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PROCEEDINGS AND DEBATES OF THE 96th CONGRESS, FIRST SESSION

SENATE—*Monday, July 16, 1979*

(Legislative day of Thursday, June 21, 1979)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by Hon. HOWELL T. HEFLIN, a Senator from the State of Alabama.

PRAYER

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

Let us pray:

God of our fathers and our God, in Thee we put our trust generation after generation, through happy days and in times of trouble. We thank Thee for every patriot whose life has blessed the Nation, for all who have served and all who now serve the Nation with competence and character. When new directions, new exertions and new disciplines are required, wilt Thou show us the way with a clarity transcending our highest human insight?

O Lord keep us close to Thee, for Thy presence is the answer to every prayer. Unite the Congress with the President to serve with such purity of purpose and singleness of devotion as befits service in Thy kingdom. May goodness and mercy and justice follow us through changing scenes.

In Thy holy 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. MAGNUSON).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 16, 1979.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HOWELL T. HEFLIN, a Senator from the State of Alabama, to perform the duties of the Chair.

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

THE JOURNAL

Mr. ROBERT C. BYRD. 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.

PRESIDENT CARTER'S SPEECH

Mr. ROBERT C. BYRD. Mr. President, last night President Carter addressed the people of our Nation. He reminded the Nation of who we were, what we have become, and what we can be again.

He asked us to look inward, to reexamine our values. He asked us to be strong. He asked us to make sacrifices.

It is my hope that he struck the raw nerves of our Nation.

Time will be the measure, as President Carter further outlines his energy and inflation plans.

In any event, the President captured the attention of the Nation. He had the ear of the people. It is my hope that now he can reach out to their hearts and minds.

His speech was a recognition that the malaise of the spirit is not incurable, but can be swept away with the right kind of leadership. He asked for our cooperation, and we will give it.

But Congress has not been on the sidelines all of these weeks. Congress is already well ahead in its development of most of the legislation to which he referred.

For example, the National Energy Mobilization Board is included in the legislation which Senator JACKSON and the Energy Committee will be reporting to the Senate, perhaps as early as next week.

The synthetic fuels program is included in that legislation.

The House has passed legislation dealing with an accelerated synthetic fuels program. That legislation will be coming to the Senate within a week or 10 days.

The windfall profits tax is already in the works. The House has acted in that regard. The Senate Committee on Finance is proceeding, and my meetings with Senator LONG, Mr. ULLMAN, and others have indicated to me that the Senate will be moving along. The House legislation, of course, must be passed first by virtue of the constitutional requirement, and the Senate will be acting on the tax in due time.

As to the creation of a solar bank, the administration has talked about sending up such legislation but it has not yet done so. In the past, some form of solar bank legislation has been introduced in the Senate. It is an idea that has been floating around for a while and will be considered thoroughly.

As to the import quotas, the President has the authority to impose them. He has said he will use that authority. It is a matter that will be left up to his leadership.

In order to mandate utilities, by law, to cut oil consumption by 50 percent within the next decade and switch to coal, an amendment to the Fuel Use Act will be necessary.

But, in the main, I think I need only say, as I have said before, that Congress is ahead of the game.

As to its performance in this area, I am sure Congress is going to do its part and is going to cooperate. Congress has already indicated that kind of leadership in the recent past, as well as over the many years in which it has enacted a great deal of energy legislation.

The Senate gave the President standby authority to ration gasoline. The other body did not go along. But I believe that some legislation along that line will be enacted.

I still think the President ought to send up a plan, rather than wait for a plan to be developed in the Congress, but I am not hardnosed about it. I think the important thing is that the country have a standby gasoline rationing plan, hope-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

fully one that would never have to be used.

As to the massive energy program that we are talking about, particularly the reduction in imports of foreign oil, I am glad to see the President taking a strong position on this matter.

He has said that this country will not import any more oil than was imported in 1977. Of course, that is the year in which the highest imports occurred. It gives him a little flexibility and elbow room. I hope the President will pursue the course he has set out upon. He can do it. He certainly stated with emphasis last night his intention to do it. I believe the American people will support that kind of determination.

I commend President Carter for his accurate and forceful speech. The real world is not the world in which we have been attempting to live, as he has indicated. But we have the spirit and the fortitude to mold our Nation to fit the realities of the day, and we will be a better people.

Mr. President, I yield the remainder of my time to the Senator from California (Mr. CRANSTON).

Mr. CRANSTON. I appreciate that very much.

