwork Commission, concludes that the total cost of complying with federal regulations will probably approach $200 billion in fiscal 1979.

Estimates of the cost of future regulations range even higher. James Miller, in a report submitted to OSHA for the Vistron Corp., calculated that the cost to business of controlling the 1,500 substances identified by the government as possible cancer-causing agents could conceivably reach $400 billion a year—or 20 per cent of the nation's current gross national product.

The truth is that no one knows how much regulation costs. And though it's not clear that reliable estimates can ever be made, the Commerce Department is trying to develop a "regulatory budget" that would show the costs to the economy of regulations issued by all government agencies. Such a budget might possibly be used to allocate costs among programs and agencies—allowing, for example, an increase of 5 percent for OSHA in a given year. OSHA then would have to set priorities and consider costs more carefully.

Clearly, federal regulation has had an enormous impact on business. Edward F. Denison, a senior fellow at the Brookings Institution, estimated that pollution abatement requirements and health and safety regulations (as well as a rise in crime) have cut productivity by half a percentage point—a significant number in light of the fact that over-all productivity has been rising by only about 2 per cent annually in recent years.

Barry P. Bosworth, director of the Council on Wage and Price Stability, calculates that regulation contributes as much as three-quarters of a percentage point annually to the increase in the consumer price index, and that compensatory increases (as in wages and prices) "double the original impact within two years."

But unfortunately for Carter, there may not be much the President can do to reduce the impact of regulation on business. Most regulations are required by law, and Congress is not showing any signs of cutting back on the number of laws requiring federal regulation. In fact, the departments and agencies will have to promulgate many more regulations just to comply with recently enacted laws.

For example, current air quality standards for new power plants would cost electricity consumers some $36 billion from 1983 to 1990. To comply with changes enacted in 1977 in the Clean Air Act, the EPA staff has proposed new standards that would cost, according to the Energy Department, an additional $26 billion to $37 billion. The Council on Environmental Quality estimated last December that requirements imposed since 1970 would add $290 billion in the decade beginning in 1976 to the cost of the total federal pollution control effort.

Another very expensive regulation in the works is OSHA's proposal for noise control. The proposed standards would cost an estimated $18.5 billion in capital costs and billions more in annual operating costs.

Thus Carter can hardly hope to reduce federal regulation on his own authority. As one Administration official said, the changes that Carter has adopted in the regulation-making process are "simply not credible as a tool against inflation."

Simon Lazarus, who is in charge of regulatory reform on the White House Domestic Policy Staff, said the greater benefit of the Administration's attempts to restrain inflation through regulation will lie in their symbolic value.

"No one is silly enough to pretend that these efforts will affect the consumer price index by half a point," Lazarus said. But in an Administration "which is not contemplating mandatory [wage and price] controls," he said, "we are trying hard to show that government is doing what it can to restrain inflation, and so to convince the private sector, which is responsible for most of the inflation, to restrain itself."

CONTROLLING REGULATION

Carter is not the first President to worry about the mounting cost of regulation, nor the first to attempt to make the regulatory agencies pay more attention to the economic consequences of their actions.

After two "inflation summit conferences," President Ford in November 1974 issued an executive order to require agencies to prepare inflation impact statements for all major regulations. Just before leaving office, at the end of 1976, Ford extended the life of inflation impact statements, changing their name to "economic impact statements." Carter's new executive order requiring "regulatory analyses" is the latest extension of the idea.

During the Ford Administration, agencies typically prepared impact statements for major regulations after proposals already had been developed. Thus the analyses became tools to justify the course of action the agency had already decided to take.

Carter, with his Executive Order 12044, is seeking to force the agencies to weigh regulatory alternatives earlier in the process, and unlike Ford, he is asking for a review of regulations already on the books.

As a first step in implementing the new order, agencies were required to publish descriptions of their procedures for developing regulations. Forty agencies complied, filling 240 pages of the *Federal Register* with 235,000 words. Another 26 agencies claimed they were exempt from the order because they issue few regulations. Public comments are being received on the agencies' submissions, and final procedures are due to be published by Sept. 15.

The Regulatory Analysis Review Group, created by Carter to implement the executive order, is chaired by CEA chairman Schultze, who has assigned day-to-day responsibility to CEA member William D. Nordhaus. The group includes the principal economic and regulatory agencies of the government. The economic members are the CEA, the Office of Management and Budget (OMB) and the Commerce, Labor and Treasury Departments. Regulatory members are the Agriculture, Energy, Health, Education and Welfare, Housing and Urban Development, Interior, Justice and Transportation Departments and the EPA.

The group intends to review 10 to 20 regulations each year, with the issues picked by an executive committee whose members are the CEA, OMB and two other agencies.

Nordhaus said the group has no formal agenda of regulations to be reviewed, though it is aware of major regulations under development in the agencies. As a matter of process, however, regulations are not considered for review until they are formally proposed by the agencies.

Once an issue is chosen for review, the Council on Wage and Price Stability prepares a report focusing on the economic consequences of the proposed regulation. In most cases, recommendations apparently will not be made, but the analysis will be entered into the agency's record before the comment period is closed.

If, however, Schultze determines that the wage-price council review militates strongly for a course of action that is contrary to the agency's intentions, he can press his case with the agency head and, as a last resort, take the issue to Carter.

COTTON DUST

The full regulatory review process, including selection of a regulation shortly after it is proposed and the development of a formal comment by the Council on Wage and Price Stability, has been used only once, in OSHA's acrylonitrile case.

But the regulatory review group, on a more informal basis, has brought about changes in some other regulations. The most controversial case concerned cotton dust.

Unions representing some 600,000 textile workers have been trying for better than a decade to force companies to reduce exposure to the dust, which, according to Labor Department estimates, already has afflicted some 35,000 people with a respiratory illness called byssinosis, or "brown lung."

With a cotton dust regulation in the offing, textile executives were among the heaviest contributors to Richard M. Nixon's 1972 reelection campaign, and OSHA pledged that, as an aid to Nixon's campaign, "no highly controversial standards, i.e. cotton dust, will be proposed by OSHA."

In 1975, in response to a union court suit, OSHA proposed a cotton dust standard estimated to cost industry some $2.7 billion in capital investment. Predictably, the companies protested, and the case continued under Labor Department review until final standards were published on June 23, 1978. During the review, OSHA modified its proposed standard and cut costs; the final regulation is estimated by the Labor Department to cost $656 million in capital investment and $206 million in annual expenditures.

Schultze became interested in the issue late in the review process. Though OSHA had promised a federal judge it would publish a standard by May 31, Schultze told the Regulatory Analysis Review Group in a May 2 memo that because of Carter's concern about inflation, "it is important to ensure that any new regulations do not impose unnecessary or uneconomic costs on American industry." He said he and Robert S. Strauss, the President's inflation counselor, would like the standard delayed to make time for a study of "its likely economic impact."

OSHA's proposal relied on installation by industry of engineering controls within factories, but in a May 18 memo, the wage-price council said that $125 million in compliance costs could be saved by greater reliance on medical surveillance and heavier use of respirators, Schultze, with the President's consent, told Labor Secretary Ray Marshall that revisions in the standard were desirable.

This produced a blast from Marshall; in a five-page memo to the President, he directly challenged the right of CEA and the wage-price council to delay enforcement of the cotton dust standard and said that delay "will cause a major political upheaval among such groups as textile unions, the AFL–CIO, the Brown Lung Association, public interest groups and Congress."

Carter and Vice President Walter F. Mondale met on June 7 with Schultze, Marshall and other Administration officials. Backtracking from his earlier stand, Carter decided essentially to support the Labor Department, although two changes were made in the OSHA proposal. A firm, four-year timetable for compliance was established (instead of leaving the deadlines to OSHA) and the regulations were amended to permit the normal OSHA procedure of allowing variances if alternatives to engineering controls could achieve the same health benefits.

Although both industry and labor are challenging the cotton dust standard in the courts, Carter seems pleased by it. In a June 8 statement, he said a solution had been found "to control this threat to the health of the workers in textile mills, but with a greatly reduced over-all cost."

OTHER CASES

The Regulatory Analysis Review Group also played a role in modifying standards issued June 13 by EPA to limit increases of air pollution in clean air areas of the country.

Following the provisions of 1977 legislation, the agency last November proposed rules that would have required new or modified pollution sources to install the best available pollution control technology if their emissions would exceed 100 tons per year without pollution controls. Some 4,000 new sources per year were to be affected.

Nordhaus and Bosworth took an early interest in the case, holding meetings and exchanging memos with EPA officials during the first half of this year.

Partly as a result of their efforts, EPA moved to exempt any source that would emit less than 50 tons of pollutants with a lesser degree of control. This cut the number of sources to 1,600 per year.

CEA wanted to restrict the standards further, so that only 900 new sources would be subject to the stringent requirements. But EPA administrator Douglas M. Costle argued against this step in a meeting with Schultze (during which he cited other concessions EPA had made to CEA), and Schultze decided not to take the issue to the President.

The formal review process has been applied so far only to an OSHA proposal to regulate worker exposure to acrylonitrile, a chemical that produces cancerous growths in animals and probably humans as well.

E. I. du Pont de Nemours & Co. and three other companies produced 1.5 billion pounds of the chemical in 1976, and according to OSHA, 5,130 workers inhale the substance. It is used in the manufacture of dozens of products, including clothing and brake linings.

In its published proposal, OSHA asked for comments on three possible ceilings that could be set on exposure to acrylonitrile: 2 parts per million parts of air, 1 part per million and 0.2 parts per million. An economic impact statement filed with the proposal estimated capital costs to the companies at $109 million for the first, $198 million for the second and $698 million for the third.

On May 22, Bosworth, on behalf of the Regulatory Analysis Review Group, sent OSHA a review of the agency's economic analysis of the proposed regulation.

The review asked how regulations should be set when the gains—in this case, the reduced risk of cancer—cannot be definitely quantified. Criticizing OSHA for failing to undertake a risk assessment, the review estimated it would cost $4 million to prevent a single cancer death under OSHA's least stringent standard, $29 million under the middle standard and $170 million under the strictest standard. The latter, said the review, seemed too high.

The review took issue with OSHA's official position that estimates of risk reductions are not necessary so long as some risks can be reduced, and that exposure to risk should be reduced to the lowest level feasible. "Simply knowing that the lower the permissible exposure level, the lower the risk of cancer, is not information enough on which to base a standard unless it is intended to eliminate immediately all risks regardless of the consequences. Although as a long-range goal this may describe the intend of the OSHA act, as an operational procedure it is empty, since in order to eliminate all risks forthwith, industry would have to shut down."

The regulatory review group also addressed an issue that frequently arises in OSHA cases: the merits of mandated engineering technologies as opposed to so-called performance standards. In general, the economic advisers favor the latter, on the grounds that if industry is told it must perform up to a given level, it will find the most cost-efficient way to do so.

OSHA, by contrast, traditionally has favored specific standards dictating engineering controls. With cotton dust, acrylonitrile and other substances, industries might be able to meet performance standards (limiting worker exposure) by providing personal respiratory devices to their employees—a step often less costly than redesigning the workplace but one that is fiercely resisted by OSHA and by organized labor.

Whether the acrylonitrile review will have an impact on OSHA's decision cannot be predicted; the final regulations will not be published for several weeks.

In late June, the Regulatory Analysis Review Group chose a second issue for formal consideration: a Transportation Department draft regulation to make public transportation accessible to people in wheelchairs. The group questioned whether the most efficient way to meet this goal was to install elevators in existing subway stations at a cost of $1.8 billion, as the department suggested.

OPPOSITION

The regulatory review process has encountered suspicion and hostility from environmental and labor groups, the bureaucracy and some Members of Congress.

On Aug. 3, 31 organizations sent a letter to Carter calling for elimination of the regulatory review program on the grounds that it "threatens important commitments you have made to the health and welfare of the American people, with little or no effect on inflation or government efficiency." Signatories included representatives of the Natural Resources Defense Council Inc., the AFL–CIO, the United Auto Workers, the United Mineworkers of America, the United Steelworkers of America, the Environmental Defense Fund Inc. and the Sierra Club.

From the agencies, particularly EPA, has come a defense of regulatory programs. In an April 27 speech, Costle said that although a recent study by Chase Econometrics had concluded that EPA programs add 0.3 to 0.4 percentage points a year to the consumer price index (CPI), "an estimated increase in the CPI does not mean that environmental regulations are inflationary. The CPI ignores improvements to public health, reduced property damage, increased crop yields, etc., that result from pollution control spending." If the CPI measured these "savings to the consumer, then pollution control spending would not appear inflationary," Costle said.

Deputy EPA administrator Barbara Blum, in July 26 congressional testimony, said EPA "would prefer that they [the Regulatory Analysis Review Group] work with us earlier in the future on selected regulations to gain a fuller understanding of the constraints and tradeoffs and to suggest alternatives when they are less likely to delay final decisions on our regulations."

Others in EPA worry about the possibility that the regulatory review program could be abused. Assistant administrator William Drayton Jr. recalled that the last Administration had created a "quality of life" review program in OMB, which he said had been used to "muzzle" EPA and to "suggest that economic interests had a special access and could come in and influence the agency's decisions."

"For us," said Drayton, "regulatory independence is absolutely imperative, and it is entirely inappropriate to have any group with special access." He said that while it was unlikely, "we could slip back and have an arrogant, imperial White House trying to dictate our responsibilities."

At the Labor Department's OSHA, worries about the review program are at least as strong. Marshall's explosion over Schultze's intervention in the cotton dust case was one indicator.

In defense of their regulations, agency spokesmen cite the OSHA law, which requires that workplace hazards be reduced to the lowest level technically and economically feasible. OSHA has long resisted the kind of cost-benefit analysis favored by White House economists on grounds that it is impossible to calculate the benefits. "How do you quantify the benefits of saving a human life, or preventing the loss of a limb?" asked Charles B. Knapp, a special assistant to Marshall.

Knapp said that the department viewed the regulatory review program "with no fear" but that he hoped the program would turn out to be "more supportive and less adversarial. If it turns out to be combat over every regulation, that will be a problem."

In Congress, Members seem to guard the regulatory programs they enacted as fiercely as they do spending programs. When Carter published a draft of his new executive order last November, he proposed to apply it not only to agencies reporting to him but also to the independent regulatory agencies. This provoked a hands-off letter from 13 senior Senators, and the proposal was dropped from the final order.

In reaction to the cotton dust controversy, 16 members of the House Education and Labor Committee on June 7 sent a letter to Carter saying that White House intervention "threatened to undermine the basic procedures" mandated by Congress in the OSHA statute.

Rep. Paul G. Rogers, D-Fla., a leading congressional health expert, on June 14 asked the General Accounting Office to investigate whether the regulatory review group was acting legally and whether it was adequately assessing "the potential impact on inflation of failure to undertake maximum feasible efforts to prevent . . . 'environmentally-related' diseases."

Yet other Members are worried about the proliferation of regulation. Their concern is reflected in the increasing tendency of Congress to add amendments to bills providing for legislative vetoes of agency rules.

In the Senate, two committees have approved a "sunset" bill (S 2) authored by Sen. Edmund S. Muskie, D-Maine, requiring periodic review of spending programs. If it comes to the floor, Sen. Charles H. Percy, R-Ill., will try to add a requirement for regular "sunset" reviews of regulatory agencies.

OUTLOOK

The regulatory review program is likely to generate more controversy and attract increased public attention. It also could cut some regulatory costs. Nordhaus estimates potential savings could amount to a few billion dollars a year, though others working with the program say that is optimistic.

But the review group, with small staff resources and a commitment to examine only 10 to 20 regulations a year, cannot by itself hope to make a major dent in the costs of regulation.

Agencies in 1975 considered some 10,000 regulations and actually issued more than 7,000, and the trend does not seem to be moderating appreciably. Nordhaus estimates the prospective costs of regulations to be issued under existing laws at $20 billion to $50 billion "over the next few years."

The main hope for more cost-effective regulation lies in persuading agencies to take the President's executive order seriously, with the review group setting examples for them to follow. But that will be a long and difficult task. "It's a feudal war, fought with tunnels and trenches," said one OMB official.

And Nordhaus said. "We're not going to turn the beast around in a year. It'll take a decade, assuming we can do it."

But Nordhaus emphasized the Administration's intention to make the necessary effort, saying the program has the full support of the President, the Vice President and "the major officers of the government."

CHALLENGES FACING THE PRESIDENT'S COMMISSION ON THE COAL INDUSTRY

Mr. PERCY. Mr. President, on May 26, in remarks at Charleston, W. Va., President Carter announced the formation of a Commission to determine the state of the coal industry. This Commission, which will be composed of 13 members representing the coal management, labor, the general public, the administration, and both Houses of Congress, will be responsible for outlining some of the challenges currently confronting the industry and to offer some suggestions for future comprehensive coal policy. I am pleased to serve on his Commission together with my distinguished colleagues, Senator JENNINGS RANDOLPH of West Virginia and Senator WALTER HUDDLESTON of Kentucky.

Many of the Members of this Chamber come from coal-producing States and have a responsibility to maintain a sound and healthy coal mining industry both in their respective States and in the Nation. My colleagues from these States have likewise become acutely aware of the National, regional, and local problems that have plagued the industry. Some of these problems are not new. Labor and social unrest, in the Eastern coal producing States has plagued the coal industry for decades. Even today, legal battles are being fought for the right to organize miners in some parts of the country. In areas where the coal miners are collectively represented, interruptions in the supply of coal have become almost as regular as clockwork every 3 years with the expiration of the contract. Only recently, the mine operators and labor representatives settled the longest coal strike in our Nation's history—a 103-day interruption which could have severely affected much of the Eastern half of the United States. Because of this interruption, as of July 3, 1978, coal production was approximately 18.7 percent below that for the same period in 1977. This represents a reduction of almost 67 million tons of coal that was lost to the Nation's utilities, its steel plants and to coal exports. The effects of the coal strike were not only felt by the power companies, but by the striking miners themselves and particularly the primary coal carrying railroads that loaded almost 449,000 fewer coal cars during the first 6 months of 1978 than during the same period of 1977.

In addition to the hardships experienced by unemployed miners and their families, miners who have long since retired and are dependent upon benefits generated from coal production for food, clothing, and particularly medicine were likewise affected. Many of these recipients are disabled from black-lung disease.

The industry has also been faced with declining productivity in the underground mines for the past several years. According to industry statistics, the average output per person, in tons-per-man-day has fallen from 18.02 short tons in 1971 to 14.74 in 1975. Although the increased labor costs resulting from these declines can be passed through in most steam-coal contracts, losses in productivity are ultimately reflected in higher electricity bills. In the metallurgical coal industry, however, increases in production costs oftentimes must be directly absorbed by the produced. The combination of increasing variable costs and escalating transportation charges for U.S. metallurgical coal overseas has caused some of our principal importers to switch to lower quality but lower cost Australian "met" coal. Just recently, my distinguished colleague from West Virginia, Senator ROBERT BYRD, discussed declining exports of U.S. metallurgical coal to Japan with officials of that government.

Even when metallurgical coal is consumed domestically, lower productivity and resulting higher production costs must ultimately be passed through to the price of steel, which is losing its competitive edge in world markets.

Although surface mine operators can produce more coal per man-day, their costs have also increased with the passage of the Surface Mining Control and Reclamation Act of 1977.

Because of the site specificity of surface mining operations it is virtually impossible to determine an average cost increase resulting from the passage of the law. It is reasonable to assume, however, that most of the operators, especially the smaller ones, in the mountainous coal-producing regions of the country will experience cost increases in complying with the new law and its regulation. Many surface mine operators have become outspoken concerning what they term the overzealousness of the new Office of Surface Mining in implementing regulations that go beyond the letter and intent of the Surface Mining Act, and have challenged some of the more stringent regulations in court.

Surface mine operators in the Western United States have also had their problems. A great percentage of the coal in the Northern Great Plains is relatively low in sulfur content, by weight, and the major portion of these reserves are extremely thick—some in beds up to 100 feet in thickness. The ability to develop this otherwise very desirable resource has been frustrated by a confusing pattern of ownership among Federal, State, and private interests, and by an Interior Department moratorium on long-term leasing since early in 1971. Presently, to comply with a 1977 Federal district court ruling, the Department of the Interior is preparing a new environmental impact statement to evaluate the need for new long-term leasing and to determine its potential regional effects.

Furthermore, with the passage of the Clean Air Act Amendments of 1977 and their associated regulations, serious questions have arisen concerning the continued economic desirability of shipping low-sulfur western coal to eastern markets. If the Environmental Protection Agency intends to require the scrubbing of powerplant emissions regardless of the sulfur content of the coal, many utility officials may conclude that the economics suggest burning higher-energy eastern coal.

These are just a few of the challenges which must be met by the coal mining industry. Others include such things as increasing the carrying capacity of the railroads and barge transportation systems in the United States; improving underground and surface mining technology in order to permit the recovery of

deeper and thinner seams of coal without further adversely affecting the productivity rates; enhancing the image of coal mining in order to attract the talent that will be needed to nearly double our output by 1985 or 1990; determining the most desirable locations for the development of an energy resource that is competing with other land uses such as housing and agricultural development; and generating sufficient amounts of capital and equipment necessary to enable the mining industry to produce coal in quantities sufficient to alleviate our dependence on foreign energy sources.

In order to help the Commission launch its study, I have requested the Congressional Research Service to prepare a background report for the members which will provide them with a comprehensive picture of the coal mining industry as it is today, along with information related to some of the challenges facing the industry that I have briefly discussed above. I am confident that the CRS treatment of this crucial issue will help the Commission members examine the challenges confronting the industry and to offer the appropriate recommendations for solutions. In particular, I want to thank Mr. Duane Thompson and Mr. Dave Gusbee of CRS for the tremendous cooperation and responsiveness they are evidencing.

I ask unanimous consent that the text of my letter to Mr. Gilbert Gude, the Director of the Congressional Research Service, be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., July 10, 1978.

Mr. GILBERT GUDE,
Director,
Congressional Research Service,
Library of Congress,
Washington, D.C.

DEAR GIL: On May 26, 1978, Preident Carter announced the formation of a Presidential Commission to review and report on the condition of the Nation's coal industry. The Commission created by the Executive Order will consist of thirteen members representing coal-industry management, labor, the general public, the House of Representatives, the Senate, and the Departments of Labor and Energy. During its year-long existence, it will be responsible for a comprehensive review of the industry with emphasis on its general economic health, collective bargaining issues, socio-economic effects of increasing coal production, the development of new mining technology, and the impact of recent Federal regulations on the mining industry. The final report of the Commission may include other subjects as deemed appropriate.

I am pleased that Vice President Mondale has named me as one of the three Senate representatives to the Commission. As you know, Illinois has considerable coal deposits underlaying most of our State. The value of coal produced during 1977 amounted to approximately $1 billion, a figure representing almost sixty percent of the total value of minerals produced in Illinois during the year. Like so many other coal-producing states, however, Illinois has experienced problems that the President's Commission should address during its investigations.

In order to prepare myself and to provide my fellow members on the Commission with sufficient information for the job ahead, I would appreciate the Congressional Research Service preparing a background study outlining some of the problems confronting the industry. The study should be structured around the five subject areas listed in the Executive Order, although other pertinent issues and information can be included along with any suggestions for possible legislative action in the 96th Congress.

On Friday, June 23, Mr. Christopher Palmer of the staff of the Governmental Affairs Committee, at my request, discussed the possibility of CRS assistance with Duane Thompson, a mines and mining analyst in the Environment and Natural Resources Division Mr. Palmer has indicated that Mr. Thompson was not only enthusiastic about the work of the Commission but also about the potential contribution that the Research Service could make by providing a back ground report for the group. I am equally confident that your staff can provide the Commission with a thorough understanding of the problems and challenges confronting the coal mining industry.

I would greatly appreciate approval of this request so that Mr. Thompson and Mr. Palmer can arrange a planning session. I would need the background study ready for distribution to the Chairman and members at the first meeting of the Commission in October. If you or your staff have any questions, please contact Mr. Palmer or me. Thanking you in advance, I remain.

Sincerely yours,

CHARLES H. PERCY,
U.S. Senator.

SALT

Mr. MATHIAS. Mr. President I have a brief statement to make to the Senate on behalf of the distinguished Senator from Kansas (Mr. PEARSON), the distinguished Senator from Massachusetts (Mr. BROOKE), the distinguished Senator from Oregon (Mr. MARK O. HATFIELD), the distinguished Senator from Colorado (Mr. HART), and the distinguished Senator from Oregon (Mr. PACKWOOD), and, of course, on my own behalf.

Mr. President, yesterday in New York City Paul Warnke, Director of the Arms Control and Disarmament Agency, was asked whether the administration was considering the possibility of bringing a SALT agreement before Congress in other than treaty form. Mr. Warnke confirmed that the decision on whether to bring SALT to the Hill as a treaty or as an executive agreement "remains open."

The administration has decided to publicly state what has been the subject of a great deal of private discussion between the executive branch and Members of the Senate. A number of Senators have made the point privately to senior members of the administration that not to bring SALT to Congress in treaty form would be a serious mistake. It would bring into question the constitutional responsibilities of the U.S. Senate. It would be viewed as an effort to circumvent the clear and established procedures which lie at the very root of our federal system.

We have opposed heretofore any administration consideration of alternatives to the treaty route. We wish to reiterate publicly our continued opposition to such consideration.

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

Mr. MATHIAS. I am happy to yield to the Senator from California.

Mr. CRANSTON. Mr. President, I join with the distinguished Senator from Maryland in his statement, and I applaud him for bringing this matter to the attention of the Senate.

It became known to those of us following SALT a little while ago that the administration was keeping open the option of submitting the protocol and the treaty re SALT I or both to this body as executive agreements or as treaties, perhaps one one way, one the other, perhaps both as executive agreements or perhaps both as treaties.

It is tempting to try to reduce the number of votes that are necessary to pass something through this body and an executive agreement would only need 60 for cloture and then 51 for passage; whereas 67 would be required to pass a treaty if all Senators were present and voting.

After thinking this over with care and discussing this with a number of my colleagues, I came to the conclusion personally that it would be quite unwise for any part of the SALT agreements to be submitted to this body as an executive agreement rather than a treaty.

(Mr. SASSER assumed the chair.)

Mr. CRANSTON. I think it is generally known within the Senate that a number of us who are deeply interested in SALT, and who are committed to the concept of arms control and arms limitations, and arms reductions are meeting regularly to acquaint ourselves with the issues in SALT so that we will be prepared to judge whatever agreement is ultimately submitted to this body intelligently and knowledgeably. If we find it is an agreement that we can support we will be equipped to support it steadfastly and strongly.

This is a group comprising one-fifth of the Senate, Democrats and Republicans, liberals and conservatives. We are not committed to any particular SALT agreement. We reserve judgment until an agreement is negotiated with the Soviet Union and submitted to this body, and until that is done and until we have examined it, we do not know whether we will support that particular agreement. We hope an agreement will be submitted to the Senate that we can support.

I polled all the members of that group not too many days ago to ascertain their views on this issue of treaty versus executive agreement. It was almost unanimous within this group that it would be a great error for the administration to submit any SALT agreement as anything other than a treaty. Some members felt so strongly that they said they might not be able to support even a good agreement if it came as an executive agreement.

It plainly would inject a wholly new and separate issue into our deliberations on the SALT matters if it came to us as an executive agreement rather than a treaty. I believe it would very badly jeopardize the success here of considering any such agreement with a favorable outcome no matter how good that agreement might be.

As a matter of fact, I feel that the administration might just as well not sub-

mit an agreement to this body if it submitted it in the form of an executive agreement. I think its fate would be foreordained and it would go down to defeat.

After polling this group and finding that only one member was uncertain—he did not favor the executive route, he just wanted to think it over—but that all others strongly opposed it, Senator CHURCH and I—he also is a member of this group—called the administration and made plain our views and the views of this group. They have been transmitted to the President, I am certain, and I just want to reiterate very strongly the views of many Senators on both sides of the aisle that it would be exceedingly unwise for the administration to submit any part of the SALT agreement as anything other than a treaty.

It would diminish, it would seemingly diminish, the importance of the agreement if it was submitted as an executive agreement rather than a treaty. I think probably no matter more important than arms limitation and SALT will be considered by the Senate during the time I am in this body, nothing more related to the ultimate survival and security of our Nation. Anything that solemn and that significant should certainly come to us in the form of a treaty since it involves the signature and the adherence to the agreement of people in another land.

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

Mr. MATHIAS. I am happy to yield.

Mr. CLARK. I would like to join with my two colleagues in encouraging the President to give second thoughts to sending this agreement, international agreement, here as a treaty. I think it is obvious that that is its appropriate role, and I think the Senator from California's description of the historical recent events that have occurred is very helpful.

It seems to me that any reading of the Constitution makes clear this point. Article II, section 2, paragraph 2, states:

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.

There is no provision even in the Constitution for international agreements. Obviously, the historical development of this country has been such that we have seen more and more international agreements sent up to the Senate and the House as executive agreements, and important agreements increasingly seem to be sent up as agreements, whereas rather insignificant agreements, dealing with international shrimp agreements, for example, are now sent up as treaties.

So one could argue, I suppose, the President's authority, constitutional authority, to send this very important agreement to the Congress, which form it would take. But it does seem to me it would make a complete mockery of the Constitution, article II, section 2, if we were to have an international agreement as significant as this one and yet say, "This is not really important enough an agreement to be considered as a treaty."

If this is not important enough, then it seems to me there is absolutely no limit and no meaning to this part of the Constitution.

I would just like to say further that with this historical trend in mind about 2 years ago I introduced a resolution that was referred to the Committee on Foreign Relations which would require a point of order in the Senate to lie against any money bill if the Senate had expressed itself by Senate resolution in favor of an international agreement being considered as a treaty.

We had hearings on that subject, and we decided at that time not to push it forward.

This year, in consideration of the foreign aid authorization bill, Senator GLENN and I joined in that same effort, and the Senate committee indeed adopted that provision. It failed by a relatively close margin to succeed in the Senate.

But I would point out what was pointed out by the opponents of that resolution at that time, that at any time the Senate can simply pass a resolution saying that a point of order would lie against any money bill to implement that treaty. So that that option is open to this body. One would hope that that would not be necessary. But I think it ought to be clear to those who make the decision that that option is open to the Senate, and then there would be no way in which an international agreement could really be implemented without the Senate's approval.

So I think—I would hope, at any rate—that the President would recognize the Senate's view. Not only are his strong supporters of a meaningful agreement in agreement on this point, I think, but if there is a single Member of the United States Senate who does not believe that this kind of agreement ought to be sent to this body as a treaty, I have not heard that man or woman speak up. I think it is one issue on which we are very united.

An agreement of that magnitude and this significance, this importance, certainly ought to come before the Senate and receive the Senate's advice and consent as required by the Constitution.

I thank the Senator for yielding.

Mr. MATHIAS. I thank the Senator from Iowa and the Senator from California. I think both of them have made a very essential point, and one that the administration is certain to listen to.

In addition, with all the serious consideration that every Member of the Senate would give to an agreement, in whatever form it came to the Senate, we would add the very serious problem of the procedural approach if it came as other than a treaty.

As the Senator from Iowa and the Senator from California pointed out, this is the constitutional route; it is the only way to go.

Mr. CRANSTON. Mr. President, I would like to point out one of the difficulties of going the route of submitting part of the agreement as an executive agreement and part as a treaty, which is one of the options the administration apparently is keeping open.

The Soviets would likely assume we were putting into the executive agreement the parts we would like to get out of most easily if we decided we did not like them, and putting into the treaty the parts we did not mind being bound by.

I think this would greatly increase the difficulty of the negotiations with the Soviet Union. They would have some of the same temptations on their part, and that might work out to our disadvantage.

Rather plainly the administration also would seek to put into the executive agreement those parts that would be most difficult in passing the Senate, and put into the treaty those parts where there would be virtual unanimity, if anything like that could be achieved.

There are all sorts of pitfalls with this route. I understand all the temptations, and I strongly urge the administration to heed these words in the Senate from people dedicated to the concept of arms control.

I know the administration, the President, Secretary Vance, and others want an effective SALT treaty, an effective SALT agreement.

I urge them to take to heart, to weigh very seriously, the words spoken today on the Senate floor on this subject.

CONSIDERATION OF CERTAIN MEASURES ON THE CALENDAR

Mr. ROBERT C. BYRD. Mr. President, there are, I believe, three measures on the calendar which have been cleared for action by unanimous consent. The distinguished acting Republican leader is here; I believe there are five measures.

I ask unanimous consent that the Senate proceed to the consideration of Calendar Order Nos. 1047, 1049, 1053, 1056, and 1057.

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

MARITIME MEDALS

The bill (H.R. 13235) for the relief of James Thomas Lantz, Jr., David D. Bulkley, and Arthur J. Abshire, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95-1128), explaining the purposes of the measure.

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

PURPOSE OF THE BILL

The purpose of H.R. 13235 is to authorize the issuance to the individuals named in the bill of the enumerated decorations and indicia of service in full recognition of their service in the U.S. merchant marine during World War II.

BACKGROUND AND NEED

The U.S.-flag merchant marine has been aptly termed America's fourth arm of defense. During World War I the U.S. merchant marine lost more men than the U.S. Navy, and in World War II, the merchant marine lost a greater percentage of its members to hostile enemy action than did any of the Armed Forces.

A grateful Government gave recognition to their service by means of various decorations and indicia of service. Public Law 524, 77th Congress (56 Stat. 217), Public Law 52, 78th Congress (57 Stat. 81), and certain Executive orders authorized the Maritime Commission and the Administrator of the War Shipping Administration (the predecessor of the Maritime Administration of the Department of Commerce) to issue citations, medals, and decorations to merchants seamen, and plaques to ships. These honors were given mainly for bravery under combat conditions. Public Law 524 was expressly repealed and the operation of Public Law 52 was terminated by the act of July 25, 1947 (61 Stat. 450). Public Law 698, 79th Congress (60 Stat. 960), authorized issuance of medals and honorable discharge buttons to seamen for war zone service on Government-owned and operated vessels in World War II, and to any seaman entitled to receive a certificate of substantially continuous service under Public Law 87, 78th Congress (58 Stat. 162). The operation of these laws was also terminated by the act of July 25, 1947 (61 Stat. 450), and the Maritime Administration has revoked all general orders based on these statutes, effective June 30, 1954 (Federal Register, March 31, 1954, vol. 19, p. 1763).

Were these statutes still in effect, the individuals named in H.R. 13235 would have been eligible to receive the decorations and indicia of service set forth in the bill.

CARL ALBERT INDIAN HEALTH FACILITY

The bill (S. 3184) to designate the Indian Health Facility in Ada, Okla., the "Carl Albert Indian Health Facility," was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Indian Health Facility located at 1001 North Country Club Road, Ada, Oklahoma, shall hereafter be known and designated as the "Carl Albert Indian Health Facility".

SEC. 2. Any reference in law, map, regulation, document, record, or other paper of the United States to such facility shall be held to be reference to the "Carl Albert Indian Health Facility".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1130), explaining the purposes of the measure.

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

PURPOSE

S. 3184, as referred, would designate the Indian Health facility in Ada, Okla., the "Carl Albert Indian Health Facility."

BACKGROUND

On March 17, 1978, the Chickasaw Nation of Oklahoma adopted a resolution requesting that the comprehensive Indian Health Care Facility located in Ada, Okla., be named in honor of Hon. Carl Albert in appreciation for his friendship and service to the Chickasaw Nation.

Speaker Albert was instrumental in securing the funds necessary to construct the health care facility which will provide complete health services to primarily the Chickasaw Indians.

THE AMERICAN EPHEMERIS AND NAUTICAL ALMANAC

The bill (H.R. 3532) to amend chapter 639 of title 10, United States Code, to enable the Secretary of the Navy to change the name of a publication of the Naval Observatory providing data for navigators and astronomers, was considered, ordered to a third reading, read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1134), explaining the purposes of the measure.

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

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to remove the requirement that the publication in which the Secretary of the Navy makes available data for navigators and astronomers be entitled "The American Ephemeris and Nautical Almanac." Removal of this requirement would allow the Secretary to administratively change the name of this publication.

BACKGROUND

Current law was adopted in 1912 when the advantages of international cooperation in the exchange of astronomical data were recognized. The principal nations involved in the exchange of astronomical data at that time, the United States, France, Germany, Great Britain, and Spain, each published an "ephemeris," which is an orderly collection of information relating to the assigned places of celestial bodies at regular intervals. In the statute, the publication is entitled, "American Ephemeris and Nautical Almanic." H.R. 3532 would enable the Secretary of the Navy to change the name of the publication by striking the words "in the American Ephemeris and Nautical Almanac" from section 7396(a) of title 10, United States Code.

The Department of the Navy believes that the name of the publication, imposed by statute, is no longer appropriate. The ephemeris offices of several nations currently contribute data included in the publication. Elimination of the word "American" in the title of the publication would encourage those nations to further participate in the preparation of the annual volumes. The single printing of the volumes in this country could then be distributed and used in other countries. The use of the name of one country in the title of a publication being prepared and used in several countries does not appear to be appropriate.

Additionally, there is continuing confusion between two separate publications of the Naval Obserbatory, "The Nautical Almanac" and "The American Ephemeris and Nautical Almanac." Because of the similarity of titles, it is incorrectly concluded that the two are the same, or that there is direct duplication between them. The Naval Observatory regards the solution to this problem as an ancillary benefit of the passage of H.R. 3532.

The Secretary of the Navy proposes to change the name to "Astronomical Ephemeris."

TRANSPORTATION FOR GIRL SCOUTS OF AMERICA

The Senate proceeded to consider the bill (S. 3373) to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with international world, friendship events, or troops on foreign soil meetings, and for other purposes, which had been reported from the Committee on Armed Services with amendments as follows:

On page 2, line 3, strike "reurn" and insert "return,"

On page 2, line 7, strike "an international world friendship event or troops on foreign soil" and insert "any International World Friendship Event or Troops on Foreign Soil";

On page 2, line 13, after "(2)" insert "United States citizen";

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 151 of title 10, United States Code, is amended by adding after section 2544 the following new section:

"§ 2545. Transportation services: international Girl Scout events

"(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Military Airlift Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

"(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

"(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current aplicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.".

SEC. 2. The table of sections at the beginning of chapter 151 of title 10, United States Code, is amended by adding after the item relating to section 2544 the following new item:

"2545. Transportation services: international Girl Scout events.".

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read:

A bill to amend title 10, United States Code, to authorize the Secretary of Defense to provide transportation to the Girl Scouts of the United States of America in connection with International World Friendship Events or Troops on Foreign Soil meetings, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1137), explaining the purposes of the measure.

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

PURPOSE OF BILL

The purpose of this legislation is to provide permanent authority for the Secretary of Defense to provide transportation on mili-

tary aircraft or vessels to the Girl Scouts of the United States of America to attend international world friendship events or troops on foreign soil meetings. The use of this transportation will be for international travel only. This transportation will be provided to Girl Scouts, and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts at international world friendship events or troops on foreign soil meetings.

Transportation will be furnished to the extent that it does not interfere with the requirements of military operations. It will be provided at no expense to the U.S. Government. The legislation requires that before furnishing transportation, the Girl Scouts of the United States of America shall furnish to the Secretary of Defense a good and sufficient bond for reimbursement to the United States for the actual cost of the transportation. The reimbursement shall be credited to the applicable appropriations or funds to which such costs were charged.

BACKGROUND

Public Law 92-249, enacted on March 10, 1972, gave the Secretary of Defense the permanent authority to provide transportation, to lend certain equipment and other services to the Boy Scouts of America in connection with the Boy Scout jamborees. The Congress had passed enabling legislation providing for the loan of equipment and provision of services for seven previous jamborees. The committee foresaw no circumstances under which such loan of equipment and provision of services would not continue to be appropriate. In Public Law 92-249, a permanent authorization was established to obviate the need for periodically enacting such legislation.

IMPROVEMENTS IN THE SURVIVOR BENEFIT PROGRAM FOR RETIRED MILITARY PERSONNEL

The Senate proceeded to consider the bill (H.R. 3702) to amend title 10, United States Code, to make certain changes in the retired serviceman's family protection plan and the survivor benefit plan as authorized by chapter 73 of that title, and for other purposes, which had been reported from the Committee on Armed Services with an amendment to strike all after the enacting clause and insert the following:

TITLE I—ANNUITIES UNDER SURVIVOR BENTFIT PLAN

DEFINITION OF BASE AMOUNT

SEC. 101. Section 1447 (2) of title 10, United States Code, is amended to read as follows:

"(2) 'Base amount' means—

"(A) in the case of a person who dies after becoming entitled to retired or retainer pay, the amount of monthly retired or retainer pay to which the person—

"(i) was entitled when he became eligible for that pay; or

"(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list;

"(B) in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming sixty years of age, the amount of retired pay for which the person would have been eligible—

"(i) if he had been sixty years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title, or

"(ii) upon becoming sixty years of age (if he had lived to that age), for purposes of an annuity to become effective on the sixtieth anniversary of his birth in accordance with a designation made under section 1448(e) of this title; or

"(C) any amount which is less than the amount otherwise applicable under clause (A) or (B) with respect to an annuity provided under the Plan and which is designated by the person providing the annuity on or before (i) the first day for which he becomes eligible for retired or retainer pay, in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, or (ii) the end of the ninety-day period beginning on the date on which he receives the notification required by section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, but not less than $300;

as increased from time to time under section 1401a of this title.".

APPLICATION OF SURVIVOR BENEFIT PLAN

SEC. 102. (a) Subsection (a) of section 1448 of title 10, United States Code, is amended to read as follows:

"(a)(1) The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

"(A) Persons entitled to retired or retainer pay.

"(B) Persons who would be eligible for retired pay under chapter 67 of this title but for the fact that they are under sixty years of age.

"(2) The Plan applies—

"(A) to a person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired or retainer pay, unless he elects not to participate in the Plan before the first day for which he is eligible for that pay, and

"(B) to a person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 1331(d) of this title that he has completed the years of service required for eligibility for retired pay under chapter 67 of this title, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the ninety-day period beginning on the date he receives such notification.

A person described in subclauses (i) and (ii) of clause (B) who does not elect to participate in the Plan before the end of the ninety-day period referred to in such clause shall remain eligible, upon reaching sixty years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

"(3)(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan who is married elects not to participate in the Plan at the maximum levels, or elects to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that election.

"(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elect to provide an annuity for a dependent child but not for his spouse, that person's spouse shall be notified of that action.

"(4)(A) An election under paragraph (2)(A) not to participate in the Plan is irrevocable if not revoked before the date on which the person first becomes entitled to retired or retainer pay.

"(B) An election under paragraph (2)(B) to participate in the Plan is irrevocable if not revoked before the end of the ninety-day period referred to in such paragraph.

"(5) A person who is not married when he becomes eligible to participate in the Plan but who later marries or acquires a dependent child, may elect to participate in the Plan, but his election must be written, signed by him, and received by the Secretary concerned within one year after he marries or acquires that dependent child. Such an election may not be revoked. His election is effective as of the first day of the first calendar month following the month in which his election is received by the Secretary concerned. In the case of a person who is eligible to participate in the Plan under paragraph (1)(B), such an election shall include a designation under subsection (e).".

(b) susbection (b) of such section is amended—

(1) by striking out "entitled to retired or retainer pay" and inserting in lieu thereof "eligible to participate in the Plan"; and

(2) by adding at the end thereof the following new sentence: "In the case of a person who is eligible to participate in the Plan under subsection (a)(1)(B), such an election shall include a designation under subsection (e).".

(c) Such section is further amended by adding at the end thereof the following new subsection:

"(e) In any case in which an election to participate in the Plan provides for a designation under this subsection, the person making the election shall designate whether, in the event he dies before becoming sixty years of age, the annuity provided shall become effective on the day after the date of his death or on the sixtieth anniversary of his birth.".

PAYMENT OF ANNUITY

SEC. 103. Section 1450 of title 10, United States Code, is amended—

(1) by inserting "(or on such other day as he may provide under subsection (j))" in subsection (a) after "of this title applies" the first time such words appear therein; and

(2) by adding at the end thereof the following new subsections:

"(j) An annuity elected by any person eligible to participate in the Plan by virtue of section 1448(a)(1)(B) shall be effective in accordance with the designation made by such person under section 1448(e).

"(k) Where the annuity has been adjusted under subsection (c) of this section and there is no entitlement to compensation under section 411(a) of title 38, due to remarriage of the spouse after reaching age sixty, such annuity shall be readjusted to the rate of entitlement existing prior to the adjustment under subsection (c) of this section if the amount of any refund made under subsection (e) of this section is repaid.".

AMOUNT OF ANNUITY

SEC. 104. (a) The first sentence of subsection (a) of section 1451 of title 10, United States Code, is amended to read as follows: "The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—

"(1) 55 percent of the base amount, if the annuity is provided under eligibility to provide an annuity under section 1448(a)(1)(A) of this title, or

"(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the base amount, if the annuity is provided under eligibility to provide an annuity under section 1448(a)(1)(B) of this title.".

(b) The last sentence of subsection (a) of section 1451 of such title is amended to read as follows: "For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work.".

(c) Subsection (b) of such section is amended to read as follows:

"(b) The monthly annuity payable under section 1450(a)(4) of this title shall be—

"(1) 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by a person eligible to participate in the Plan by virtue of section 1448(a)(1)(A) of this title, or

"(2) a lesser percentage (determined by the Secretary of Defense in accordance with subsection (d)) of the retired pay of the person who elected to provide that annuity after the reduction in such pay in accordance with section 1452(c) of this title, if the annuity is provided by a person eligible to participate in the Plan by virtue of section 1448(a)(1)(B) of this title.