Mr. President, I concur very strongly in the statement of the majority leader on the President's speech and his recognition of the legislation that has already been enacted or is in movement in the Congress that would fulfill significant portions of what the President talked about.

President Carter spoke out as a leader last night, forcefully, clearly, eloquently. The energy program he set forth is sound and strong and in keeping with America's size and strength.

The test will be the President's ability to lead Congress and the Nation now. His success will be our success. His failure will be our failure.

I believe that all of us together will be successful. I will do what I can do help the President.

RECOGNITION OF THE MINORITY LEADER

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

Mr. BAKER. Mr. President, I thank the Chair.

PRESIDENT CARTER'S SPEECH

Mr. BAKER. Mr. President, I watched the President's address last night, as I am sure most Americans did.

I was struck by his sincerity, his desire to publish the urgency of the moment, and his formula for solution to an anxious Nation.

I commend the President for making the address. I think, by and large, he succeeded in conveying his concerns and anxieties. I believe his call for national support for his energy initiatives will be widely accepted.

For my part, while I do not agree with every aspect of the President's proposal, and while I disagree with some parts of it, it occurs to me—and I represent—that today is not the day for perfection, which is often the enemy of the merely good but, rather, a day to try to formulate a policy that we can all support.

The President is right, beyond a shadow of a doubt, in saying that we have an energy crisis to contend with. So, while we may not—indeed, we do not—agree on every aspect of his proposals heretofore made or those suggested or intimated in his speech last night, I am prepared to say and I do now say that, for my part, and I believe I speak on behalf of all or virtually all Republicans in this body, we are willing to start from scratch. We are willing to begin anew. We are willing to consider together the formulation of a plan that will lead this country to better times.

It is not an easy job, and I place no preconditions on my effort at cooperation, but I earnestly hope that the President and his advisers will take account of the views that we express on our side of the aisle here, in the other body, and throughout the country, and try to synthesize a broad-based, genuine bipartisan policy. I am willing to do that, and I hope the President is willing to do that.

I am willing to consider and to adopt programs and proposals about which I may not be wholly enthusiastic, in deference to the need to do something. I am willing to lay aside apprehensions and concerns I might have about some programs, provided they lead to a coherent, combined energy program, with reasonable prospects of success.

What we do today and in the weeks and months remaining of this session almost surely is not the last word that will be spoken on energy in the Government and it is not necessary that we achieve absolute perfection in our efforts. So I am declaring, Mr. President, on my own behalf and I hope on behalf of our many, I believe most, Republicans in the Senate, that we are willing to start from scratch and try to enact a worthwhile program for America.

I do not abdicate my right to criticize and critique, suggest alternatives, to disagree and disavow any parts of such a program that are clearly anathema to my principles and beliefs, but I am willing to start from scratch, to lay aside the animosities and conflicts that have characterized this debate in the past and try anew.

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

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. Mr. President, I commend the distinguished minority leader on the broad and objective approach that he has outlined as far as the minority is concerned. He has recognized that this is an American problem, that it is not one in which there should be partisanship, and I think this is statesmanship as he has expressed it.

For my part, let me say that the minority in the Senate has, all along, as we have dealt with energy issues, made its share of the contributions, has given its support. There have been differences on that side of the aisle, just as my own side of the aisle has been divided on energy matters. Energy is one of the most divisive, contentious subjects that I think I have ever seen come before the Senate. But the minority has not taken a partisan viewpoint on this, in my estimation, over the years, and has joined those on the other side of the aisle who could see the issue as those on my side of the aisle could see it in order to produce the majorities necessary to pass important energy legislation. It was not all done by the Democrats. We had to have some Republican support, and I have maintained this consistently in my advice to the White House.

It was at my request that Senators STEVENS, DOMENICI, HATFIELD, and BELLMON went to Camp David. I mentioned those only because they are the leaders—not all the leaders, but at least, they are leaders on the Energy Committee and on the Budget Committee.

I have stated from the beginning that any program dealing with energy has to have broad support, has to have bipartisan support. I have seen it manifested in the Senate; I know that it pays. It is the only way to reach consensus, to have members of both parties join in working out a solution.

So, as far as the Senate is concerned, I want to say that I am proud of the demonstration of cooperation and nonpartisanship on the part of the minority in dealing with energy issues. I know that the minority leader is to be congratulated on what he has just stated and I am satisfied that that reflects the opinion of the minority as we approach this common problem, because we are going to have to manifest statesmanship in dealing with the problem that is of such vital interest to the American people, and that so vitally affects the economy and our own national security. I hope we can join in supporting the President whenever we feel that we can support him. He needs the help of the people, and I think, in this moment of common concern, we should show that common understanding and support that the President needs, and that the Nation needs.