A person who provides an annuity which is determined in accordance with clause (2) and who dies before becoming sixty years of age and is otherwise entitled to retired pay shall be considered to have been entitled to retired pay, for the purpose of such clause, at the time of his death, and the retired pay of such person for the purpose of such clause shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity is to become effective in accordance with the designation of such person under section 1448(e) of this title.".

(d) Such section is further amended by adding at the end thereof the following new subsection:

"(d) The percentage to be applied by the Secretary of Defense in determining the amount of an annuity under subsection (a)(2) or (b)(2) shall be 55 percent reduced by such amount as the Secretary shall by regulation prescribe, taking into consideration the age of the person electing to provide the annuity at the time of such election, the difference in age between such person and the beneficiary of the annuity, whether such person provided for the annuity to become effective (in the event he died before becoming sixty years of age) on the day after his death or on the sixtieth anniversary of his birth, appropriate group annuity tables, and such other factors as the Secretary considers relevant.".

SEC. 105. Section 4 of the Act entitled "An Act to amend chapter 73 of title 10, United States Code, to establish a Survivor Benefit Plan, and for other purposes", approved September 21, 1972 (Public Law 92-425), is amended—

(a) by striking out "$2,100" in subsections (a)(3) and (b) and inserting in lieu thereof "$2,340"; and

(b) by adding at the end thereof the following new subsection:

"(c) If at any time after the date of the enactment of this subsection the maximum annual income limitation provided for in section 541(b) of title 38, United States Code, is increased by any amount, the maximum annual income limitation set forth in subsection (a)(3) of this section and the dollar figure set forth in the first sentence of subsection (b) of this section (relating to the computation of annuities payable under this section) shall be increased by a like amount effective on the date on which any such increase with respect to such section 541(b) first takes effect.".

REDUCTION IN RETIRED PAY

SEC. 106. (a) The first sentence of subsection (a) of section 1452 of title 10, United States Code, is amended by striking out "shall be reduced each month" and all that follows in such sentence and inserting in lieu thereof "shall be reduced each month—

"(1) by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount, if the person is providing an annuity under eligibility to provide an annuity under section 1448(a)(1)(A) of this title; or

"(2) by an amount prescribed under regulations of the Secretary of Defense, if the person elects an annuity by virtue of eligibility under section 1448(a)(1)(B).".

(b) Subsection (c) of such section is amended to read as follows:

"(c) The retired or retainer pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced—

"(1) in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title, by 10 percent plus 5 percent for each full five years the individual designated is younger than that person; or

"(2) in the case of a person who elects to provide an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title, by an amount prescribed under regulations of the Secretary of Defense.

However, the total reduction under clause (1) may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this section shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f) of this title.".

NOTIFICATION

SEC. 106. Section 1331(d) of title 10, United States Code, is amended by adding at the end thereof the following new sentence: "Such notice shall include notification of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the effects of such elections.".

TECHNICAL AND CONFORMING AMENDMENTS

SEC. 107. (a) The first sentence of section 1449 of title 10, United States Code, is amended by striking out "the first sentence of subsection (a), or subsection (b)," and inserting in lieu thereof "subsection (a)(2) or (b)".

(b) Section 1450(d) of such title is amended by striking out "section 8339(i)" and inserting in lieu thereof "section 8339(j)".

(c) Section 1450(f) of such title is amended by striking out "the last three sentences of section 1448(a)" and inserting in lieu thereof "section 1448(a)(5)".

TRANSITION

SEC. 108. With respect to any individual who—

(1) is eligible for retired pay under chapter 67 of title 10, United States Code, on the date of the enactment of this Act but for the fact that such individual is under sixty years of age, or

(2) receives, before the end of the nine-month period beginning on the date of the enactment of this Act, a notification that such individual has completed the years of service required for eligibility for such retired pay,

the ninety-day period referred to in section 1447(2)(C) of title 10, United States Code (as amended by section 101 of this Act), and in sections 1448(a)(2) and 1448(a)(4)(B) of title 10, United States Code (as amended by section 102(a) of this Act), shall be considered to end at the end of the one-year period beginning on the date of the enactment of this Act.

EFFECTIVE DATES

SEC. 109. (a) Except as provided by subsection (b), the provisions of this title and the amendments made by this title shall take effect on October 1, 1978, or the date of the enactment of this Act, whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

(b) The amendment made by section 106 shall apply to notifications under section 1331(d) of title 10, United States Code, on and after the date of the enactment of this Act.

TITLE II—MEDICAL AND DENTAL CARE

SEC. 201. (a) Section 1076 of title 10, United States Code, is amended by (1) redesignating subsection (c) and (d) as subsections (d) and (e), respectively, and (2) adding after subsection (b) a new subsection (c) as follows:

"(c) Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a department of a member or former member who—

"(1) is deceased,

"(2) had, prior to his death, completed the years of service required for eligibility for retired pay under chapter 67 of this title but had not, because of age, become entitled to such pay, and

"(3) had elected, prior to death, to participate in the Survivor Benefit Plan provided for under subchapter II of chapter 73 of this title,

may, upon request, on or after the date on which such member or former member would have become entitled to retired pay under chapter 67 of this title had such member or former member attained sixty years of age and made timely application for such retired pay, be given the medical and dental care prescribed in section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilites of the medical and dental staff.".

(b) Section 1086(c)(1) of such title is amended to read as follows:

"(1) Persons covered by sections 1074(b) and 1076 (b) and (c) of this title, except persons covered by section 1072(2)(F) of this title.".

(c) The first sentence of section 1087 of such title is amended by inserting "and (c)" after "1076(b)".

SEC. 202. The amendment made by section 201 shall become effective on October 1, 1978, or the date of the enactment of this Act, whichever is later.

TITLE III—RETIRED SERVICEMEN'S FAMILY PROTECTION PLAN

SEC. 301. (a) Section 1434(a) of title 10, United States Code, is amended by—

(1) striking out "or remarries" in clause (1) and inserting in lieu thereof "or the spouse remarries prior to age sixty"; and

(2) striking out "or remarriage of that spouse" in clause (3) and inserting in lieu thereof "of that spouse or the remarriage of that spouse prior to age sixty".

(b) Section 1434 of title 10, United States Code, is further amended by adding at the end thereof a new subsection as follows:

(c) Whenever retired or retainer pay is increased under section 1401(a) of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased at the same time by the same total per centum.".

SEC. 302. Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of enactment of this Act to a spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act is enacted, or as of October 1, 1978, whichever is later, by the total per centum that retired or retainer pay has been increased under section 1401a of that title since September 21, 1972.

SEC. 303. No benefits shall accrue to any person by virtue of the enactment of this Act for any period prior to the first day of

the first calendar month following the month in which this Act is enacted or prior to October 1, 1978, whichever is later.

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 95–1138), explaining the purposes of the measure.

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

PROVISIONS IN HOUSE VERSION OF H.R. 3702 ACCEPTED BY COMMITTEE

There were a number of provisions in the House version of H.R. 3702 which the committee accepted. These were: (1) cost-of-living adjustments of certain annuities under the retired serviceman's family protection plan (RSFPP); (2) reinstatement of survivor benefit plan (SBP) payments to widows whose dependency and indemnity compensation (DIC) payments are terminated upon remarriage after age 60; (3) elimination of the social security offset under the survivor benefit plan for working widows or widowers who do not receive social security because of their income.

Cost-of-living adjustments for retired serviceman's family protection plan (RSFPP) annuitants

The retired serviceman's family protection plan (RSFPP) was established in 1953. Under RSFPP a retired member could elect to cover a surviving spouse and/or children up to 50 percent of the member's retired pay. It was an actuarially sound plan, that is, at no cost to the Government. RSFPP was complex with specific rules of election and definitions of beneficiaries. Only 15 percent of eligible retirees elected coverage under RSFPP. Benefit payments to widows and children were specific dollar amounts which were fixed over the life of the annuity. Because RSFPP was not indexed to the cost of living, inflation has seriously eroded the purchasing power of the fixed amount paid to RSFPP annuitants.

The committee bill authorizes increases in RSFPP annuities for the survivors of retired members who died on or before March 20, 1974—the last date on which retired members could elect to participate in the current survivor benefit plan (SBP). In addition to providing future increases, the bill authorizes annuities to be increased effective October 1, 1978, or the first day of the month after the date of enactment whichever is later, by the percentage by which retired pay has been increased since September 21, 1972, the date of establishment of the survivor benefit plan.

Reinstatement of survivor benefit plan (SBP) payments to a surviving spouse whose dependency and indemnity compensation benefits are terminated on remarriage after age 60

Under present law, SBP payments to surviving spouses who remarry before age 60 are terminated. If remarriage is after age 60, these payments continue. In the case of a retiree whose death is service connected, the widow or widower receives dependency and indemnity compensation (DIC) from the Veterans' Administration. If that compensation exceeds the SBP payments to which the survivor is entitled, he or she can receive DIC payments only and receive a refund of the deductions from the deceased retiree's retired pay. If the DIC is less than the SBP payment, the survivor receives the full DIC payment and, in addition, the amount of SBP benefits which exceeds the DIC payment along with a refund of the proportionate amount of the deductions from the deceased retiree's retired pay.

Unlike the SBP law, the law governing payment of DIC does not permit continued payment to the widow or widower who remarries after age 60. Accordingly, the DIC payments terminate with remarriage after age 60. Having received a refund of either all, or part of, the deductions from the deceased retiree's retired pay, the widow or widower is not entitled to the full SBP payment to which he or she would have been entitled if the deceased retiree's death had not been service connected. The committee bill would reinstate the full SBP payment to which the surviving spouse would otherwise be entitled subject to repayment of the refund of the deductions from the deceased retiree's retired pay which was received.

Elimination of social security offset under the survivor benefit plan (SBP) for working widows or widowers

Under current law when survivors of military personnel who are receiving payments under the survivor benefit plan become eligible for social security, the payment under the survivor benefit plan is reduced by 100 percent of any social security benefits attributable to the retiree's earnings while on military service.

The committee bill would eliminate the offset of social security under the SBP where the widow or widower works and thereby does not receive all or a portion of their social security payments. The committee bill provides that a working widow or widower shall not be considered entitled to a social security benefit to the extent that such benefit has been offset by deductions on account of work. The committee intends that a working widow or widower will only have an offset of the SBP annuity to the extent that the full social security annuity is reduced by working. For example, if a widow or widower were to lose 80 percent of the full social security benefit (the amount that would be received if he or she did not work) as a result of wages or salaries earned, then the widow or widower would receive an offset in the SBP annuity of 20 percent of the amount determined to be attributable to her husband's military service, or stated differently, 20 percent of the amount that would be offset if he or she did not work.

PROVISIONS NOT IN HOUSE VERSION OF H.R. 3702 ACCEPTED BY COMMITTEE

Minimum income guarantee for certain widows

The 1972 survivor benefit plan (SBP) law provided for a guaranteed minimum annual income for certain needy widows whose husbands died prior to September 21, 1972 without being able to elect into the survivor benefit plan. To qualify in 1972 for the minimum annual income, a widow must (1) have been entitled to a VA non-service-connected death pension and (2) have had less than $1,400 annual income from other sources (other than the VA death pension). The Department of Defense supplemented the widow's income up to the $1,400 and she was then also eligible for a VA death pension annuity. Public Law 94–496, enacted October 14, 1976, increased the $1,400 to the current $2,100 and the committee bill would increase this amount to $2,340. The committee bill also provides that the $2,340 would be increased at the same time and by a like amount as the VA's non-service-connected death pension annual income limitation under 38 U.S.C. 541(b) is increased.

Benefits for remarried retired serviceman's family protection plan (RSFPP) annuitants

Under current law, annuities paid under retired serviceman's family protection plan are terminated upon remarriage regardless of age. When the current service benefit plan law was enacted in 1972 it terminated annuities when remarriage occurred before age 60 but continued them if the remarriage occurred at age 60 or after. The committee, therefore, adopted a provision to conform the retired serviceman's family protection plan law to the current service benefit plan law and permit retired serviceman's family protection plan annuities to continue upon remarriage after age 60.

Survivor benefit plan for reservists

Under current law, a reservist who reaches age 60 may elect to participate in the current survivor benefit plan for military retirees on the same basis as any other retiree entitled to retired pay. In other words, if the member elects to provide survivor coverage after age 60, his monthly retired pay is reduced by 2½ percent of the first $300 plus 10 percent of any portion over $300. The member must make the election to participate at the time he begins to draw his retired pay. The survivor benefit payable at the time of his death is 55 percent of his retired pay.

Should the reservist die before reaching age 60, however, the survivor is not eligible for any benefit from the survivor benefit plan. This is true even though the reservist had completed 20 years of satisfactory service and had become entitled to retired pay at age 60.

Survivor program for reservists in committee bill

The committee had pending before it three bills (S. 2856, S. 1996, and the House-passed H.R. 11797) that would change the survivor benefit program for reservists. S. 2856 (introduced by Senator Morgan) and the House-passed bill H.R. 11797 are similar in substance so the committee used the text of these bills as the basis for its recommendation for changes in the survivor program for reservists.

The committee bill is designed to provide survivor protection to the spouse, spouse and children, children alone, or persons with an insurable interest of reservists who have completed 20 years of satisfactory Federal service but who have not yet reached age 60.

Compared to the current SBP law, the Committe's survivor program for reservists provides two additional options for coverage. Each reservist will be required to make an election upon completing 20 years of creditable service. Reservists will be notified of the options available to them under the survivor benefit plan at that time. They will have 3 months from receipt of notification to elect in writing one of the three options available to them.

Options available to reservist under committee bill

The retirement-eligible reservist has the following options:

(1) No change from the current survivor benefit plan.—The member can decline to make an election for or against survivor benefit plan coverage until attaining age 60. Consequently, there would be no coverage in the years between becoming retirement eligible and attaining 60 years of age; and coverage for the time beyond age 60 would remain subject to the retiree's election upon becoming entitled to retired pay. At that time the provisions of the SBP as they currently exist would apply.

(2) First new option.—A survivor annuity payable on the date the member would have attained age 60 if he dies before age 60, or on the date of his death if he dies on or after that date.

(3) Second new option.—A survivor annuity payable on the date of the member's death whether before or after age 60.

Election to participate

A positive election in writing is required if the reservist wishes coverage under either

of the two new options. If no election is made by the reservist within the 3 months following notification, the member is presumed to have elected not to make an election until age 60. An election not to participate during the interim period, at the maximum level, requires that the spouse be notified. It is the intent of the committee that a concentrated effort be made to insure that the spouse of the reservist is made aware of the provisions of the plan in a timely manner so that a joint decision can be reached before the 3-month period expires. The election to participate under either of the new options is irrevocable as long as there remains an eligible beneficiary. The committee bill permits a reservist to discontinue coverage should there no longer be an eligible beneficiary. This is similar to the provision in the current SBP. In addition, if the member's original beneficiary becomes ineligible and a second beneficiary is obtained, the member would be permitted to rejoin the plan within one year. The costs under the plan would be revised to reflect this most recent election. A member with no beneficiaries upon completion of 20 years of service, who later acquires a beneficiary, would be given a year to join the plan. Reservists who have completed 20 years of creditable service before the bill is enacted would be given a year in which to elect into the plan. The committee intends that the Department of Defense will make every reasonable effort to locate and notify retirement-eligible reservists of their options under the new survivor benefit plan.

Cost to participants

The cost of providing additional coverage under the new options in the committee's bill before age 60 is shared entirely by those individuals potentially benefiting from the coverage. The cost to the retiree will be in the form of an additional reduction above the standard contribution of 2½ percent of the first $300 of retired pay plus 10 percent of the remainder. The cost to the survivor will be in the form of a reduction applied to the 55 percent of the retired pay normally received.

The amount of these reductions will be based on an actuarial calculation using a specified group annuity table and discount rate, the member's age at election, the difference in age and sex of the survivor, and the option elected. The percentage reduction will be computed at the time of the member's election and based on the actuarial charges in effect at that time. The committee expects the Department of Defense to consult with the committee prior to initially implementation and any subsequent changes to the actuarial charges. The committee bill does not extend eligibility to survivors of members who die before the date of enactment. The committee bill authorizes medical benefits to survivors of reservists (who select either of the new survivor options) as provided for in current law; that is, at such time as the reservist reaches age 60 or would have reached age 60.

Cost estimates of committee's survivor program for reservists

The Congressional Budget Office estimates an increase in outlays of $494 million between fiscal year 1979–2000, including estimated inflation, for the cost of the committee's survivor program for reservists. The committee fully intends, however, that this program be actuarially sound, that is, at no cost to the Government. The committee is informed by the Department of Defense that the committee's program for reservists will be actuarially sound and that actuarial charges to survivors and reservists who live beyond age 60 will pay after the year 2000 for the outlays initially incurred as a result of initial "start-up costs" for survivors who become eligible for coverage during the early years of the program. The committee directs the Department of Defense to review regularly the actuarial reduction factors for both the immediate and deferred options so as to assure the actuarial soundness of the plan. A recent analysis of the cost of the program indicates that only modest changes in the currently prepared reduction factors may be necessary to make the program actuarially sound.

PROVISIONS IN H.R. 3702 NOT ACCEPTED BY THE COMMITTEE

There were a number of provisions in the House version of H.R. 3702 which the committee deferred action on. These were: (1) reduction of the social security offset under the survivor benefit plan from 100 to 50 percent, (2) change in the method of calculating the reduction of military retired pay for members covered under the survivor benefit plan (cost to the retiree), (3) elimination of the social security offset under the survivor benefit plan when the widow has one dependent, (4) elimination of the social security offset when the widow is collecting social security based on her own earnings, (5) elimination of the social security offset for certain reservists who serve on active duty for less than 30 continuous days and who receive a refund of social security taxes withheld for those periods.

Reduction in social security offset from 100 to 50 percent

Under the current survivor benefit plan, the payments by the Department of Defense to widows are reduced at age 62 by an amount equal to 100 percent of the amount of social security benefits to which she is entitled based on her husband's military service.

The committee recommends against a change in the social security offset under the survivor benefit plan pending a thorough study of the current military survivor benefit plan. The committee is concerned that there is no actuarial data and analysis to support a change in the offset at this time. The Congressional Budget Office estimates a total cumulative cost of $6.1 billion between fiscal years 1979 and 2000 for changing the offset of social security from 100 to 50 percent. An increase in Government outlays of $6.1 billion for fiscal year 1979–2000 should require more careful actuarial and other types of analyses than currently available.

Change in formula for calculating retiree's cost under survivor benefit plan

The House version of H.R. 3702 provides in law for a change in how the reduction in military retired pay will be calculated for those participating in the SBP to make it conform identically to the formula used for the Federal civil service survivor plan. The Congressional Budget Office estimates a total cumulative cost of $3.5 billion between fiscal years 1979 and 2000 for making the military SBP identical to the civil service plan in the method of calculating cost to the member. The committee was concerned with this significant cost to make the two survivor plans identical in one area when the military and civil service retirement plans are significantly different in a number of areas:
average years of service, average age at retirement, average years in retirement, average lifetime retired pay and contributions to the retirement system. These differences make a comparison of the military and civil service retirement programs difficult at best and suggests that any attempt to equate the two systems in any one particular area may not be appropriate. The committee would prefer to have a sound actuarial basis provided for making a change of this kind.

Elimination of social security offset where there is one independent child

When a military retiree dies, leaving a widow and one or more children, a social security benefit is payable to the mother and to each dependent child. Under the survivor benefit plan, if there is only one child, an amount equal to the amount of social security "mother's benefit" payable based solely on the member's military service is "offset" against the survivor benefit plan payment. If there is more than one dependent child there is no offset. The committee does not have sufficient actuarial or other evidence at this time to justify a change in the offset for a widow with one dependent child particularly considering the potential cost implications.

Elimination of offset for widows or widowers collecting social security on their earnings

The current survivor benefit plan requires an offset in the surviving spouse's annuity at age 62 even though he or she may be receiving social security benefits based on his or her own earnings and not on the basis of the deceased retiree's military service. The committee did not approve this provision and recommends that the Department of Defense develop more reliable cost data on this provision.

Elimination of the social security offset for widows or widowers of certain reservists

The House version of H.R. 3702 contained a provision which eliminated the social security offset under the survivor benefit plan for the widow or widowers of a reservist whose only active service consisted of periods of active duty of 30 or less continuous days for which periods the reservist received a refund of social security taxes because he or she had maximum social security coverage from private employment. The committee was concerned that this group of reservists was not a distinct group. Some reservists had periods of active duty of 30 days or more but in many of their years of reserve service had the maximum taxable wages in their civilian employment. This provision would also ignore regular members who had substantial civilian covered wages and who received a refund for excess social security taxes in some years of military service. The committee was also concerned that this provision would cause selective consideration of civilian wages for certain reservists. Moreover, such a change would fail to recognize the government contribution in social security taxes on the military covered wages of these reservists.

Committee requirement for Department of Defense study on survivor benefit plan

The committee requests the Secretary of Defense to undertake a study of the current military survivor benefit plan and report his findings to the committee no later than February 1, 1979. The study should include, but not be limited to, the following:

A statement of policy by the Department of Defense as to the goals of the Survivor Benefit Plan in terms of participation, cost to the member and to the Government, the rationale for this policy, and the recommended changes in law to accomplish it.

An actuarially based analysis of the survivor benefit plan, including net outlay estimates, benefit payments, expected reductions in retired pay under the current survivor benefit plan, and with a 50 percent offset of social security and change in the method of calculating retired pay deductions as provided for in the House version of H.R. 3702. The analysis should include the effect on benefit payments, reductions in retired

pay, and net outlays of increased participation in the survivor benefit plan.

An actuarial analysis of the cost of officers and enlisted personnel of the survivor benefit plan and the cost to the Government under the current survivor benefit plan and with the changes provided for in the House version of H.R. 3702.

An actuarial analysis of how the current survivor benefit plan impacts on the unfunded liability of the military retirement system and how the provisions in the House version of H.R. 3702 impact on this unfunded liability.

A comparison between the current survivor programs for military and civilian service retirees in terms of what portion of each program is paid for by the retirees. A similar comparison should also be provided based on the House version of H.R. 3702.

The committee recommends that the opinions of independent actuaries be reflected in this analysis.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to move, en bloc, to reconsider the votes by which the various measures were passed.

The PRESIDING OFFICER (Mr. CLARK). Without objection, it is so ordered. The motion is in order.

Mr. ROBERT C. BYRD. I so move.

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

The motion to lay on the table was agreed to.

THE OLDER AMERICANS PROGRAMS

Mr. CRANSTON. Mr. President, I would like to speak about S. 2850, the proposed "Older Americans Act of 1978," as reported from the Committee on Human Resources. As the ranking majority member of the Subcommittee on Aging, I am most concerned and involved with programs and projects with respect to elderly individuals. At my request, my colleague from Missouri, Mr. EAGLETON, announced that I would be inserting into the RECORD a statement on S. 2850, as reported.

GENERAL BACKGROUND

Mr. President, it has been 5 years since Congress authorized, as part of the Older Americans Act, the creation of a national network of area agencies on aging to plan, coordinate, and develop a wide variety of services for elderly individuals. Area agencies—AAA—are designed to serve as the focal point on aging for their planning and service area—PSA—and to develop a comprehensive and coordinated system of services for older persons within their PSA. Since the enactment of the 1973 amendments, 563 area agencies have been established covering 90 percent of the eligible elderly population. Approximately 11 million individual community services are provided annually through the network. In my home State of California, approximately 88.4 percent of the elderly population lives in counties served by AAA's. The remainder live in counties where title III funding comes directly from the State for particular services.

Mr. President, testimony presented by Secretary Califano before the House Select Education Subcommittee of the Committee on Education and Labor last March reveals the importance of long and short-range planning and program development with respect to aging and the value of evaluating current efforts. He said:

In 1960, 9.2 percent of our population, or 16.5 million people, were 65 or older. Today, that older group has grown to 10.05 of our population: 22.4 million people. Looking ahead to the year 2035, we can predict that nearly one-fifth of the population, or more than 55 million people, will be 65 and over. Today, 38 percent of the elderly are over 75 years of age. By the year 2030, that figure may be nearly one-half of the elderly population.

The reauthorization of the Older Americans Act provides a pertinent opportunity for evaluation of the AAA network. After 5 years, sufficient time has passed to enable us to determine whether, and to what extent, the AAA approach is working as intended. Senator EAGLETON, chairman of the Subcommittee on Aging, and Senator CHAFEE, the ranking minority member, along with their staffs, have worked hard on this reauthorization, and their efforts should be applauded.

GOALS

Mr. President, in order to evaluate whether, and to what extent, the older American programs are working, I believe it is important to discuss the gages by which such programs should be measured. We must not fail to remember that these programs are intended to serve older individuals—people who have served this country for many years. I believe that of uppermost importance in the evaluation of the older Americans programs—and, indeed, all such programs—is whether they further the Nation's goal of assuring that each and every American has the opportunity to live their life in dignity, and whether the programs do so effectively, equitably, expeditiously, efficiently, and compassionately—and with a minimum of red-tape, regulation, and paperwork.

Mr. President, we all realize there are limitations on the amount of Federal money available for meeting the goals I have outlined. Recognizing such limitations, and, in conjunction with the overall goals of the Older Americans Act, I believe that it is necessary to make hard decisions on priorities for the funds available. In this regard, I direct my colleagues' attention to the following findings of the California Department of Aging in their recently developed long-range plan on aging, adopted early this spring:

While the California Department of Aging is committed to improving the quality of life for all older Californians, because of limitations in funds and other resources, its efforts must be focused on the portion of the elderly population determined most "at risk" of premature or unnecessary institutionalization. This is in keeping with its mission under the Older Americans Act to secure and maintain maximum independence and dignity in a home environment for older persons capable of self-care with appropriate supportive services. The factors contributing to an older person's being considered "at risk" can be generally summarized as poverty, physical, or psychological impairment, and social isolation. These factors are inter-related and intercausal and are present predominantly among the minority elderly, elderly women, and the frail elderly.

Mr. President, in 1975, approximately 512,000 elderly Californians—aged 65 and over—had incomes in the near-poor or poor range. This represents approximately 25 percent of all Californians aged 65 and older. California's share of the Nation's elderly poor as counted by the Census Bureau is 6.4 percent.

The long-range report revealed that members of ethnic minority groups are more than twice as likely than white individuals to live in poverty. In addition, not only are elderly minority persons more likely to live in poverty but, as I will discuss in greater detail later in this statement, they are also less likely to receive the benefits and services that would alleviate their poverty. Elderly women have about half of the income of elderly men, and they are twice as likely as men to living alone. The long-range plan reports:

Older single women are among the poorest persons in our society. While about 15 percent of all persons aged 65 and over live below the poverty threshhold set by the Census Bureau, 32 percent of all single women have incomes below this level and 50 percent have incomes below the "near-poverty" threshhold.

Finally, Mr. President, with respect to "frail elderly", I recall that Secretary Califano described these individuals as those whose ability to function in the ordinary business world and daily living has become limited because of poor health, disability, or senility. The Secretary estimated that 3½ to 4½ million people fall within the classification of "frail elderly." Said Secretary Califano, "We can expect that an increasingly older population will mean a greater incidence of disability and isolation."

Mr. President, I believe that when we examine S. 2850 as reported, and the provisions included as part of that measure, we should do so in light of the elderly population we are trying to serve, the goals we are trying to attain, and, importantly, the particular needs of those categories of older individuals who, it seems to me, are in need of special consideration with respect to our efforts in this area.

CONSOLIDATION

Mr. President, the reported bill is an ambitious undertaking designed to consolidate administratively under the AAA network three Older American Act legislative thrusts—social services, multipurpose senior centers, and nutrition programs. I believe that consolidations of these three titles within one administrative framework should result in a more efficient and effective administration of the Older American programs and should strengthen the capacity and effectiveness of local area agencies on aging. As my colleagues are aware, currently, title III programs—social services—are generally administered by area agencies, title V programs—multipur-

pose senior centers—are operated by the Commissioner on Aging, and title VII programs—nutrition programs—are administered by the States.

The general success of the AAA network has made it possible to give serious consideration to consolidation at this time. In California, currently, more than 80 nutrition projects are being operated under title VII throughout the State with most of them being conducted in PSA's in which AAA's have been designated. The California's long-range plan on aging emphasizes:

Many AAA's have developed specialized knowledge of the needs and resources in their PSA's as well as specialized knowledge of administration of aging projects, and may be qualified to administer a coordinated, efficient, and effective title VIII program within their PSA.

The long-range plan recommended that—

the CDA (California Department of Aging) shall transfer direct responsibility for title VII nutrition project administration to area agencies on aging.

Mr. President, I do not take lightly the consolidation of title VII and title III to be administered by the AAA network. It is a major step. On the whole, title VII projects have done an admirable job in attempting to meet the nutritional needs of elderly citizens. However, the advantages of consolidating responsibility for the multipurpose senior centers and the nutrition programs along with the social services within the AAA network will, in my judgment, outweigh the disadvantages. Under S. 2850, as reported, accountability for the responsive, expeditious, and efficient operation of such programs will reside in a direct chain-of-command from area agencies through the States to the Commissioner on Aging.

Although we are shifting responsibility for the operation of title VII programs from the States to AAA's—and derivately back to the States—I believe that it would be unfortunate and unwise if AAA's do not take into account and give special consideration to the special talents and abilities of current title VII grantees.

OTHER ADMINISTRATIVE PROVISIONS

There are a number of other administrative provisions contained in the measure which I believe should be highlighted. With respect to accountability, the bill would make specific the responsibility of the Commissioner to advise, consult, and cooperate with Federal agencies or departments administering programs designed to serve older individuals. This change would revise the existing requirement of Federal agency cooperation by reassigning to the Commissioner on Aging the burden for assuring coordinated interagency dealings. In addition, a paperwork reduction requirement is included, at my suggestion, derived from Senator DOMENICI's bill, S. 2609. The Commissioner would be authorized to request only such information as the Commissioner deems essential to carry out the purposes and provisions of the Older Americans Act. In this regard, the reduction of the frequency of submission of State and area plans should also facilitate the ability of States and area agencies to concentrate on pooling, coordinating, and delivering services. Under the committee bill, State plans would be submitted every 2 years, rather than every year as presently required. These provisions, in conjunction with other administrative changes included in the reported bill, Mr. President, should result in a reduction of paperwork and a more streamlined administrative structure, better able to serve the needs of older Americans.

INTRASTATE FORMULA

Mr. President, the reported measure includes a number of changes which affect States and the manner in which States administer Older American programs. One very important change would require States, for the first time, to develop a formula, in accordance with guidelines issued by the Commissioner, taking into account the best available statistics on the geographical distribution of individuals aged 60 and older in the State, the incidence of such low-income individuals, and the number of individuals who are members of minority groups. I emphasize that the committee report—No. 95–855—to accompany S. 2850 stresses that Older Americans Act "social services delivery has never been a poverty program in the sense that its benefits were provided solely to poor persons or that a means test was employed." This amendment would not change the intent of or the operation of the Older Americans Act in that regard. However, as I indicated earlier, there are segments of elderly individuals whose needs are particularly striking and to whom special consideration should be given. When we are attempting to plan programs designed to address needs, especially when we have limited funds available, I believe that special efforts to target assistance on meeting those most in need should be taken. The inclusion of low-income and minority aged for purposes of intrastate formula distribution is a desirable step in the direction of assuring that segments of the elderly population with the most striking needs are given the maximum opportunity to participate in and benefit from programs under the act.

Under the committee bill, States would be required to publish the intrastate formula for review and comment. This requirement should provide the opportunity for interested individuals and organizations to become involved in the process for allocating these funds. Another important provision in the bill designed to assure that interested individuals and organizations have the opportunity to participate in the State's aging efforts is the requirement that State agencies provide an opportunity for a hearing, upon request, to any area agency on aging submitting a plan, to any provider of services under such plan, and to any applicant to provide services under such a plan.

AAA DESIGNATION

Mr. Presient, another aspect of the measure affecting relationships between a State and AAA's involves the consideration of applications of certain cities to become AAA's. My colleagues are aware that title III of the Older Americans Act is primarily a State-run program. Under the committee bill, States, subject to the act's limitations, generally, are the final arbiters on AAA applications submitted by general purpose local governments. Currently, cities and towns are denied AAA designation by States for a variety of reasons. In most instances, such a denial can be very frustrating to the involved city's efforts to provide the best possible service—as they see it—to its older Americans. However, I believe that an effective system of comprehensive and coordinated planning responsibilities for older American services with a State requires that States must generally have authority for determining the focal points for service delivery.

Mr. President, recently, the city of Long Beach sought and was denied AAA designation by the State of California. I recognize and appreciate the State's position—just as I appreciate and understand the city of Long Beach's position. The amendment offered on the floor by the Senator from New Mexico, Mr. DOMENICI, with respect to providing an opportunity for appeal to the Commissioner for general purpose local governments which are otherwise eligible, but whose applications for AAA designation have been denied by the State, would provide a solution—albeit, not a perfect one. I would expect, however, that the Commissioner, in making these determinations, would do so in view of the aims and goals of the approved State plan within which the appellant city is located.

STATE ADMINISTRATIVE EXPENSES

Mr. President, during consideration of Older Americans Act legislation this year, a great deal of concern was expressed concerning the availability of moneys for the administration by States of State programs. I believe that consolidation of the three titles and the extension of the period of time for submission of plans should alleviate somewhat the concerns expressed to us that insufficient funds are provided for State administration.

However, I realize the importance of providing sufficient administrative funds. For example, S. 2850 as reported would require the State-designated aging agency "to serve as an effective and visible advocate for the elderly by reviewing and commenting upon all State plans, budgets, and policies which affect the elderly and providing technical assistance to any agency, organization, association, or individual representing the needs of the elderly." Such duties, while benefiting older individuals, do not increase the amount of administrative funds under the formula in present law. In addition to such advocacy and technical assistance responsibilities, the State agency must oversee the operation

of older American programs within its jurisdiction generally. Additionally, pooling, coordinating, and serving as focal points for delivery of services can result in greater administrative expenditures than would generally be required for provision of services.

In recognition of these problems, Mr. President, we included in the 1975 amendments to the Older Americans Act a mechanism for relieving the costs of the administrative burden on States. Specifically, a provision was included as part of those amendments for providing additional administrative funds to an applying State for the administration of its plan. To date, only three States have so applied. Such limited use of this mechanism could be interpreted in at least two ways—one, that the States' administrative burdens are not sufficient to warrant application for additional administrative funds; or, two, that the procedures established are so rigorous or inequitable as to inhibit any such application. In either instance, I will be examining with care the further operation of this section in order to determine whether, or to what extent, changes are needed.

In addition, under the committee bill, the minimum amount allowed for administration of State plans would be increased. This, of course, would also result in an overall reduction in the amount available for other than minimum-allocation States when the funds appropriated are allocated on the basis of the population. In this regard, we have been assured by the subcommittee chairman that, at the time appropriations for the Older Americans Act are considered, the effect of this increase for the 7 minimum States, on the 43 nonminimum States will be brought to the attention of appropriate members of the Subcommittee on Labor and HEW of the Committee on Appropriations.

PUBLIC MATCH AMENDMENT

Mr. President, I was pleased to join with the Senator from New York, Mr. JAVITS, in offering an amendment to reinstate the currently required State-and-local-public-agency funding match provision. Under current law, of the amounts provided by States or local public agencies to match the Federal Government's share, 25 percent must be from State and local public sources. Under S. 2850 as reported, the public sources share of the match would have been increased to 50 percent in order to increase the minimum level of State and local public involvement.

Whatever the source of dollars used by State and local public agencies to match Federal dollars, the important consideration is the provision of assistance to eligible older Americans. I believe that requiring an increase in the current level of such public involvement would be unwise at this time. The current 25 percent match assures State and local public involvement. If a State or local public agency undertakes efforts to generate or involve the private sector in older American programs, these efforts should not be penalized—rather, they should be encouraged.

FUTURE MANPOWER NEEDS

Mr. President, I would like to draw attention to provisions in the reported measure relating to title IV of the act. Currently, title IV is, in part, designed to improve the quality of services and help meet critical shortages of adequately trained personnel for programs in the field of aging. The Commissioner on Aging is required to appraise the Nation's existing and future personnel needs in the field of aging at all levels and in all types of programs, and evaluate the adequacies of the Nation's efforts to meet those needs.

Mr. President, at the turn of the century, the U.S. Census calculated that 4 of every 100 persons living in our country were 65 years of age or older. By 1978, the proportion had more than doubled. More than 10 of every 100 persons in the United States today are at least 65 years of age. Because of these and prospective changes in our society, we must examine how we are going to meet the needs of our older population today, and, especially in light of "the graying of America," how we are going to meet the needs of our older population in the future. In addition, as I discussed previously, aged minority group members have generally had more aging problems than generally besets older Americans. In July, 1977, there were 32,856 persons aged 60 or over in our country—of that figure approximately 9.3 percent were aged minority group Americans. Hence, I want to focus special attention on the amendment to title IV which I proposed with respect to future personnel and minority group needs which would require the Commissioner to "assess future national personnel needs with respect to the aging with special emphasis on the needs of aged minority group individuals the need for the training of minority group individuals to meet such needs." This provision should be an important one in terms of meeting tomorrow's needs among all elderly individuals, especially minority group elderly.

WHITE HOUSE CONFERENCE—AGING RESEARCH

Mr. President, the committee bill cites—at my suggestion—as a reason for the convening of the 1981 White House Conference on Aging, the great need for a national policy with respect to increasing, coordinating, and expediting medical and other appropriate research directed at determining the causes of the aging process. The measure also specifically directs that the Director of the National Institute on Aging shall have a major role in planning and conducting the conference. In addition, researchers on problems with the elderly and the process of the aging are included in the groups of individuals who are to be participants in the conference.

I proposed these involvements because I am convinced that research in the aging process can lead to findings which will enable older individuals to live happier, productive, and more dignified lives, and add more—and quality—years to our lives. I have become increasingly concerned that sufficient emphasis has not been placed on the support of basic biomedical research, and I am convinced that a greater emphasis—such as will be provided by the White House Conference on Aging—will have a real payoff for medical advances with respect to the aging process generally, both in the long and short runs.

Among those areas with the greatest potential for unlocking the basic mysteries of the aging process are:

Immunology.—Research in the immune system, including the effect of antioxidants on the decline of the immune response with age.

Nutrition.—Research on nutrition and aging, and the importance of nutrition research to the maintenance of health and the prevention of disease in the aging adult.

Pharmacology.—Studies of drug absorption, distribution, metabolism, and excretion in the aging, as compared to, younger individual.

Endocrinology.—Research into the association between osteoporosis and hormones secreted by the parathyroid.

Neurosciences.—Study of organic brain diseases that cause major disabilities and institutionalization among the elderly.

Mr. President, the emphasis on this research into the aging process in the provisions for a 1981 White House Conference on Aging will be a major step. Research into the aging process can have major implications for biomedical research generally. Research in the aging process does not focus principally on specific diseases, but rather on genetic controls and the time-dependent mechanisms that cause progressive changes in the body—changes that are likely to set the stage for the onset of disease as well as of the aging process. The results of our research efforts, as well as the result of the attention given to the White House Conference on Aging, may help us find the key to causes of such major crippling and killing diseases as diabetes, multiple sclerosis, arthritis, and so many others.

The inclusion of research in the White House Conference on Aging and the major role given to the Director of the National Institute on Aging on the conduct of planning for the Conference is designed to insure that these important issues will be given appropriate attention. Such inclusion should assist the development of a national policy to increase, coordinate, and expedite medical and other appropriate research directed at determining the causes of the aging process.

ADDITIONAL KEY PROVISIONS

Mr. President, there are a number of other aspects of the committee bill which I believe are worthy of mention. The requirement that 50 percent of the AAA's service expenditures are to be expended on transportation—access—in-home, and legal services should facilitate greater efforts in those three important

areas. There are limited amounts of Federal funds available for AAA services. We must recognize that we can do only so many jobs well—and so many need to be done. These three priorities are all services of utmost importance. Concentration on these areas should provide greater opportunity for elderly individuals, particularly those individuals in need of special consideration, to receive needed services, while still allowing local communities to tailor services to local needs with the other half of the service funds. The special provisions for legal services should play a key role in assuring that elderly individuals are able to obtain, in a coordinated, cost-effective fashion, the benefits to which they are entitled under law. The new ombudsman program should be an important tool in assuring that institutionalized older Americans are assisted appropriately. Institutionalized persons are very vulnerable. The amendments regarding ombudsman projects should provide a mechanism for protecting these vulnerable individuals and assuring that they receive appropriate care and attention. The improvements in the nutrition program—including the extension of eligibility for Meals-on-Wheels to homebound handicapped individuals—are also noteworthy and should assure continuation of these important and worthwhile programs.

SUMMARY

In sum, Mr. President, I believe that S. 2850 will go a long way toward assuring that each and every American has the opportunity to live his or her life in dignity and that programs designed to accomplish that goal will be operated and administered more effectively and responsively. In addition, I believe that those segments of the elderly population in need of special consideration will be benefited by the changes made.

I would like to express my appreciation to Chairman EAGLETON, Senator CHAFEE, and their hard working staffs—particularly Marcia McCord and Steve Roling—for their fine and creative efforts in putting together the committee bill and guiding it through the Senate, and for their cooperation with me and my staff on numerous issues. I look forward to working with my colleagues at a conference on this measure.

THE SHAPE OF NEW CHILD-CARE LEGISLATION

Mr. CRANSTON. Mr. President, the Subcommittee on Child and Human Development, which I am privileged to chair, recently completed a series of four hearings on the subject of child-care and child-development programs. The purpose of these hearings was to solicit the comments of parents, child-care providers, and others concerned with the welfare of children about the need for Federal legislation in the child-care area and how best to shape such legislation. These hearings were, I believe, extremely helpful to me and to the other members of the subcommittee, and I wanted to share today with my colleagues some of the data and thoughts emerging from those hearings. Before discussing the testimony, I would like to describe some of the dimensions of the child-care picture that led to the decision to hold hearings.

The need for adequate child-care services in this country has been documented time and again. Statistics released by the U.S. Department of Labor in March of 1977 indicate that a majority—51 percent—of the mothers of children under the age of 18 work outside of the home. Most of these working mothers have entered the labor force for reasons of financial necessity, and two-thirds work full time. These statistics also indicate that 41 percent of the mothers with children under the age of 6 are in the labor force.

In the terms of the numbers of children involved, these statistics translate to 6.4 million children under the age of 6 whose mothers work and 22.4 million children from 6 to 17 whose mothers work. Yet, there are only 1.6 million licensed child-care openings, including center-based and family-based child care, available throughout the Nation, according to 1976 data from HEW—enough to cover only 25 percent of the children under 6 whose mothers work. Many witnesses at our hearing concluded from this data that substantial numbers of children are left in inadequate care, shuffled from one care arrangement to another, or simply left alone while the mother is at work.

The President's Commission on Mental Health discussed the need for more child care programs in its recently issued report:

With the growing number of working mothers—51 percent of the mothers of school-age children are employed, and many mothers work in order to meet subsistence needs—many families urgently need more and better daycare for their children. There are not enough programs available. A variety of child-care options should be explored. Research has shown that child-care programs that focus on emotional and cognitive development can help to promote positive mental health. The Commission therefore recommends increases in the number of Project Headstart and developmental day-care programs, so that within a reasonable period of time all children needing these and similar programs can have them available. Special attention should be paid to ensuring the inclusion of additional handicapped, rural, and migrant children. Such programs should be culturally acceptable to parents and the communities . . . The Commission specifically recommends that the Administration for Children, Youth, and Families in the Department of Health, Education, and Welfare design a flexible program that supports a variety of child-care arrangements, with adequate provision for evaluation. The Commission also recommends that the Department of Health, Education, and Welfare support programs to recruit and train caretakers at all educational levels and from a wide variety of age, ethnic, and socio-cultural groups.

Although the need for more child care seems clear, the solution has not been easy to come by. Several attempts have been made in Congress over the last 8 years to enact comprehensive child-care legislation. In 1971, we passed such a bill, but it was vetoed by President Nixon. In 1975, hearings were held in both Houses of Congress on similar legislation, the proposed Child and Family Services Act, introduced by former Senator Mondale and Congressman BRADEMAS, but no action was taken on that legislation in either body.

Today, it appears that the need for child-care legislation is even greater than it was 8 years ago. Although the Federal Government already provides support—either directly through social services programs funded through title XX of the Social Security Act which are targeted toward welfare recipients and poor families, or indirectly through tax credits which benefit primarily middle- and upper-income families—large numbers of low-income, working families receive little or no assistance from these programs. Many families, struggling to stay in the work force and off welfare, are simply unable to find reasonable quality child care at prices they can afford in the present marketplace. Some families are able to find neighbors or relatives to take care of the children—and many of these arrangements are adequate. Many others, however, are forced to leave their children alone or in unsafe or unhealthy situations.

NEED FOR MORE PROGRAMS

Mr. President, the strongest theme to emerge from the hearings held by the subcommittee was the need for more child-care programs. Witness after witness told of the difficulties that parents face in trying to find good child care that they can afford, of the long waiting lists for all types of child-care programs, and of the lack of funds to start new programs or to expand existing ones. I would like to give you some examples.

In the Chinatown community in San Francisco, there are 3,000 preschool children in need of child-care services, but only 10 percent of these can be served by existing programs. In Sonoma County, Calif., there are approximately 20.000 low-income children in need of child care but only 5,000 licensed slots for all children in the county, regardless of income. The children's center program in the Hayward school district in California has a waiting list of 400 children for its after-school program.

In response to questions I asked at our hearing about what is happening to these 400 children on the waiting list in the Hayward community, I was told by the supervisor of this program that there were no other programs providing after-school care for the low-income families served by the school district program. Where these children were is simply unknown. A survey done by the Childcare Switchboard of child-care needs in San Francisco found that the 52 children's centers run by the San Francisco school district were all full and had a combined waiting list of 1,600 children. The 25 other publicly funded programs in the city had a total of 12 openings. As Patty Siegel, director of the Switchboard, put it:

It is depressing to talk to 60 parents a day and know that three-quarters of them are

not going to be able to find the child care they want.

The Switchboard's counterpart across the Bay in Oakland—called BANANAS because parents who are trying to find child care are usually "going bananas"—reports a similar demand and a similar lack of facilities.

In case anyone thinks that California is unusual in this respect, I would like to note that we had witnesses at the hearings from all parts of the country—from Arizona, Colorado, Connecticut, Florida, Kansas, Maryland, New Jersey, New York, Pennsylvania, Virginia, and Washington. The subcommittee also received written testimony from numerous other States.

The story is the same everywhere, Mr. President. In Newark, N.J., the waiting list for the title XX funded child-care centers is 3,000 children—at one neighborhood center the waiting list is triple the number of spaces in the center—and this figure does not include the parents who are so discouraged by the length of the waiting list that they do not complete an application. The families that are turned away must pay $25 to $50 per child per week for non-subsidized care out of take-home pay that averages $125 per week. In Colorado, eligibility for title XX child-care programs has been limited to single parents earning less than 60 percent of the median family income, but even so there are 24,000 children eligible while the State's capacity in the title XX programs is 8,000.

CHILDREN ON WAITING LISTS

Mr. President, many of my colleagues may be wondering what is happening to all of the children whose families are on waiting lists for the existing child-care programs. I have been asking this question consistently throughout the hearings. I am still asking it. The truth is, we do not really know where most of these children are, who is taking care of them, or what kind of care they are receiving. Some of the answers to these questions are, however, truly alarming. Ms. Jeanne Ellis, director of the Child Care Center of Stamford, Conn., did a survey of the 139 children on the waiting list for her center and reported the following five actual cases in her testimony before the subcommittee:

1. The parent returned the child to her native country because she needed day care, couldn't find it, and had to work. Parent and child are separated.

2. Another parent was able to talk her neighbor and her maternal grandmother into sharing the day care duties. Child does not have consistent caregiver.

3. One put her child in an expensive, lower-quality, for-profit center. Child gets poor care, parent poor bargain.

4. One wanted "respite" because she was undergoing psychiatric treatment. She got no day care and she's still having mental problems. Parent's future is dim.

5. One stayed home and went on welfare. Another willing worker is added to the millions on the welfare rolls.

Ms. Ellis subsequently provided the subcommittee with a breakdown of the rest of the 134 children on the waiting list: 64 were receiving care by friends of the family, neighbors, private babysitters; 29 were enrolled in expensive, for-profit centers; 35 remained at home, with the parents either remaining unemployed or going on welfare; and 6 were relocated out of the State to reside with relatives who provided child care, resulting in the separation of parent and child.

This summary does not, however touch on one of the most distressing phenomenon—no care. Although we do not know where all of the children not in licensed child-care programs are, we do know that many do not receive any care at all. Statistics from the Census Bureau on the kind of child care used by parents show that there are at least 20,000 children aged three to six caring for themselves while their mothers work. There are another 1.8 million children aged 6 to 13 caring for themselves after school—and sometimes for younger siblings as well. These figures—particularly those for preschool children—probably grossly underestimate the actual number of children caring for themselves since—as Bill Pierce of the Child Welfare League noted in his testimony before the subcommittee—parents are reluctant to admit that they leave a young child alone. The President's Commission on Mental Health made special mention of these "latch-key" children in its report:

Two-thirds of the children estimated to need day care are of school age. According to the Bureau of the Census, there are nearly two million "latch-key" children who come home to an empty house each day. It seems more than coincidental that the rise in the number of "latch-key" children has been accompanied by an increase in school vandalism, adolescent alcoholism, and juvenile participation in serious crime (now 45 percent of the serious crime committed).

Mr. President, I want to stress here the enormous costs—social as well as economic—which this increase in school vandalism, adolescent alcoholism, and juvenile delinquency generates. Each of us, I am sure, shares a deep concern about the increasing problem of juvenile delinquency. Yet, with a small investment in after-school programs, these children can be provided the supervision and direction needed in the hours before their parents return from work, and our over-all costs resulting from vandalism and juvenile crime can be greatly reduced. Society in general, as well as these children and their families, will benefit greatly in the long run.

These statistics, coupled with what we know about the limited number of licensed arrangements in comparison with the number of children in need of child care, suggest that many parents are forced—out of necessity—to leave their children either unsupervised or in otherwise inappropriate situations. The social consequences of these arrangements, as the President's Commission suggests, are multiple and almost always unfortunate.

WOMEN WORK OUT OF FINANCIAL NECESSARY

Mr. President, many who testified stressed the fact that most women work for the same reasons that men do: financial necessity. Their incomes may be the only one the family has—as with the 9.7 million single parents in this country—or their income may make the difference between poverty and a decent living. Marian Wright Edelman, director of the Children's Defense Fund, noted in her testimony to the subcommittee that in 1974 almost 2 million families with incomes over $5,000 were kept there by the wife's income and that 4.5 million families with earnings over $10,000 were kept above the poverty line by the wife's income. According to Ms. Edelman, in single parent families headed by women, the average income is $7,513 if the mother works and $3,794 if she does not.

I could go on and on with these statistics, but I think that the point has been made. There is a pressing need for more child-care programs in this country—although exactly how many more, no one can say. There will be those who say that we do not know enough in the child-care area to act, that we need more research. I do not agree. Although it is true that we do not know everything, we do know enough to move forward with legislation that addresses some of the needs that we know about and that will help us uncover the answers we are presently lacking about the full dimension of the problem.

In her testimony before the subcommittee, on February 20, 1978, Arabella Martinez, Assistant Secretary for Human Development Services in HEW, expressed this same point. She presented an overview of what research in the area of child development tells us about children and their needs and then continued:

I have chosen to emphasize what we know about the development of young children, not because I believe that only professionals can rear children, or that research provides the answers to everything we do, but because I am very conscious of how often we hear that we cannot act until we have the evidence. To a much larger degree than many recognize, I believe we do have the evidence. Not to make all of the decisions we will want to make in the years ahead, not to specify the details of exactly what does or does not work, but to move in the right directions. We will never have a neat equation which spells out how many parts of professional training or units of affection, to how many staff, to how large a nutrition component will equal optimal child care. Child care involves children, and their needs are as individualized as their particular personalities and the circumstances of their families' lives. It is not for us to dictate to families or communities precisely what we might think is best for them. But we do know, with some assurance and the wealth of scholarly and practical research that has been contributed by many thoughtful, caring individuals over the years, what children need in the most basic terms, and what harms children—in equally basic terms. At the very least, we should build on what we know to be good, and do our best to avoid what we know to be harmful.

Ultimately, I find myself agreeing in large measure with the sentiment expressed by Dr. Kenneth Kenniston, who directed the Carnegie Council on Children, when he said: "The call for 'more research' is a common academic reaction to conflicts in the area of child and family policy. This book, Child Care in the Family, clearly implies that research is only a necessary beginning. In the end, a better society for children requires not just more knowledge, but a commitment to change."

SUGGESTIONS FOR LEGISLATION

I would like to turn now to some of the suggestions that the witnesses made con-

cerning the shape Federal legislation should take in this area.

Mr. President, when I began the hearings, I outlined the following five questions to which I felt the hearings should help us find answers. These are not simple questions—and they are ones on which there will continue to be a wide variety of opinions—but they are questions that are central to the development of a comprehensive child-care policy in this country.

First, what constitutes quality child care and what can we do to bring about such quality in our child-care programs?

Second, what are the special needs of different groups for child care, and how can legislation provide for the diversity of programs required to meet those needs?

Third, what types of supportive services, such as information and referral agencies, are necessary to assist families in finding the type of child care and services that meet their individual needs?

Fourth, what is the relationship of child care to employment—both to the employment of parents whose children are in the program and to the employment of those who care for children?

Fifth, how do we assure that the programs will be cost effective and still provide care within reasonable limits of quality?

QUALITY IN CHILD CARE PROGRAMS

Mr. President, in discussing the question of what constitutes quality child care and what we can do to bring about the quality in our child-care programs, the witnesses made four main points.

Federal minimum standards: First, the witnesses expressed strong support for having Federal regulations tied to Federal money. Almost all of the witnesses felt that the Federal Government has not only the right but also the responsibility to set standards for child care purchased with Federal dollars. In general, the witnesses thought that the Federal interagency day care requirements (FIDCR) were appropriate, basically sound, and beneficial to children. Witnesses indicated concern that the same requirements are not applied to all programs receiving Federal funds.

For example, in California, and many other States, child care paid for under the income-disregard provision of the AFDC program is completely unregulated. Witnesses also expressed concern that some States have been able to ignore the intent of the Congress that the FIDCR apply to care supported under title XX of the Social Security Act by substituting State dollars for Federal ones in the child-care area—and using the released Federal dollars to support other social services—thus being able to apply State standards that allow fewer staff members for a given number of children. Many of the witnesses who operated child-care programs testified that the ratios specified in the FIDCR were good ones, and that they wanted to have the funds to be able to hire staff to meet these ratios.

The general support for FIDCR expressed by the various witnesses has also been expressed by HEW in its recently released report to Congress on the appropriateness of FIDCR. The HEW report concluded that regulation of federally supported day care is appropriate and suggested that consideration be given to extending revised FIDCR to all child care supported with Federal funds. It also concluded that the current FIDCR should be rewritten, based on 10 years of experience, to improve their ability to protect the well-being of children. HEW has already announced its intention to develop new FIDCR provisions and has indicated that it will be seeking wide public input in the development of these new provisions. Hopefully, this process will result in the development of standards that are feasible and will promote the quality of care each of us wants for all children.

Importance of licensing: Mr. President, the second main point that was made by a number of witnesses in addressing the question of quality concerned the importance of State and local licensing. Although most States have licensing procedures on their books, a number of them have failed to provide sufficient funds to inspect the child-care programs in their States—some have never appropriated any money at all. In some cases, State licensing codes are too restrictive in areas not really related to the quality of care—for example, specifying the dimensions of windows—and this keeps a number of providers—mainly family day-care providers—from seeking to be licensed. No one is exactly sure what percentage of family day-care homes are licensed nationwide, but estimates are that it is only 2 to 3 percent. Bill Pierce, executive director of the Child Welfare League, described the current child-care situation as an underground one:

> There are a substantial amount of children of working parents who are somewhere, we don't know where. The Census won't tell us because few parents will admit they have their child in a custodial warehouse or overcrowded, unlicensed home, or that they are alone or in the care of a young brother or sister. Licensing people cannot tell us because policy-makers somehow have failed to see the wisdom of spending for licensing child-care providers. Yet, they license others who provide services of a less important nature, like eating places and haircutting establishments. . . . The children are floating in an unsupervised limbo while . . . two and a half billion tax dollars somehow swirl about them. The accountability is virtually nil, and there has been absolutely no response to repeated requests from the League that the Federal Government try and find out what's happening to the children. Instead, we are fed myths, guesses, and hopes—not facts.

Clearly, Mr. President, we need to develop the kind of mechanisms that will give us the answers to these questions and that will assure some minimum forms of accountability where Federal funds are involved in child-care programs.

At the same time, it is important to make sure that licensing requirements or standards are reasonable and do not result in needless redtape or overregulation. Many of the informal child-care arrangements that presently exist—between neighbors or friends—are perfectly adequate and precisely what some parents want for their children. These informal situations are not generally licensed now and should not face licensing requirements in the future. A careful balance obviously needs to be achieved between promoting licensing as a mechanism for protecting the welfare of children on the one hand, and interfering with informal and acceptable arrangements for child care on the other. These decisions, of course, must be made at the local and State level—not the Federal.

No magic recipes: Mr. President, the third main point that was made about quality in child care programs was that there are no magic recipes that will automatically insure quality. Although licensing should help protect children from harmful or detrimental situations, it does not guarantee quality. Even the FIDCR, which set much more comprehensive standards, can only set the stage for quality—they cannot insure it. Ultimately, the quality of a child-care program depends on the people involved. Because the child-care provider is such a crucial element in the quality question, the witnesses stressed the need to provide adequate training and support for child-care workers. As Arlyce Currie, testifying on behalf of a special advisory board of the California State Department of Health, said:

> The bottom line in providing quality care is that a provider is doing what she or he wants to be doing. As it stands now, many people go into child care because they have no options of earning a living. Some want to do it and many don't. People should have access to employment or security so they don't find themselves taking care of children because there is no other way to survive. Child care should not be seen as a cottage industry for the poor. Somehow the present licensing system or the current certification procedures, which are ostensibly there to obtain and maintain quality, don't do the job. What happens is that people who do child care suffer isolation, low prestige, and insufficient benefits. Those who genuinely want to be with children and care for them 40 or 50 hours a week burn out fast.

Mr. President, many witnesses pointed out the irony that even though our children are our Nation's future, the job of caring for them is accorded low status and even lower pay.

Importance of parental involvement: Finally, Mr. President, most of the witnesses noted that parental involvement is related to quality in a number of ways. First, there was a feeling that parents are good arbitrators of quality in child-care programs. One witness noted that a parent can almost always tell whether a child wants to go back to the program and that this is, in itself, a good indicator of quality. Several witnesses said that parents should be involved in setting standards for licensing and in monitoring programs for compliance. Nearly all agreed that it was important to involve parents in the process of planning to meet child-care needs.

The witnesses also testified that parental involvement in a program generally contributed to the quality. It is my belief that the social, emotional, and intellectual development that occurs during childhood—and especially during the preschool years—can best be enhanced

if there is a close involvement between the child-care or child-development program—the planning and operation of it—and the family. In this connection, I would like to note that the Headstart program has been successful in its high degree of parental involvement.

NEED FOR DIVERSITY

I would like to turn now to the issue of diversity, Mr. President. Almost without exception the witnesses at our hearings stressed the need for a pluralistic child-care system that would allow parents a range of alternatives from which they could choose the program that was best for themselves and their child.

Special needs children: As the witnesses testified, it became clear that two kinds of diversity are required. First, there must be child-care programs that will meet the special child-care needs of different groups of children. We had witnesses who represented a number of programs designed to serve such needs, and I would like to present a few highlights of their testimony.

Eleanor Clement from Continuing Development, a migrant child-care program in San Jose, Calif., testified about the special requirements of programs serving migrant children: long hours—beginning at 5 or 6 in the morning—during the peak season; extra funds for start-up and closing costs every year; bilingual staff with a knowledge of migrant culture; health and social services components that can do followup with families in a way that community agencies cannot; and Federal regulations that will promote consistency of care when the migrant children cross State lines.

Stephen Park, the director of Rural Community Child Care in Ukiah, Calif., spoke on the special problems in rural areas: isolation and distance between areas; the seasonal nature of employment and unemployment; the inappropriateness of many governmental regulations for rural areas; and a lack of other resources for programs to draw on.

Ms. Judith Lewis from the Family Developmental Center in San Francisco, Calif., testified about the special needs of school-age parents; support and education for parenthood; guidance in setting and pursuing career goals; mature role models to help them deal with the problems involved in their own growth as well as that of their infants; and child-care programs in close proximity to their high schools. Ms. Lewis also addressed the special requirements of programs for infants; staffing by stable caregivers assigned to the same infants every day; appropriate attention to nutritional needs; staff relief during breaks and lunch periods; and a lower child-staff ratio than programs for older children.

Ruth Yee, of the Chinatown Community Children's Center, in San Francisco, spoke about the needs of children from families in which English is not the dominant language; bilingual staff members who respect and understand the children's primary language and culture; mechanisms to ease the transition to public school; programs to teach the English language; and a high degree of parental involvement.

Judith Lewis also testified about the requirements of programs for handicapped children; specific teacher training; support and education for the parents to help them understand and deal with their child's handicap; modified equipment and facilities; and funds for consultations with specialists such as occupational, physical, and speech therapists.

GIVING FAMILIES OPTIONS

Mr. President, in addition to addressing the special child-care needs of different groups of children, the witnesses talked about the importance of a second kind of diversity; providing families with a range of program types from which to choose. They noted that there are families who prefer center care and those who prefer family day care. Among those with a preference for center care, some prefer centers in their neighborhoods; others prefer centers at or near their worksites. Different families want different types of program emphasis—for example, programs stressing school readiness or those giving more importance to social skills and interaction. Some parents prefer church-sponsored programs; others do not.

The witnesses at our hearings almost uniformly stressed that these choices should be made by parents and that their options should not be limited by what kind of a program is eligible for subsidy. Even within families, the needs of different children may vary. One witness in San Francisco testified that her two preschool children needed the structure of a center-based program while her infant needed the home-like atmosphere of a family day-care program.

Unfortunately, although her low income qualified her for a subsidy for child care, that subsidy was available only for center care. Rather than quit work and go on welfare, she borrowed money from friends to pay for family day care 3 days a week and took the child with her to work or left him with friends the other 2 days. During the course of her testimony, she noted that next year her oldest child will be in school and she will have a whole new set of child care problems to solve.

Actually, Mr. President, to a certain extent, the kind of diversity that the witnesses are talking about already exists—at least for middle-income families. Our task in developing legislation is to devise ways to support and encourage this diversity and to increase the range of options for families who are unable, because of financial constraints to share these options.

During the February 20 hearing at which the representatives of the administration testified, Dr. Blandina Cardenas, Commissioner of the Administration for Children, Youth, and Families of the Department of Health, Education, and Welfare, talked about the ways in which Federal assistance can support and nurture the pluralistic philosophies in child care that already exist in our country. Dr. Cardenas noted that one of the keys to supporting the many diverse cultural and ethnic traditions regarding child care is to provide the financial assistance necessary to make parental choice feasible:

> I have found that where there is little choice in terms of the availability of services to a parent who, in fact, has no alternative but to go to the day care center that is there, and who, in fact, does not have access to the kinds of resources that would help them fashion a more ideal day care situation or one more conducive to their own cultural beliefs and attitudes, that, in fact, that danger [lack of pluralism] is heightened. It is the lack of availability of child care which puts the parents in a more vulnerable position in terms of the day care that is available.

Mr. President, I strongly share the view that a fundamental way to try to assure that a family's child-care arrangements are appropriate to the child's needs and consistent with the parent's values is to encourage the development of a range of program types and models. Meaningful choice, however, rests ultimately on an adequate supply, and until that is available, families will be unable to find the kind of care that meets their individual needs.

INFORMATION AND REFERRAL PROGRAMS

Mr. President, I would like to turn now to the third of our areas of focus for the child-care hearings—the role of supportive services such as information and referral programs. At both of the hearings in California, we received testimony from people involved with information and referral—also called resource and referral—programs. I was very impressed with the range of services offered by these programs, services not only to parents but also to child-care providers and to State and local agencies.

According to Betty Cohen of BANANAS, an information and referral program, Berkeley, Calif., the services of information and referral programs go far beyond simply giving parents a list of child-care programs. They include helping parents figure out what they want from a child-care program, giving them a chance to discuss their feelings about going to work and leaving their child with another caretaker, providing referrals to other much needed family services, and answering parents' questions on everything from infant car seats to organizing cooperative babysitting services.

For child-care providers, Mr. President, the information and referral program serves as a resource center providing information on such subjects as possible sources of funding, where to purchase supplies, and State and local regulations. It gives providers a chance to talk to each other and to share their experiences. Sometimes the information and referral programs serve as sponsors for family day-care homes who want to participate in the child-care food program. If someone wants to start a child-care program, the information and referral agency can use the information that they have gathered comparing child-care needs and programs in various neighborhoods to suggest an appropriate location.

Information and referral programs can also provide services to State and local agencies trying to meet child-care needs by documenting for them not only the need for additional child-care services, but also the type of services that are desired—part-time or full-time, infant care or care for older children, family day care or center care. This information allows these agencies to plan for child-care services in a community and to assess the progress that is being made toward meeting the community's needs.

Finally, I think information and referral programs are absolutely essential to offering parents the option of child care through other than center-based models. Without some network for letting parents know, for example, of family day-care homes in their neighborhoods, parents are often faced with very difficult tasks in locating these options. These agencies thus can provide invaluable services in helping parents find the kind of care arrangements they truly want for their children.

CHILD CARE AND EMPLOYMENT

Mr. President, I come now to the fourth area of focus of our child-care hearings: The relationship of child care to the employment of parents and to the employment of child-care workers. I will talk first about the testimony presented concerning the relationship between parental employment and child care.

NOTCH EFFECT

Mr. President, one of the main concerns of those who addressed themselves to the relationship between child care and employment was that the current child-care programs funded under title XX of the Social Security Act, as well as the child-care services made available to people in CETA and WIN programs, often operate so that once a person moves off welfare and out of the training program, that person does not get the necessary assistance needed in child care and working becomes a disadvantage for them.

Persons in low-paying jobs who are receiving subsidized child care under title XX may have to stay in those jobs rather than taking promotions, or raises since, once they are near the cutoff point, an increase in salary of just a few dollars may mean an increase in child-care costs of $35 to $50 per week per child. The witnesses suggested that a sliding fee scale under which parents pay an increasing share of their child-care expenses as their income increases would not only eliminate the problem of this "notch effect," but would also provide a mix of economic levels in each child-care program.

EFFECT OF CHILD CARE ON EARNING POWER

Mr. President, several witnesses pointed out that the availability of child care has an effect on the earning power of women.

For example, Joe Breiteneicher, of the Employment Law Center in San Francisco, testified:

. . . [the] paucity of child care services has a direct and depressing impact on the workforce mobility of poor women, who traditionally have been consigned low-wage, dead-end jobs. The lack of positive child care alternatives means that women are unable to move to a job which may have better pay or the opportunity for career training, because any change in the work schedule may upset child care arrangements which were already tenuous. In addition, minority women are forced to take jobs close to their ghetto homes in order to be near children left alone or with older youths. The work they manage to find is generally less remunerative and fulfilling than that which is available in the overall labor market. Thus, the absence of child care resources contributes directly to the continuation of poverty for those who are working mightily just to keep their heads above water.

OTHER EMPLOYMENT CONCERNS

Mr. President, another way in which employment and child care are related is that the hours of a parent's employment determine the hours during which child care is needed. Several witnesses pointed out that there are many parents whose working hours may not be the same as the hours most child-care programs are open. For those who work night or evening shifts the only options may be in-home care or a 24-hour child-care program. At one of our hearings we heard from the director of one such program: Ms. Annie Green of the Small Fry Center in Los Angeles. Although this center is providing an essential service to its community that is not available elsewhere, it has not been able to obtain a secure source of funding and is constantly threatened with extinction.

Our witnesses pointed out that employers—as well as parents and children—benefit from having good child care available and affordable since a lack of child-care facilities may have an adverse effect on worker morale and productivity. If a mother is constantly worrying about her child, trying to solve minor crises over the phone, and missing days of work when her makeshift child-care arrangements fall through, she is not able to do her best at her job. Recognizing this, a number of employers have helped support child-care programs. Russell Yoas and Donald Shearer of the Baltimore Regional Joint Board, Health and Welfare Fund, Amalgamated Clothing and Textile Workers Union, testified about the ACTWU's program of child-care centers supported jointly by the union, the employer, and the participating parents. This highly successful program has been expanding since its foundation in 1968 and now serves over 1,000 children. Workplace or onsite child care is an option which needs to be encouraged and supported.

Mr. President, I have spoken before about my interest and concern for the on-site child care programs that have been established in a number of Federal agencies. I think these programs provide valuable services—both to the employees and the agencies involved. On May 9, the Office of Management and Budget held a hearing on proposed regulations that would seriously damage these programs. I sincerely hope that there will be continued leadership on the part of Federal Government in supporting these programs.

CHILD CARE EMPOYEES

Mr. President, our witnesses noted that the expansion of child-care services has the potential to provide employment for thousands of people. They stressed, however, that because the quality of a program depends so much on the people involved, child-care workers must be given adequate emotional, social, and physical support. Sue Brock, of the California children's lobby, gave the following response when I asked what effect paying inadequate wages to child-care providers had on the quality of child care:

Well, most people care for children between 10 and 12 hours a day. If they are on food stamps because they don't make enough money and if they don't have any relief from their job, and if they don't have any training linked into it, they get very tired and often they get very bitter. They are not really the kind of people you want working with your children.

There was general agreement among the witnesses that providing adequate support for child-care workers would mean at a minimum insuring that the following were made available to them:

First, adequate pay; second, employment benefits such as health insurance, leave time, and retirement plans; third, adequate preservice and in-service training; and fourth, opportunities to improve their skills and move into positions of increasing responsibility.

COST-EFFECTIVENESS

Mr. President, I turn now to the fifth and last area of focus for our hearings: Cost-effectiveness. I would like to note that this term made a number of our witnesses uneasy. Dr. Vivian Weinstein, chairperson of California's Governor's Advisory Committee on Child Development Programs, began her testimony this way:

When I hear the phrase "cost-effectiveness" applied to child care services, I really shudder because in this context, cost-effective has only one meaning, and that's cheap. Cheap applied to the needs of the young children generally results in . . . much higher costs later on—unemployment and crime and untold cost in human misery and the waste of human potential.

This notion—that short-term savings achieved by providing low-quality care with too few staff members per child, inadequate pay for child-care workers, or a lack of supportive services for parents results in much higher human and social service costs later—was echoed by most of the witnesses. Real cost effectiveness, the witnesses suggested, could be achieved by the following activities:

First, reducing duplication of effort by comprehensive, long-range planning and by coordinating programs funded under different auspices.

Second, eliminating conflicting requirements and regulations imposed on child-care programs by different agencies and different levels of government agencies.

Third, utilizing resources such as the Department of Housing and Urban Development in the rehabilitation or construction of child-care facilities.

Fourth, increasing the involvement of local government officials.

Fifth, coordinating child-care services with other Federal, state and local programs, such as CETA, and eliminating the Federal and State regulations that hamper this kind of coordination.

Sixth, using community facilities in the training of child care workers.

Seventh, staffing child-care programs with

a range of personnel, from professionals with more academic credentials to paraprofessionals with field-based training.

Eighth, providing information and referral services.

Ninth, utilizing all resources, both public and private.

At a time when we are increasingly concerned about the cost of all government programs, cost-effectiveness is clearly an important factor that must be addressed in any new Federal legislative approach. In many ways, child-care programs are among the most cost effective of social service programs because they permit parents to get out and earn their living, rather than collect welfare. Quality child care is also a long-term investment in the future. Our children are far too valuable to society to place in jeopardy. Nevertheless, the taxpayer is entitled to know that Government funds are utilized in appropriate, cost-effective ways.

THOUGHTS ON LEGISLATION

Mr. President, I hope that this brief overview of the testimony presented at the subcommittee's 4 days of hearings on child care and child development has given my colleagues some idea of the dimensions of the child-care problems in our country and the issues that must be addressed in legislation designed to begin resolving these problems.

When I announced the hearings last fall, I indicated that I planned to draft and introduce new child-care legislation and that I would draw upon the testimony presented at the hearings and later submitted for the record in preparing this legislation. Although I am still reviewing this testimony and considering the legislative options, there are some basic principles that I believe should be followed which I would like to share with my colleagues now.

PURPOSE

Mr. President, the purpose of the legislation must be to make child care more available and affordable for low-income, working parents who are not receiving child-care services through other programs who cannot afford not to work. Families in this group should be given priority for services, and fees should be charged on a sliding scale based on income. Utilization of sliding fee scales can also promote economic diversity in child care programs and help avoid segregation of low-income children in particular programs.

STATE ROLE

In order to insure both effective planning and coordination and responsiveness to local needs and conditions, I believe that State governments must be involved as principal agents for planning and coordination of the program. Past legislative efforts in this area have sometimes sought to establish administrative structures outside of State and local government units. This approach can be costly and result in the diversion of much needed funds for child care into the establishment of new bureaucratic structures. I believe there is a great need to work in partnership with existing agencies to meet these critical needs.

The approach I am developing would distribute funds through the States in accordance with the respective populations of the groups most in need of child care assistance.

The States would be required to assess their child care needs and to devise a plan to meet those needs. The State plan to be submitted would cover areas such as:

First, provisions to assess and seek to meet the need for services for such groups as preschool children, and school-age children, up to age 14, with special provisions for services to migrant children, handicapped children, bilingual or non-English-speaking children, and other groups with special needs;

Second, coordination by State and/or local governments of all child-care programs receiving government subsidies including those funded under title XX of the Social Security Act;

Third, support for some reasonable form of licensing by State and/or local governments for all child care except care in a child's own home or care by a relative or in a very informal, non-commercial neighborhood setting;

Fourth, provision for information and referral sevices;

Fifth, training and certification of child-care workers;

Sixth, establishing mechanisms for data collection and evaluation;

Seventh, establishing linkages between child-care programs and other family services such as health and nutritional services; and

Eighth, parental involvement in State and local planning and oversight activities.

By utilizing State governments as a primary mechanism for channeling funds to the program level, I believe we can best achieve the kind of comprehensive and cohesive system of services that is needed. This is particularly vital to attaining linkages with other services—such as health and nutritional services.

Mr. President, I would like to expand on several of the provisions which are critical to this legislation.

LEGISLATIVE PROVISIONS RELATING TO THE QUALITY OF CHILD CARE PROGRAMS

In order to insure quality in our child-care programs, I think that the legislation should include the following four provisions:

First, it should require that programs meet Federal standards in order to receive Federal funds. The Department of Health, Education, and Welfare has announced its intention to develop new requirements. I was pleased to note HEW's plans for broad public participation in this effort. I believe that, by building on the strengths of the current FIDCR and dealing creatively with some of the problems therein, a set of regulations can be developed that will be appropriate to the needs of children and families.

Hopefully, these new requirements will provide for quality standards, yet allow flexibility to meet different needs of different groups of children in different settings.

Second, the legislation should provide ways to help States improve their own licensing procedures. In some cases, this will mean simply providing funds to allow them to increase the number of inspectors; in other cases, it may mean giving them technical assistance in the development of licensing provisions that will promote quality child care. Great care, however, must be taken so that licensing procedures are reasonable, and so that over-burdensome requirements are not established which will result in needless redtape and actually reduce child-care availability. Licensing, under any circumstances, must remain a State or local responsibility, not a Federal one.

Third, the legislation should include provisions for insuring good working conditions, adequate pay, and appropriate training for child-care workers.

Fourth, it must provide opportunities for parent involvement in the programs themselves, in setting standards and, at all levels of Government, in working out plans to meet child-care needs. I believe that it is absolutely essential that parents be given meaningful opportunities for full involvement at all levels in child-care programs.

TYPE OF SERVICES AND ELIGIBLE PROVIDERS

Mr. President, because families have a variety of child-care needs and preferences, the legislation should promote as wide a range of child-care alternatives as possible. It must, therefore, encompass all types of child-care arrangements—full day and part-day, center-based and home-based, neighborhood and worksite—and allow participation of all programs that are licensed and meet basic quality standards. Each local community must have flexibility, however, in determining what types of child-care arrangements are needed in that particular community. It may not be necessary—or appropriate—for each community to offer the entire range of child-care programs, but each community must be free to explore the entire range of options. Only with such a pluralistic system can parents make their choices about child-care programs on the basis of what is best for their children and themselves, rather than on the basis of eligibility for subsidies.

To achieve a diversity of arrangements, we must allow for a diversity of sponsorships. All types of groups—school districts, community nonprofit groups, employers, churches, proprietary centers, unions—should be eligible to participate in some fashion. No group should be arbitrarily excluded or given exclusive control. At the same time, new funding mechanisms such as vendor or voucher approaches should be options for States to explore in attempting to find effective avenues for stimulating a variety of child-care options.

I think it is important to stress here that parents want different things for their children—not all parents want center-based care, particularly for young children and infants. In the past, perhaps too much emphasis has been placed on the center-based model as the primary vehicle for Federal support. The hearings produced data on the wide range of child-care programs that presently exist. Some of these—for example, child-care centers with satellite family day-care homes—provide unique and innovative methods of meeting the child-

care needs of families and communities. I believe we must support this diversity.

RELATIONSHIP TO OTHER PROGRAMS

Mr. President, in order to insure that funds provided under the new legislation are used to supplement, not supplant, existing Federal child-care moneys, the bill should include provisions to maintain the current level of Federal expenditures in this area. In addition, States would be required to coordinate—or provide for local governmental units to do so—the child-care programs funded under different authorities and to coordinate, to the maximum extent feasible, child-care programs with programs providing other services to children and families.

DEMONSTRATION AND TRAINING PROJECTS

Mr. President, in addition to the funds provided to the States, I plan to include a special grant program to support innovative demonstration programs in areas such as care for children whose parents work nights or care for children who are sick. These necessary services often get lost in the demand for "ordinary" child care, and the lack of experience with providing them makes them difficult to establish and maintain. Similarly, some funds should be provided for training and technical assistance programs.

EVALUATION AND ASSESSMENT OF NEED

Mr. President, I consider it vitally important that any new legislation in this area contain very specific provisions that will enable both Congress and the public to assess how funds are being expended and what progress States are making toward helping families in real need of assistance. I believe that the fact that we do not know what is happening to the children on waiting lists and in unlicensed care is simply unacceptable. At the same time, we canot afford to wait until all the data are collected and the whereabouts of each child is known before we move forward in an area where additional support is clearly warranted. We know enough to make a start—perhaps a cautious and measured start—but certainly a significant beginning.

Gwen Morgan, professor of early childhood education at Wheelock College and a recognized expert in the field of child care, has written an excellent review of child-care policy. One of her principal recommendations is that we stop trying to predict the exact demand for child-care services before moving forward:

> Recently we have seen a somewhat ridiculous debate between those who see the need for daycare as the difference between the number of children of working mothers and the number of children in formal daycare arrangements, *versus* those who look at the data on what working parents are doing with their children and conclude that no new daycare is needed. Obviously the truth lies between these two extremes . . .
>
> There is no absolute number which represents the final, future demand for child daycare. It depends. It depends on the fluctuations of the economy; demand will be greater at some times than others. It depends on the types of jobs available. If and when part-time jobs are available in ready supply the pattern of daycare demand will be different. It depends on the type of income maintenance available, how adequate it is for meeting survival needs of families and how adequate it is for meeting the needs for self-respect among adults and the needs children have to look up to the role models in their parents. It depends on the quality of the daycare and how well it matches consumer needs and expectations in its location.
>
> If we postpone daycare decisions until we can predict all these factors, or have made firm and final policy in all these areas, we are going to wait forever. There is no one final policy which will describe the way things are supposed to be. Any society, like any living organism, is in constant interaction with the people and things in the environment, constantly changing goals as conditions change. This dynamic change is the constant; it is the way things are supposed to be. We are not evolving toward some correct fixed condition; the evolution and change itself is the condition we will forever be addressing in our policy.
>
> There is no absolute number representing daycare demand, any more than there is an absolute daycare cost. The only way to plan daycare is to plan incrementally, in small steps, in the directions of consumer demand. . . .
>
> We know families need daycare, and they need it now. We know the demand will not produce a runaway service, but will be modest.
>
> Sensible policy would be to increase daycare, within a fixed appropriation, but with broad eligibility, with improved support systems in the form of training and consultation, both to centers and homes. It appears from consumer studies that we need a modest increase in the number of children in centers, over time perhaps double what we now have, but a much smaller increase now; and we need better support for the family daycare homes.
>
> The delivery system should be flexible enough to shift as patterns of consumer demand shift. The best indicator of consumer preferences would be what consumers choose, given options. It is time to provide these options.

NONINTERFERENCE WITH FAMILIES

Mr. President, I want to emphasize that the legislation I am proposing would in no way interfere with the role and responsibilities of parents in raising and caring for their children. The family is and must continue to be the primary influence upon children, and it is absolutely critical that any Federal legislation proposed recognize—and, indeed, reinforce—this principle. The legislation I am proposing will make assistance available to parents who request help in finding child care for their children while they work to support their families. I think it is important to stress that participation in any of the child-care programs supported by this legislation would be strictly at the option of the parent. It is not intended to, nor will it, set up governmental agencies or anyone else to intervene in any of the decisions parents make about how they want to rear their children, nor will it provide any agencies—public or private—with any basis for interfering with child-rearing decisions parents may make.

Mr. President, both by making it absolutely clear that participation in any program supported by this legislation is totally voluntary, and by providing parents who seek assistance the right to choose among a variety of options the type of child care they want for their children, as well as providing for meaningful roles for parents in the setting of policy and planning for child-care programs at the local and State levels, I believe we make it truly possible for parents to make the decisions and choices about how they want their children cared for while they work.

Mr. President, I also want to stress the fact that by providing additional Federal assistance for families in need of child-care services for their children, we are providing the kind of assistance which holds families together. The testimony presented at our hearings describing children being separated from their parents and sent to other States to live when child care was not available in their community provides a dramatic illustration of how families can actually be broken up when adequate child care is not available. The incredible stress and strains placed upon working parents when they are unable to find reliable child care also contributes to family disintegration. Child-care services for families that need them both support families and help them to function and stay together.

ADMINISTRATION SUPPORT

Mr. President, just a month before he was elected President, Jimmy Carter told the National Women's Agenda Conference in Chevy Chase, Md., that he was "committed to join in developing a comprehensive child-care program which will help fund State and local programs and provide subsidies or scaled fees for employed mothers from low- and moderate-income families." President Carter further observed that "adequate child care services are just as essential to the children of mothers who work as food, shelter, and clothing."

At our fourth hearing last February, Arabella Martinez, HEW Assistant Secretary for Human Development Services, and Blandina Cardenas, HEW Commissioner for the Administration for Children, Youth, and Families, shared with us the views and concerns of the administration in the area of child care. Before their testimony, Secretary Califano advised me that the administration was not yet prepared to discuss specific legislative initiatives in this area. However, their testimony was very positive, and I look forward to working closely and constructively with the administration in the coming months as we move forward in meeting President Carter's commitment to join in the development of a comprehensive child-care program.

OTHER GROUPS

Mr. President, child care is not a conservative versus liberal issue. I can foresee a broad coalition of groups from all over our society—from business and labor, from the right and the left—united behind this effort to provide decent options for working parents and their children so that we can hold families together. Just this past weekend I stressed the need for moderate, careful Federal leadership in this area at a meeting of the American Legion Children and Youth Committee during the American Legion National Convention in New Orleans. My remarks were very well received. I look forward to working with many groups on this issue. We clearly do not know all

the answers at the Federal level. In fact, no one does. HEW stressed this in our February hearing. What we do now know is enough to get started, provide a blue print for planning, action, data gathering, and a prudent expansion of programs and arrangements.

CONCLUSION

Mr. President, the subcommittee has received letters from all over the country encouraging us to move forward with Federal child-care legislation and expressing support for our efforts. One of the most moving pleas for child-care assistance came from a woman who was unable to attend our first hearing, because she could not afford a babysitter. She wrote:

To decrease expenses for child care, I work a p.m. shift and my husband works a day shift. I drop the children off at 2:30 p.m. and he picks them up at 5:30 p.m. I am half asleep when he leaves before seven in the morning and he is asleep when I return home a little before midnight. This is a terrible way to live, but we cannot afford to spend $400 per month for child care. If we had that much extra money, I wouldn't be working in the first place.

I am sure that most of my colleagues have received inquiries about plans for Federal legislation in this area, and I want to assure them that I am giving the issue high priority and will be drafting legislation to carry out the foregoing specifications during the coming months. If possible, I plan to introduce the legislation before the end of this Congress, and to reintroduce it—with appropriate revisions based on suggestions—at the outset of the 96th Congress. Consideration of this legislation will be the top priority for the Subcommittee on Child and Human Development in the next Congress.

Mr. President, I hope that this legislation will be received by all those interested in this area as a new beginning toward enactment of comprehensive child-care legislation. I also hope that a constructive dialog will be stimulated around this legislation so that our goals can be achieved in the foreseeable future.

EXECUTIVE SESSION—TAX CONVENTION WITH THE REPUBLIC OF KOREA

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for the purpose of calling up the tax convention with the Republic of Korea, Executive P, 94th Congress, 2d session.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider Executive P, 94th Congress, 2d session, the tax convention with the Republic of Korea.

Mr. ROBERT C. BYRD. I ask unanimous consent that the treaty be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, there will be time for comments on that when the majority leader calls it up?

Mr. ROBERT C. BYRD. Yes.

Mr. STEVENS. I am not going to ask for a vote on it, but I do want to raise my reservation that I voiced before about one provision in it which concerns what I consider to be a tax break.

Mr. ROBERT C. BYRD. Would the Senator prefer that I not make this request tonight?

Mr. STEVENS. No, I know of no objection to taking it up. I just want to make sure I have an opportunity to make those remarks.

The PRESIDING OFFICER. Without objection, the protocol will be considered to have passed through its various parliamentary stages, up to and including the presentation of the resolution of ratification, which the clerk will state.

The assistant legislative clerk read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention between the United States of America and the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Encouragement of International Trade and Investment, signed at Seoul June 4, 1976, together with a related Exchange of Notes (Executive P, 94th Congress, second session).

The PRESIDING OFFICER. The Chair will state that the resolution of ratification will be debatable.

Mr. ROBERT C. BYRD. Mr. President, there will be a rollcall vote on that tax convention. It could occur tomorrow, or it could occur when we return from the recess, but I assure the distinguished acting Republican leader that it will not be until such time as he is present.

ORDER FOR RECESS UNTIL 8:15 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:15 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATORS McGOVERN, DOLE, STENNIS, ROBERT C. BYRD, STEVENS, AND SASSER TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders have been recognized under the standing order tomorrow, the Senator from South Dakota (Mr. McGOVERN) and the Senator from Kansas (Mr. DOLE) be recognized, each for not to exceed 15 minutes, and that they be followed by Mr. STENNIS, Mr. ROBERT C. BYRD, Mr. STEVENS, and Mr. SASSER, each for not to exceed 15 minutes.

I have named these other Senators because Mr. STENNIS will want an hour, and by unanimous consent, I ask that the orders for the recognition of Mr. ROBERT C. BYRD, Mr. STEVENS, and Mr. SASSER be transferred to the control of Mr. STENNIS tomorrow morning.

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

PROGRAM

Mr. ROBERT C. BYRD. It will be my intent, Mr. President, at the completion of those orders, under the order previously entered, to ask that the Chair lay before the Senate the CETA bill. For the information of the Senate, the action of the Senate tomorrow on the CETA bill will complete the action on that bill, I trust, and then the Senate will proceed to the consideration of the other tax bills for which the order has already been entered.

Any other measures that have been cleared for action will be taken up, hopefully the Senate can complete all this work tomorrow; it may take a few extra hours, but if it can be completed, we can then recess for the Labor Day holiday.

SENATE LEGISLATIVE ACHIEVEMENTS, JANUARY 19 TO AUGUST 25, 1978

Mr. ROBERT C. BYRD. Mr. President, the No. 1 priority for the 95th Congress has been the enactment of a comprehensive national energy program, the five components of which were passed and sent to conference during the first session. Senate and House conferees have worked diligently and under extreme duress since then to reach agreement on the many facets of this program which will affect all aspects of the Nation's well-being at home and abroad. On July 18, the Senate agreed to the first component of the package to be reported from conference, the coal utilization bill, which requires utilities and major industries to burn more plentiful domestic coal instead of oil and natural gas. Conference agreement has also been reached on the public utility rate reform measure and on all but one provision of the conservation policy bill. Just last week, a major breakthrough was reached by conferees on the controversial issue of natural gas pricing, a matter no Congress has been able to agree on since 1958. I am increasingly hopeful that the many months of work on this legislation will culminate in the enactment this fall of the first comprehensive national energy program in history which will serve the Nation into the next decade.

Already written into law this year is an authorization of $75 million for loans and loan guarantees to small businesses to encourage the design, manufacture, marketing, and installation of solar technologies and energy conservation practices. We have sent to the President for his signature a military construction authorization bill which requires the incorporation of solar energy systems in all new military family housing and in at least 25 percent of all other new military facilities that are put under design. Earlier this week we cleared legislation establishing a policy for the development

of oil and natural gas on the Outer Continental Shelf. This measure, which represents 5 years of effort by the Congress in opposition to previous administrations, strikes a balance between oil and gas development and potentially adverse economic, social, and environmental impacts that accompany it. These are but the most recent measures which the Congress has agreed upon dealing with the energy problem. We have long recognized the need for a comprehensive energy policy and have enacted 100 energy-related pieces of legislation since 1969.

With regard to the other related priority concern of this Congress—the state of the economy—we need only compare the economy today with what it was when we began our work in January of last year.

The gross national product is up by 7½ percent;

Disposable income is up by more than 5 percent per capita;

Farm income is up more than 35 percent per farm;

Unemployment has dramatically declined over the past 19 months from 7.4 to 6.2 percent; and

Housing starts are up 21 percent.

These measured improvements in the Nation's economy bear witness to our enactment of the economic stimulus jobs legislation last year, and Congress should be proud of its part in bringing about this recovery.

Since submission of the President's budget request in January, the Congress has demonstrated fiscal restraint which has been reflected in the sizable budget cuts made by the Congress in the first budget resolution and by the further cuts proposed by the Senate Budget Committee in the second concurrent resolution. In the budget resolution we will consider in early September, Federal outlays and budget authority will each be cut by approximately $10 billion while the deficit will be pared down by about $18 billion.

In the area of international affairs, the Senate has given the President strong support. We have squarely faced several extremely controversial and unpopular foreign policy initiatives this year. Most notable of these was the approval of ratification of the Panama Canal treaties which had been under negotiation for 14 years. The careful examination Senators gave the treaties resulted in essential clarifications of the American right to defend the canal and to have priority passage through the canal in an emergency. While their ratification has improved our relations with Latin America and smaller countries throughout the world, support for the treaties was extremely unpopular in some quarters. Many Senators showed immense courage in voting for ratification of the Panama Canal treaties when a majority of their constituents vociferously opposed them.

The President's Mideast arms sales to Egypt, Israel, and Saudi Arabia and the lifting of the Turkish arms embargo exemplify two other important and controversial administration initiatives which the Congress supported. They illustrate the cooperation between the two branches of Government which is all too often overlooked. The Congress and the President sometimes differ on the means of achieving mutual objectives, for they both bear the responsibility to the American people to do what they believe is in the best interest of the Nation. Differences of approach will always exist, especially when seeking to enact complex legislation on over 100 proposals sent to the Congress. I would note, however, that notwithstanding all the talk of conflict between the executive and legislative branches, President Carter has vetoed only 5 measures while our last President had vetoed 46 bills during his first 20 months in office and Presidents Kennedy and Johnson had each vetoed 11 bills during a similar period of time.

Among other important legislation enacted by the 95th Congress are the following:

The most significant and far-reaching farm credit legislation since 1961 to help farmers cope with both economic and natural disasters;

An increase in the minimum wage over the next 4 years to insure low-paid workers a decent living;

A refinancing of the social security system to make it solvent into the next century for Americans living in retirement now and in the future;

The creation of a Cabinet-level Department of Energy to insure effective management of energy functions of the Federal Government;

New York City financial assistance in the form of Federal guarantees of up to $1.65 billion over the next 4 years;

Nuclear nonproliferation legislation which will lessen the spread of nuclear materials and technology while improving the framework for international cooperation; and

Reestablishment of the President's authority for 3 years to submit to Congress plans to reorganize executive branch agencies, an authority he has exercised by the submission of six reorganization plans, four of which have already become effective.

In addition, the Senate debated and passed a codification of Federal criminal law and an airline deregulation bill which, although not yet enacted by the House, has already stimulated reduced airfares. We have sent the President a proposed amendment to the Constitution granting the District of Columbia full voting representation in the House and Senate. We passed legislation to alleviate the financial burden borne by middle class Americans with children in college. Today, we passed the most comprehensive reform of the civil service laws in almost 100 years. The Senate has completed debate on a 2-year $16 billion highway construction and safety bill which will hasten the completion of remaining segments of the interstate highway system. We have also passed numerous reauthorizations of existing programs ranging from elementary and secondary education assistance to veterans pensions. A more complete listing of these measures is contained in a report prepared by the staff of the Democratic policy committee.

I ask unanimous consent that this report and related material concerning the work of the Senate be inserted at this point in the RECORD.

FISCAL YEAR 1979 BUDGET

[In millions of dollars]

	President Carter's January budget	1st budget resolution	President's midsession review	2d budget resolution amendment—P/H	Senate Budget Committee amendment
Budget authority	$568, 172	$568, 850	$571. 4	$561, 019	$557. 7
Outlays	500, 174	498, 800	496. 6	489, 790	489. 5
Deficit	60, 586	50, 900	48. 5	39, 790	42. 3

1979 APPROPRIATIONS CUTS BY SENATE

[Dollar amounts in millions[1]]

Department	Budget request considered	Senate passed amount	Amount cut	Percent cut
Transportation	$9, 296	[1] $8, 802	—$494	3. 32
Legislative	1, 144	[1] 1, 118	—26	2. 27
Interior	12, 831	11, 566	—1, 265	9. 86
Treasury	9, 206	8, 837	—369	4. 01
Military construction	4, 253	[1] 3, 881	—372	8. 75
Public works	11, 040	[1] 10, 160	—880	7. 97
State, Justice, Commerce	8, 660	8, 435	—224	2. 59
Agriculture	23, 090	23, 366	+274	—1. 18
HUD	69, 518	67, 657	—1, 861	2. 68
District of Columbia	460	[1] 225	—235	51. 09

[1] Amount agreed to in conference.

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

MAJOR LEGISLATION SUMMARY, 95TH CONGRESS—2D SESSION, AUGUST 24, 1978

Agricultural Credit: Amends the Consolidated Farm and Rural Development Act in order to improve Federal agricultural assistance programs; extends eligibility for farm real estate and operating loans under this act to family farms, corporations and partnerships; increases the lending limits for farm real estate and operating loans under the act; authorizes a new economic emergency loan program for established farmers, ranchers or domestic agricultural corporations and partnerships; and extends and amends the Emergency Livestock Credit Act of 1974 to enable the Secretary to make new loan guarantees for an additional year. H.R. 11504—Public Law 95-334, approved August 4, 1978. (146)

Agricultural Emergency Act: Amends the Food and Agricultural Act of 1977 to give the Secretary of Agriculture discretionary authority to increase the target prices for wheat, feed grains and upland cotton for the 1978 through 1981 crops whenever a set-aside program is in effect for one or more of these crops; if the target price is increased for any commodity for which a set-aside is in effect, allows the Secretary to increase the target price for any other commodity in such amounts as he determines necessary for the effective operation of the program; makes technical changes in the formula contained

in the 1977 Farm Act for computing the loan level for upland cotton, and sets a minimum loan level of 48 cents per pound regardless of the formula for the 1978–81 crops; increases the borrowing authority of the Commodity Credit Corporation from $14.5 to $25 billion, effective October 1, 1978; and provides that the Secretary may permit the acreage set-aside or diverted from the production of a commodity to be devoted to the production of any other commodity for the conversion into gasohol if the Secretary determines that such production is desirable in order to provide an adequate supply of gasohol and will not adversely affect farm income. H.R. 6782—Public Law 95–279, approved May 15, 1978. (72,85)

Airline Deregulation: Sets forth U.S. policy to develop an air transportation system which places increased reliance on market competition, with safeguards against unfair or predatory practice or decreases in services to smaller communities; revises current standards governing entry application for interstate and overseas scheduled air transportation to promote competition by directing the Civil Aeronautics Board (CAB) to authorize proposed air transportation entries unless it determines that such transportation is not consistent with the public convenience and necessity, thereby negating current policy whereby a proposed new service must be "required" by the public convenience and necessity; establishes a graduated automatic entry program by allowing existing carriers to enter one new route a year for the first two years and two new routes a year thereafter without CAB approval; provides a five-year adjustment period to the automatic entry program during which carriers may place a limited number of their routes outside automatic entry and during which subsidized and smaller carriers will be protected by limiting the number of their unprotected routes; contains provisions throughout the bill requiring expedient action on all applications, complaints, and other matters filed before the CAB; and creates a new section of the Federal Aviation Act to insure surveillance of safety standards throughout the transitional period of reform. S. 2493—Passed Senate April 19, 1978. (146)

Child Nutrition: Makes permanent the child care food program that currently provides meals for 676,000 children in day care centers; makes certain changes designed to improve the means by which the Secretary of Agriculture assists States in providing nonprofit food srevice programs for children in institutions providing child care; and extends the special supplemental food program for women, infants, and children (WIC) for four years with changes designed to improve the means by which the Secretary assists States in providing nutritious supplemental foods to pregnant, postpartum, and breastfeeding women, and to infants and children, who are determined to be a "nutritional risk" because of inadequate nutrition and inadequate income. S. 3085—Passed Senate July 21, 1978. (236)

Coal Conversion: Prohibits certain new electric power plants and major fuel burning installations (MFBI's) from using natural gas or petroleum as their primary energy source except for fuel required for startup testing, flame stabilization, feedstock uses and direct-fire uses; requires existing electric powerplants and MFBI's capable of using coal to cease using nautral gas as their primary energy source after January 1, 1990, and not to increase the proportional use of natural gas before that date, with certain exemptions; prohibits the use of petroleum by new MFBI's with certain exemptions. H.R. 5146—Passed House July 18, 1977; Passed Senate amended September 8, 1977; Senate agreed to conference report July 18, 1978. (*356,219)

Commodity Futures Trading Commission: Extends for six years through fiscal 1984 the authorization for the Commodity Futures Trading Commission and makes significant changes in the Act to strengthen the regulation of the nation's $1.1 trillion commodity futures industry. S. 2391—Passed Senate July 12, 1978. (210)

Criminal Code Reform: Creates for the first time a systematic, consistent and comprehensive Federal criminal code to remedy the hodgepodge that now exists, by replacing title 18 with a "Federal Criminal Code"; creates a Sentencing Commission to establish guidelines to govern the imposition of sentences for all Federal offenses, taking into consideration factors relating to the purposes of sentencing (deterrance, protection of the public, assurance of just punishment and rehabilitation), the characteristics of the offender, and the aggravating and mitigating circumstances of the offense; provides for a penalty structure of consistent penalties for conduct of a similar nature or seriousness; provides for appellate review of a sentence by appeal of the defendant if it exceeds the maximum guideline for such a crime or by the government if it is less than the minimum; provides that the maximum term of imprisonment established by the Commission shall not exceed the minimum by more than 25 percent; requires the Commission in promulgating guidelines to consider atlernatives to incarceration for nonviolent first offenders; allows pretrial detention of an individual charged with a serious crime such as murder, rape, armed kidnapping, drug trafficking, and armed robbery; reduces the present 79 different terms to define states of mind to four: international, knowing, reckless, or negligent; applies sex offenses without discrimination to both men and women and includes forcible sodomy in the definition of rape; provides that rape by means of force, threats of imminent serious injury, kidnapping or drugs will be punishable even where the victim is married to the offender; eliminates corroboration of a victim's testimony; prohibits defense or grading distinction based upon the promiscuity of the victim and severely restricts inquiry into the prior sexual conduct of the victim; expands the offense of kidnapping to include a case in which one holds his own child for ransom, as a hostage, or with similar criminal intent; provides that simple possession of more than 100 grams (about 1 pound) of an opiate (which retails for at least $4,000) is made a more serious offense than a simple possession of other drugs; makes possession of 30 grams (about one ounce) or less of marijuana subject to prosecution by summons rather than arrest, reduces the penalties and has liberal provisions for expungement of the record of conviction; and contains provisions regarding wiretapping, racketeering, white collar crimes, among others. S. 1437—Passed Senate January 30, 1978. (21)

Dam Inspection and Safety: Seeks to develop on-going programs that will reduce the likelihood of dam failure by encouraging the development and maintenance among the states of dam safety programs, and by gradually reducing the Corps of Engineers' role of inspecting non-Federally owned dams. S. 2444 and S. 2437—Passed Senate June 6, 1978. (VV)

Dam Safety: Provides permanent authority for the Secretary of the Interior to undertake actions deemed necessary to insure the safety of dams and related facilities under the jurisdiction of the Bureau of Reclamation; and authorizes up to $100 million to carry out the safety of dams program, with a proviso that the obligation of funds shall be conditioned upon the Secretary having submitted a report to Congress finding that the proposed works are required for the safety of dams. S. 2820—Passed Senate July 28, 1978. (259)

D.C. Voting Representation: Proposes an amendment to the Constitution which must be ratified to be valid as part of the Constitution by three-fourths of the States within seven years, to provide representation of the District of Columbia in the U.S. House of Representatives and the Senate; permits the District to participate fully in the electoral college; and extends to the people of the District the right to participate in the ratification process of proposed amendments to the Constitution. H.J. Res. 554—Public Law 95– , approved 1978. (350)

Diplomatic Immunity: Compliments the 1961 Vienna Convention on Diplomatic Relations which entered into force with respect to the United States on December 13, 1972; codifies the privileges and immunities provisions of the Vienna Convention as the sole U.S. law on the subject; repeals a 1790 statute barring suits against diplomats and their servants, which has been construed to create full immunity for these individuals and is in conflict with the 1961 Vienna Convention on Diplomatic Relations; states specifically that the provisions of the Convention shall apply to nonratifying nations; permits the President to extend, on a reciprocal basis, more favorable or less favorable treatment than the Convention specifies to members of missions, their families and diplomatic couriers; requires foreign diplomats in the United States to carry auto liability insurance against risks arising from the operation of automobiles, vessels, or aircraft in the United States at a level to be established by the Executive; creates, as a matter of Federal law, a substantive right of an injured or damaged party to proceed directly against the insurance company where the insured diplomat enjoys immunity from suit; and makes certain conforming amendments to the Judiciary Code. H.R. 7819—Passed House July 27, 1977; Passed Senate amended August 17, 1978. (VV)

Domestic Violence: Provides for Federal support and stimulation of state, local and community activities to prevent domestic violence, to assist the victims of domestic violence, and to coordinate Federal programs and activities pertaining to domestic violence; authorizes therefore $30 million for each of fiscal years 1979 through 1983; and specifies that 85 percent of the funds authorized annually shall be used for grants, 8 percent for operation of the HEW center on domestic violence and regional support centers, and 7 percent for research of which at least half shall be transferred to the Alcohol, Drug Abuse, and Mental Health Administration for research to be conducted by institutes within the administration. S. 2759—Passed Senate August 1, 1978. (VV)

Education Tuition Tax Credit: Provides a Federal income tax credit for certain educational expenses paid by an individual for himself, his spouse, or his dependents. The benefits provided by the bill will become effective in two stages. Beginning August 1, 1978, individuals will be entitled to claim a credit in an amount equal to 50 percent of tuition and fees with a maximum credit of $250 per student for expenses in an undergraduate college or a post-secondary vocational school. H.R. 12050—Passed House June 1, 1978; Passed Senate amended August 15, 1978; Senate requested conference August 15, 1978.

Endangered Species: Amends the Endangered Species Act of 1973 to establish an Endangered Species Interagency Committee to review Federal projects which have come into irresolvable conflict between the Act's mandate to protect and manage endangered and threatened species and other legitimate national goals and priorities, such as providing energy, economic development and other benefits to the American people, and to determine if the project should be completed, modified or terminated. S. 2899—Passed Senate July 19, 1978. (225)

First Budget Resolution, 1979: Recommends 1979 total estimated revenues of $447.9 billion, budget outlays of $498.8 billion, budget deficit of $50.9 billion, budget authority of $568.85 billion, and public debt level of $849.1 billion as compared to the President's recommendations of $439.6 billion in estimated revenues, $500.2 billion in budget outlays, $60.6 billion in budget deficits, $568.2 billion in budget authority, and $867.5 billion as the public debt level. S. Con. Res. 80—Action completed May 17, 1978. (140)

Foreign Development Assistance: Authorizes $1.7 billion (which reflects a 5 percent across-the-board decrease agreed to during Senate floor debate) for fiscal year 1979, for bilateral development assistance, international disaster assistance programs, operating expenses for the United States Agency for International Development (AID) and voluntary U.S. contributions to international organizations; amends the Foreign Assistance Act of 1961 to improve the coordination and administration of U.S. development-related policies and programs; and prohibits the use of funds for any form of aid, either monetary payment or by the sale or transfer of any goods of any nature to the Socialist Republic of Vietnam, Cambodia, Uganda, or Cuba or to any country which allows, supports, or encourages acts of terrorism. H.R. 12222—Passed House May 15, 1978; Passed Senate amended June 26, 1978; In conference. (177)

Foreign Intelligence Surveillance: Requires that all foreign intelligence electronic surveillance within the United States, as well as some overseas interceptions, be subject to a judicial warrant requirement based on the probable cause; prohibits the dissemination of information concerning U.S. persons which does not relate to national defense, foreign affairs, or the terrorist, sabotage or clandestine activities of a foreign power; sets limits on the dissemination of information relating solely to national defense or foreign affairs; requires certification, from an appropriate executive branch official, that any information sought by the surveillance is related to, and in the case of surveillance of a U.S. person is necessary to the national defense, the national security, or the successful conduct of the foreign affairs of the United States; allows the court to approve electronic surveillance for foreign intelligence purposes for a period of 90 days or, in the case of a foreign government, faction, or entity openly controlled by a foreign government, for a period of up to 1 year; permits emergency surveillance without a court order in limited circumstances, but provides that a court order must be obtained within 24 hours of the initiation of any emergency surveillance; and sets forth civil and criminal sanctions for violations of the bill's provisions. S. 1566—Passed Senate April 20, 1978. (128)

Foreign Security Assistance: Authorizes $2,886,400,000 for seven programs which constitute the fiscal 1979 international security assistance program; authorizes $133.5 million for grant military assistance to Portugal, Spain, Jordan and the Philippines; authorizes military assistance advisory groups for 14 countries in fiscal 1979, and further limits the activities of such groups; provides for the lifting of U.S. sanctions against Rhodesia if the government in Salisbury has made a good faith effort to negotiate with all parties and a new government, chosen by free elections, has been installed; repeals the limited embargo on arms sales to Turkey but requires that future requests for military or economic assistance, credits or arms sales to Turkey, Greece or Cyprus must support a solution to the situation in Cyprus as certified by the President to Congress; authorizes a foreign military sales credit program for fiscal 1979 of $2 billion, including $1 billion for Israel and $275 million for the Republic of Korea. S. 3075—Passed Senate July 26, 1978; Passed House amended August 2, 1978; House requested conference August 2, 1978. (254)

Higher Education Grants and Loans: Amends the Higher Education Act of 1965 to improve the basic educational opportunity grants programs and to make significant changes in the guaranteed student loan program in order to make college affordable once again for middle-income families; expands the basic educational opportunity grants program so that families with incomes of $25,000 instead of the present cutoff at $13,000, and one child in college will be eligible for a basic grant which will result in eligibility of an additional 1.5 million students; removes the cap from the guaranteed student loan program and permits any qualified family or person to borrow from private lenders funds for education which would be amortized and repaid through the private loan market with 100 percent payment guarantees by the Federal government. S. 2539—Passed Senate August 16, 1978. (324)

Housing and Community Development: Authorizes $30 billion in fiscal 1979 to extend the basic housing and community development programs conducted by the Department of Housing and Urban Development and the Farmers Home Administration; authorizes a major expansion of the section 312 rehabilitation loans and the urban homesteading programs with important changes designed to increase the effectiveness of these programs. S. 3084—Passed Senate July 20, 1978; Passed House amended July 25, 1978; In conference. (234)

Indian Claims Settlement in Rhode Island: Authorizes $43.5 million for the purchase of private settlement lands by the Federal government on behalf of the Narragansett Tribe as provided in the settlement agreement. S. 3153—Passed Senate July 21, 1978. (VV)

International Monetary Fund: Amends the Bretton Woods Agreement Act to authorize the United States to participate in a Supplementary Financing Facility of the International Monetary Fund (known as the Witteveen Facility) which shall make financial resources available to nations with serious balance-of-payments problems; authorizes the U.S. Department of Treasury to make available approximately $1.7 billion to the Witteveen Facility as the U.S. contribution, which is about 17 percent of the overall initial total; directs the U.S. Executive Director to oppose any Witteveen Facility loans to Cambodia, Uganda, and any nation which provides aid or assistance to terrorists or hijackers; directs the President to impose a trade embargo on Ugandan products until he certifies that the Ugandan government has ceased committing gross violations of human rights; and mandates a balanced Federal budget beginning in fiscal 1982. H.R. 9214—Passed House February 23, 1978; Passed Senate amended July 31, 1978. (271)

Mental Health—Biomedical Research—Family Planning: Extends for one year funding for Community Mental Health Centers which will provide community out-patient mental health care to over 2.3 million persons in 1978 while a thorough review of the program is undertaken; establishes a Presidential Commission for the Protection of Human Subjects in Federal Research; increases substantially authorizations for family planning and population research to expand the availability of voluntary family planning services emphasizing such services for sexually active adolescents and to increase research in contraceptives. S. 2450—Passed Senate June 26, 1978; S. 2522—Passed Senate June 7, 1978. (VV)

Middle East Arms Sales: States the objections of the Congress to the President's proposed sale of fifty F–5 aircraft to Egypt, fifteen F–15 aircraft and seventy-five F–16 aircraft to Israel, and sixty F–15 aircraft to Saudi Arabia. S. Con. Res. 86—Senate rejected disapproval resolution May 15, 1978. (161)

Military Construction Authorization: Authorizes $4 billion for fiscal 1979 for construction and other related authority for the military departments, and the Office of the Secretary of Defense within and outside the United States; requires the incorporation of optimum solar systems in all new military family housing and in 25 percent of all new facilities placed under design and provides the necessary authorities for the Department of Defense to develop geothermal resources and purchase public utility services from resources other than nuclear or fossil; and makes a substantial reduction in the administration's request for construction in Europe. H.R. 12602—Public Law 95– , approved 1978. (VV)

Military Procurement: Authorizes $36.957 billion during the fiscal year 1979, for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons and research, development, test, and evaluation for the Armed Forces, and to prescribe the authorized personnel strength for each active duty component and the Selected Reserve of each Reserve component of the Armed Forces and of civilian personnel of the Department of Defense, to authorize the military training student loads; and to authorize funds for civil defense. H.R. 10929—Vetoed August 18, 1978; House vote to override on September 7, 1978. (203)

National Consumer Cooperative Bank: Establishes a National Consumer Cooperative Bank with authority to make up to $1.09 billion in subsidized loans and guarantees to eligible non-profit consumer cooperatives; creates the Office of Self-Help Development and Technical Assistance within the Bank, with the purpose of providing technical assistance for consumer cooperatives; and makes self-help funds available for fledgling cooperatives in inner-city areas and among the poor and elderly. H.R. 2777—Public Law 95–351, approved August 20, 1978. (216)

National Historic Trails: Establishes within the national trail system a new category of National Historic Trails and designates the Oregon Trail, the Mormon Pioneer Trails, the Lewis and Clark Trail and the Iditarod Trail as the first such trails. H.R. 6900—Passed House April 3, 1978; Passed Senate amended July 24, 1978. (VV)

New York City Loan: Provides additional financial assistance to New York City over the next four years in the form of long-term Federal guarantees of New York City Securities of up to $1.6 billion through June 30, 1982; seeks to provide a basis for New York City to work out all of its remaining financial problems over the four-year period in order to bring its budget into balance in accordance with generally accepted accounting principles, to restructure its debt and lengthen maturities, to reenter the credit markets through sales of its own notes and bonds, and to end its dependence on Federal financial assistance. H.R. 12426—Public Law 95–339, approved August 8, 1978. (197)

Nuclear Non-Proliferation: Establishes a more effective framework for international cooperation to encourage development of peaceful nuclear activities to meet energy needs and to assure that export by any nation of nuclear materials and technology does not contribute to proliferation; authorizes the United States to take such actions as are required to insure that it can act reliably in licensing the export of nuclear reactors and fuel to nations which share our non-proliferation policies; provides incentives to other nations to join in non-proliferation activities and to ratify the Nuclear Non-Proliferation Treaty; and sets forth effective controls by

the United States over its exports of nuclear materials, equipment and technology. H.R. 8638—Public Law 95-242, approved March 10, 1978. (30)

Oil Shale Commercialization: Establishes a program within the Department of Energy for the purpose of testing the commercial, environmental and social viability of various oil shale technologies using the "GOCO" concept whereby the Federal government would supply all funds and a private corporation would contract to perform the construction and operation of the facilities; authorizes $1.4 million in fiscal year 1979 for the establishment of the program; and provides that nothing in the bill shall be construed as affecting in any way state law or regulations dealing with control of water and water rights. S. 419—Passed Senate June 27, 1978. (177)

Older Americans: Continues for an additional two years, until September 30, 1981, authorizations for programs conducted under the Older Americans Act of 1965; consolidates the existing titles III, State and Community Services, V, Multipurpose Senior Centers, and VII, Nutrition Services into a single title for the purpose of administration; establishes three priorities of (1) services associated with access, (2) in-home services, and (3) legal services, requiring that at least 50 percent of each area agency on aging allocation be directed to these three categories; authorizes a White House Conference on Aging in 1981; and mandates a study on racial and ethnic discrimination in Federal programs for the elderly to be conducted by the U.S. Commission on Civil Rights. H.R. 12255—Passed House May 15, 1978; Passed Senate amended July 24, 1978; In conference. (243)

Panama Canal Neutrality Treaty: Establishes a permanent regime of neutrality in order that both in time of peace and in time of war the Canal shall remain secure and open to peaceful transit;

Provides that Panama and the U.S. agree to maintain the regime of neutrality beginning in the year 2000 which shall be maintained in order that the Canal shall remain permanently neutral and applies the same regime to any other international waterway that may be built in Panama; by amendment, provides that each country shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality and consequently shall have the right to defend the Canal against any threat or aggression but this shall not be interpreted as a right of intervention into the internal affairs of Panama or against the territorial integrity or political independence of Panama; provides that beginning in the year 2000 Panama alone shall operate the Canal and maintain all military forces and installations within Panama's territory; provides, as a condition to the resolution, that notwithstanding these provisions, if the Canal is closed or its operation is interferred with, the U.S. and Panama may unilaterally take steps they deem necessary to reopen the Canal or restore its operation, including the use of military forces in Panama;

Provides as a condition that nothing in the Treaty shall preclude Panama and the U.S. from making, in accordance with their respective constitutional processes, any agreement to facilitate their responsibility to defend the Canal including an agreement for continued U.S. military presence in Panama;

Provides that the war and auxiliary vessels of the U.S. and Panama shall have the right to transit the Canal expeditiously; by amendment, states that this expeditious transit shall include the right to go to the head of the line of vessels in order to transit the Canal rapidly in case of need or emergency; provides as a reservation that such need or emergency shall be determined by the nation operating the vessel;

Provides before the Treaty can go into force that the U.S. and Panama must negotiate an agreement under which the American Battle Monuments Commission would administer the American Sector of the Corozal Cemetery and makes provision for the transfer of the remains of other Americans buried at Mount Hope Cemetery.

Contains as a reservation a prohibition on economic assistance, military grant assistance, security supporting assistance, foreign military sales credits or international military education and training to Panama; and provides that all amendments, reservations, understandings, declarations and other statements incorporated by the Senate in its resolutions of ratification be included in the instrument of ratification exchanged with the government of Panama. Ex. N, 95th-1st—Resolution of Ratification agreed to March 17, 1978. (66)

Panama Canal Treaty: Terminates prior United States-Panama treaty relationships concerning the Canal and establishes a partnership arrangement for the operation, maintenance and defense of the Panama Canal by the United States and Panama through December 31, 1999; provides that the treaty enter into force simultaneously with the Neutrality Treaty, six months from the date of exchange of instruments of ratification; by reservation, provides that exchange of the instruments of ratification shall not be effective prior to March 31, 1979, and the treaties shall not enter into force prior to October 1, 1979, unless implementing legislation has been enacted before March 31, 1979;

Grants to the U.S. the rights to manage, operate and maintain the canal including the right to establish and collect tolls; provides operation and maintenance of the Canal through a new United States government agency, the Panama Canal Commission, which will replace the Panama Canal Company and the Canal Zone Government and which will be supervised by a board of nine members, five Americans and four Panamanians; requires the Commission to reimburse Panama $10 million semiannually for costs incurred by Panama in providing various public services in the canal operating area and in certain housing areas; by an understanding, requires the U.S. and Panama in providing various public services in the canal operating area and in certain housing areas; by an understanding, requires the U.S. and Panama to agree on specific levels and quality of services to be provided by Panama for the $10 million annual payment for services which are essential to the effective functioning of the canal, to examine the cost of services every three years and to resubmit any disagreement between the United States and Panama to a binding independent audit;

Grants the U.S. the primary responsibility for the protection and defense of the canal for the duration of the treaty; by reservation, provides that the right to intervene militarily in Panama to keep the canal open and operating (pursuant to the DeConcini condition to the resolution of ratification of the Neutrality Treaty) shall not have as its purpose or be interpreted as a right of intervention into the internal affairs of Panama or interference with its independence or sovereign integrity; provides for the establishment of a Combined Board comprised of an equal number of senior military representatives from the two countries to facilitate planning and cooperation between the armed forces of both;

Provides that Panama and the U.S. study jointly the feasibility of a sea-level canal and enter into negotiations for its construction in the event that it is determined that such a facility is necessary; prohibits, for the duration of the treaty, construction of a canal except in accordance with the provisions of this treaty or as the U.S. and Panama may otherwise agree; prohibits the U.S. from negotiating with other countries for the right to construct an interoceanic canal on any other route during the life of the treaty; provides as a reservation that the instruments of ratification to be exchanged shall include provisions whereby each party agrees to waive these two prohibitions;

Upon entry into force, transfers to Panama all right, title and interest which the U.S. may have in real property and non-removable improvements located in areas not reserved for U.S. use under the treaty; provides that upon termination of the treaty, Panama will assume total responsibility for the Panama Canal which shall be turned over in operating condition free of liens and debts;

Provides that Panama receive payments to be derived from canal operating revenues as "a just and equitable return on the national resources which it has dedicated to" the Panama Canal as follows: (a) a share of tolls amounting to 30 cents per Panama Canal ton of shipping transiting the canal; (b) a fixed amount of $10 million per year; and (c) an additional sum of up to $10 million per year if the Canal operating revenues yield a surplus over expenditures including other payments made under the treaty; by reservation, provides that any accumulated unpaid balance under item (c) at the termination of the treaty shall be payable only to the extent of any operating surplus in the last year of the treaty's duration and that nothing shall be construed as obligating the U.S. to pay any unpaid balance and that no U.S. Treasury funds may be used for any of the above three payments without statutory authorization; and by amendment to the resolution of ratification, requires the Panama Canal Commission to reimburse the U.S. for interest on funds or other assets directly invested by the U.S. Commission or its predecessor Panama Canal Corporation. Ex. N, 95th-1st—Resolution of Ratification agreed to April 18, 1978. (119)

Petroleum Marketing Practices: Establishes minimum Federal standards governing the termination and nonrenewal of gas station franchises. H.R. 130—Public Law 95-297, approved June 19, 1978. (159)

Redwood National Park Expansion: Increases the authorized acreage of the Redwood National Park by approximately 48,000 acres to bring the total acreage to 106,000; designates an additional 30,000 acres as a "park protection zone" which the Secretary of Interior, following notice to the appropriate Congressional committees, may acquire upon a finding that failure to acquire all or a portion of the land could result in physical damage to the park resources, and contains provisions designed to protect persons adversely affected by the park expansion. S. 1976—PubliLaw 95-250, approved March 27, 1978. (24, 73)

Small Business Energy Loans: Authorizes the Small Business Administration to make direct immediate participation and guaranteed loans to certain small businesses that manufacture or market renewable energy equipment or conservation equipment or firms which provide professional engineering or achitectural services which conserve energy or apply renewable energy measures as their main objective. H.R. 11713—Public Law 95-315 approved July 4, 1978. (VV)

Veterans Benefits: Provides an improved and more equitable pension program for needy wartime veterans who are disabled by reason of non-service-connected disability or who are 65 years of age or older and for the needy surviving spouses and children of wartime veterans. H.R. 10173—Passed House

June 28, 1978; Passed Senate July 31, 1978. (263)

Provides a 7.3 percent cost-of-living increase in veterans' disability compensation and dependency and indemnity compensation (DIC); extends entitlement to service-connected disability compensation to U.S. citizens who served in the armed forces of an allied nation during World War II; raises to $200 per month the special pension rate payable to Congressional Medal of Honor recipients; and call for a report by March 1, 1979, on issues relating to the adequacy, compensation awards to and health care needs of former prisoners of war. H.R. 11886—Passed House June 28, 1978; Passed Senate amended August 7, 1978. (VV)

Increases the maximum grants for qualified veterans to acquire specially adapted housing and the maximum loan guaranty entitlement for the purchase of a home and extends such entitlements to Vietnam veterans; makes various improvements in the VA mobile home loan program; establishes a program of grants to assist states in establishing, improving, maintaining and expanding veterans' cemeteries; calls for an on-going review of the VA education default rate; and permits the Administrator to limit eligibility for education loans and to reduce the loan repayment period for certain types of loans. H.R. 12078—Passed House July 17, 1978; Passed Senate amended August 7, 1978. (VV)

Water Resources Projects—Waterway User Fee: Authorizes $2.4 billion for certain public works for improvement of navigation on U.S. inland waters and sundry water resources projects in 34 states; for such purposes as floor control, water supply and beach restoration; includes authorization of $421 million for replacement of locks and dam 26 at Alton, Illinois, on the Mississippi River with a new dam and a single 1,200-foot lock; imposes a fuel tax of four cents per gallon on shallow-draft commercial vessels that use the inland waterways which will begin in 1982 or when construction begins on locksand dam 26, whichever is sooner, and increase to 12 cents eight years later; and directs the Secretaries of Commerce and Transportation jointly to understake a study regarding the impact of fuel taxes on inland waterway users or alternative or supplemental charges and to report findings and recommendations to Congress within three years. H.R. 8309—Passed House October 13, 1977; Passed Senate amended May 4, 1978; Senate requested conference May 4, 1978. (153)

White House Personnel Authorization: Provides for the first time a 5-year authorization for the employment of personnel, employment of experts and consultants, expenses, maintenance and operation of the White House Office and the Executive Residence at the White House, the executive duties and responsibilities of the Vice President, the Domestic Policy Staff and the Office of Administration. H.R. 11003—Passed House April 13, 1978; Passed Senate amended July 16, 19; In conference. (VW)

AUGUST 24, 1978.

ENERGY-RELATED LEGISLATION, 1969–77

91st Congress (1969–1970) (5).—

1. Public Law 91–158, Interstate Oil Compact Commission, 2-Year Extension, S.J. Res. 54.

2. Public Law 91–173, Coal Mine Health and Safety Act of 1969, S. 2917.

3. Public Law 91–245, Oil and Gas Leases, S. 1193.

4. Public Law 91–581, Geothermal Steam Act of 1970, S. 368.

5. Public Law 91–631, National Mines and Minerals Policy Act, S. 719.

92nd Congress (1971–1972) (7).—

6. Public Law 92–84, Atomic Energy Commission Authorization, 1972, H.R. 9388.

7. Public Law 92–307, Temporary Operating Licenses for Nuclear Powerplants, H.R. 14655.

8. Public Law 92–314, Atomic Energy Commission Appropriations, 1973, S. 3607.

9. Public Law 92–401, Natural Gas Pipeline Safety Act of 1968, H.R. 5065.

10. Public Law 92–500, Federal Water Pollution Control Act Amendments of 1972, S. 2770.

11. Public Law 92–583, Coastal Zone Management Act of 1972, S. 3507.

12. S. Res. 45, to establish the Senate National Fuels and Energy Policy Study Group.

93rd Congress (1973–1974) (43).—

13. Public Law 93–28, Economic Stabilization Act Amendments of 1973; Voluntary Petroleum Allocation, S. 398.

14. Public Law 93–60, AEC Authorization, S. 1994.

15. Public Law 93–74, NASA Authorization, H.R. 7528.

16. Public Law 93–87, Federal-Aid Highway Act, S. 502.

17. Public Law 93–88, Euratom Corporation Act of 1958 Amendments, S. 1993.

18. Public Law 93–119, Oil Pollution Act Amendments, H.R. 5451.

19. Public Law 93–153, Mineral Leasing Act of 1920, Amendments, and Trans-Alaska Oil Pipeline Authorization, S. 1081.

20. Public Law 93–159, Emergency Petroleum Allocation Act of 1973, S. 1570.

21. Public Law 93–182, Emergency Daylight Saving Time Energy Conservation Act of 1973, H.R. 11324.

22. Public Law 93–208, G.I. Bill Benefits During Energy Crisis, S. 2794.

23. Public Law 93–239, Highway Speed Limit Reduction, H.R. 11372.

24. Public Law 93–245, Supplemental Appropriations; Naval Petroleum Reserves, H.R. 11576.

25. Public Law 93–248, Intervention on the High Seas Act, S. 1070.

26. Public Law 93–249, Fuel Cost Pass-Through for Truckers, S.J. Res. 185.

27. Public Law 93–275, Federal Energy Administration, H.R. 11793.

28. Public Law 93–276, AEC Authorization Act, S. 3292.

29. Public Law 93–316, NASA Authorization Act, H.R. 13998.

30. Public Law 93–319, Energy Supply and Environmental Coordination Act of 1974, H.R. 14368.

31. Public Law 93–322, Special Energy Research and Development Appropriations for 1975, H.R. 14434.

32. Public Law 93–377, AEC Omnibus Legislation of 1974, S. 3669.

33. Public Law 93–383, Housing and Community Development Act, S. 3066.

34. Public Law 93–385, Aid to Energy Affected Small Businesses, S. 3331.

35. Public Law 93–403, Natural Gase Pipeline Safety Act, as amended, Additional Appropriations, H.R. 15205.

36. Public Law 93–409, Solar Heating and Cooling Demonstration Act of 1974, H.R. 11864.

37. Public Law 93–410, Geothermal Energy Research, Development, and Demonstration Act, H.R. 14920.

38. Public Law 93–426, Defense Production Act of 1950, two-year extension, S. 3270.

39. Public Law 93–434, Emergency Daylight Saving Time Energy Conservation Act of 1973, Amendments, H.R. 16102.

40. Public Law 93–438, Energy Reorganization Act of 1974, H.R. 11510.

41. Public Law 93–454, Federal Columbia River Transmission System, S. 3362.

42. Public Law 93–473, Solar Energy Research, Development and Demonstration Act of 1974, S. 3234.

43. Public Law 93–482, Duty Free Entry of Methanol for use as Fuel, H.R. 11251.

44. Public Law 93–485, International Nuclear Cooperation Act, S. 3698.

45. Public Law 43–496, National Railroad Passenger Corporation, H.R. 15427.

46. Public Law 93–511, Emergency Petroleum Allocation Act of 1973 Extension, H.R. 16757.

47. Public Law 93–514, Nuclear Information Annual Report, S. 3802.

48. Public Law 93–522, Sequoia National Park Hydroelectric Project, H.J. Res. 444.

49. Public Law 93–577, Federal Nonnuclear Energy Research and Development Act of 1975, S. 1283.

50. Public Law 93–627, Deep Water Ports Act, H.R. 10701.

51. Public Law 93–643, Federal-Aid Highway Act Amendments of 1975—Fuel Exports to U.S.S.R., S. 3934.

52. Public Law 93–646, Export-Import Bank Act Amendments, H.R. 15977.

53. S. Res. 138, National Consumer Effort to Save Gas.

54. S. Res. 249, Oil Price Increase.

55. S. Res. 279, Washington Energy Conference.

94th Congress (1975–1976) (23).—

56. Public Law 94–12, Tax Reduction Act of 1975; Repeal of Depletion Allowance, H.R. 2166.

57. Public Law 94–18, Nuclear Regulatory Commission Authorization, S. 994.

58. Public Law 94–79, Nuclear Regulatory Commission Authorization, S. 1716.

59. Public Law 94–139, TVA Bonding Authority, H.R. 9472.

60. Public Law 94–163, Energy Policy and Conservation Act, S. 622.

61. Public Law 94–180, Public Works—ERDA Appropriations 1976, H.R. 8122.

62. Public Law 94–187, ERDA Authorization 1976, H.R. 3474.

63. Public Law 94–197, Nuclear Accident Indemnity, H.R. 8631.

64. Public Law 94–227, International Petroleum Exposition, S.J. Res. 59.

65. Public Law 94–258, Naval Petroleum Reserves Production Act of 1976, H.R. 49.

66. Public Law 94–269, ERDA Supplemental Authorization, 1976, S. 3108.

67. Public Law 94–291, Nuclear Regulatory Commission Authorization, S. 3107.

68. Public Law 94–332, Federal Energy Administration Extension, S. 3625.

69. Public Law 94–355, Public Works—ERDA Appropriations, 1977, H.R. 14236.

70. Public Law 94–364, Motor Vehicle Information and Cost Savings Act, S. 1518.

71. Public Law 94–370, Coastal Zone Management Act Amendments, State grants, S. 586.

72. Public Law 94–377, Federal Coal Leasing Amendments Act, S. 391.

73. Public Law 94–385, Energy Conservation and Production, H.R. 12169.

74. Public Law 94–413, Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976, H.R. 8800.

75. Public Law 94–422, Land and Water Conservation Fund Act, S. 327.

76. Public Law 94–477, Natural Gas Pipeline Safety, H.R. 12168.

77. Public Law 94–493, Interstate Oil and Gas Compact, S.J. Res. 126.

78. Public Law 94–586, Alaskan Gas Transportation, S. 3521.

95th Congress (1977–1978) (22).—

79. Public Law 95–2, Natural Gas Emergency, S. 474.

80. Public Law 95–3, Urgent Power Supplemental Appropriations, H.J. Res. 227.

81. Public Law 95–36, Deepwater Ports, S. 891.

82. Public Law 95–39, ERDA Nonnuclear Authorization, 1977, S. 36.

83. Public Law 95–52, Export Control Administration, H.R. 5840.

84. Public Law 95–70, FEA Authorization, S. 1468.

85. Public Law 95–87, Stripmining Reclamation, H.R. 2.

86. Public Law 95–91, Department of Energy, S. 826.

87. Public Law 95–95, Clean Air, H.R. 6161.

88. Public Law 95–96, Public Works—Energy Research Appropriations, 1978, H.R. 7553.

89. Public Law 95–158, Alcan Pipeline, H.J. Res. 621.

90. Public Law 95-164, Mine Safety, S. 717.
91. Public Law 95-183, ERDA Nuclear Authorization, S. 1339.
92. Public Law 95-236, Radiation Exposure, S. 266.
93. Public Law 95-238, ERDA Nuclear/Nonnuclear Authorization, S. 1340.
94. Public Law 95-242, Nuclear Nonproliferation, H.R. 8638.
95. Public Law 95-279, Emergency Agricultural Act—Gasahol Program, H.R. 6782.
96. Public Law 95-297, Petroleum Marketing Practices, H.R. 130.
97. Public Law 95-315, Small Business Energy Loans, H.R. 11713.
98. Public Law 95-343, Stripmining Program Authorizations, S. 2463.
99. Public Law 95- , Military Construction Authorization, 1979—Solar, Geothermal and Utility Systems Programs, H.R. 12602.
100. Public Law 95- , Outer Continental Shelf, S. 9.

ENERGY MEASURES, 95TH CONGRESS, AUGUST 24, 1978

Enacted.—(23):
Alcan Pipeline (H.J. Res. 621, P.L. 95-158).
Clean Air (H.R. 6161, P.L. 95-95).
Deepwater Ports Extension (H.R. 6401, P.L. 95-36).
Department of Energy (S. 826, P.L. 95-91).
Emergency Agricultural Act—Gasohol Program (H.R. 6782, P.L. 95-279).
ERDA Nonnuclear Authorization, 1977 (S. 36, P.L. 95-39).
ERDA Nuclear Authorization (S. 1339, P.L. 95-183).
ERDA Nuclear/Nonnuclear Authorization—Civilian (S. 1340, P.L. 95-238).
Export Control—Arab Boycott (H.R. 5840, P.L. 95-52).
FEA Authorization (S. 1468, P.L. 95-70).
Military Construction Authorization, 1979—Solar, Geothermal and Utility Systems Programs (H.R. 12602, P.L. 95-).
Mine Safety (S. 717, P.L. 95-164).
Natural Gas Emergency (S. 474, P.L. 95-2).
Nuclear Nonproliferation Act (H.R. 8638, P.L. 95-242).
Outer Continental Shelf (S. 9, P.L. 95-).
Petroleum Marketing Practices (H.R. 130, P.L. 95-297).
Public Works—Energy Research Appropriations, 1978 (H.R. 7553, P.L. 95-96).
Radiation Exposure (S. 266, P.L. 95-236).
Small Business Energy Loans (H.R. 11713, P.L. 95-315).
Strategic Petroleum Reserve Plan No. 1 (S. Res. 429—S. agreed to disapproval resolution).
Stripmining (H.R. 2, P.L. 95-87).
Stripmining Program Authorization (S. 2463, P.L. 95-343).
Urgent Power Supplemental Appropriations, 1977 (H.J. Res. 227, P.L. 95-3).
In conference.—(11):
Agricultural Appropriations, 1979—Energy Conservation Programs (H.R. 13125).
Coal Conversion (H.R. 5146—S. agreed to July 18, 1973).
Energy Conservation (H.R. 5037).
Energy Taxation (H.R. 5263).
HUD Authorization—Solar and Home Insulation Programs (S. 3084).
Interior Appropriations, 1979—Energy Production, Supply, and Regulation Programs (H.R. 12932).
International Development Assistance—Bilateral Assistance for Energy Resource Development (H.R. 12222).
Natural Gas Pricing (H.R. 5289—Conf. rept. filed)
Public Utility Rate Reform (H.R. 4018).
Public Works Energy Research Appropriations, 1979—Energy Research Projects (H.R. 12928—Conf. rept. filed).
Water Resource Projects—Waterway User Fee—Fuel Use Taxes (H.R. 8309—H. conferees not named).
Passed Senate, not House.—(9):
Alaska Pipeline Destruction (S. 1496).
Educational Institution Energy Savings Grants (S. 701—Provisions are now in energy conservation bill).
Endangered Species—Possible exemptions for certain energy supply projects (S. 2899).
ERDA Nuclear Authorization—Civilian/Military (S. 1341).
ERDA Synthetic Fuel Loan Guarantee Program (S. 37).
Natural Gas Pipeline Safety (S. 1895).
Oil Shale Commercialization (S. 419).
Pipeline Destruction (S. 1502).
Rate Discrimination (S. 2249).
Vetoed.—(1):
ERDA Nuclear/Nonnuclear—Civilian (S. 1811—Contained Clinch River—enacted as P.L. 95-238).

RECESS UNTIL 8:15 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in recess until the hour of 8:15 tomorrow morning.

The motion was agreed to; and at 8:49 p.m. the Senate recessed until tomorrow, Friday, August 25, 1978, at 8:15 a.m.

NOMINATIONS

Executive nominations received by the Senate August 24, 1978:

SOCIAL SECURITY ADMINISTRATION

Stanford G. Ross, of the District of Columbia, to be Commissioner of Social Security of the Department of Health, Education, and Welfare, vice James B. Cardwell.