I commend the minority leader, and I commend those Members of the minority who have demonstrated this kind of statesmanship all along on energy matters.

I do not complain about those who disagree on either side with the legislation we have passed. Where they have disagreed, it has not been in the spirit of partisanship, but simply because they did not see eye-to-eye with the majority as the matter was molded together on both sides of the aisle in passing legislation.

So I am encouraged. But the minority leader did not need to say what he said so far as I am concerned, because I have seen that kind of cooperation all along in energy matters. I have no doubt, and had no doubt, that it would be forthcoming in the future as well on this subject.

Mr. BAKER. Mr. President, I thank the majority leader. I add only this:

I never dreamt for a second that I needed to make these representations to the majority leader. I have never

known a man who had a better and clearer understanding of the essence of this institution and the necessity for bipartisan cooperation. As we often have expressed to each other on this floor, the matter of leadership in the Senate is a joint undertaking. While he, as the majority leader, has the primary responsibility, I recognize that I, too, have the responsibility; and so it is with major issues.

Mr. President, my remarks today were directed to the White House, primarily. When I expressed the view that, notwithstanding our disagreement and failure of cooperation in the past, I am willing to start from scratch, I was in no way referring to the majority leader but, rather, to those in the executive department.

Mr. President, if I have any time remaining, I yield it to the distinguished Senator from Kansas.

The ACTING PRESIDENT pro tempore. The Senator from Kansas has 3 minutes remaining.

Mr. DOLE. Mr. President, I have listened with interest, in my office, to the distinguished minority leader and the majority leader.

As the ranking Republican on the Senate Finance Committee, in which we are dealing with some of the issues and some of the problems enunciated by the President, and as the chairman of the Energy Committee of the Policy Committee, I also indicate a willingness to cooperate.

I think the one disturbing factor in the President's remarks last night was that every program he mentioned calls for more Government action. I hope that today, in Kansas City, we will hear the President of the United States talk about the private sector.

He talked about the greatness of America and the crisis of confidence. It seems to me that one thing that needs to be underscored is that we will solve this problem not with more Government programs, necessarily, but with a rededication of the private sector.

I noted that there was almost a complete lack of reference to what we could do in the private sector so far as short-term production is concerned. There are a number of things that can be done in the short term, through the private sector, that will insure increased domestic supplies of oil and gas. It is my hope that the President will address these matters today in Kansas City and Detroit.

Certainly, Congress is cooperating; the minority leader is cooperating and is willing to cooperate. Right now, in the Finance Committee, we are working on the windfall profits tax. Nearly every other program mentioned by the President last night is either in the mill in Congress or can be done without legislative action.

My point is that the key word should be "production"—production through the private sector. I hope that in the weeks and months ahead, Congress and the President will understand the need to turn to the private sector for a more complete energy program.

I thank the distinguished minority leader for yielding.

(The following proceedings occurred later in the day and are printed at this point in the RECORD by unanimous consent.)

Mr. RANDOLPH. Mr. President, I ask unanimous consent to set aside the Pastore rule to give me the opportunity to make a very brief statement, which I released last night, per the request of certain media sources in West Virginia, following the address of the President.

The PRESIDING OFFICER. Without objection it is so ordered.

COMMENT ON THE PRESIDENT'S SPEECH

Mr. RANDOLPH. Mr. President, our President spoke as a Commander in Chief should speak. His words were forceful and challenging. He pleaded with loyal Americans to join with him in a purpose that we have demonstrated in other words.

Overseas suppliers of oil heard Jimmy Carter say "this far—no more." Coal was first in his list of needed alternatives to petroleum. He emphasized coal as our most abundant fuel. President Carter correctly urged conservation.

He is in troubled waters, but he gave us the promise he would hold the rudder with a strong and steady hand. His call for unity, understanding, hard work and sacrifice will, I believe, mobilize the American people. This address was, in my judgment, his most forthright and effective message since he became President.

RECOGNITION OF SENATOR WEICKER

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Connecticut is recognized for not to exceed 15 minutes.

THE PRESIDENT'S SPEECH

Mr. WEICKER. Mr. President, last night, a President of the United States, who had run out of gas politically, intellectually and emotionally, asked the American people to push him back on the track for 1980. It is my contention this morning that what crisis of confidence exists, exists not with the American people but among the lightweights that are the President and his White House coterie.

I suggest that instead of the "I goofed but you pay" approach, President Carter pay the price of accountability by removing himself as a candidate for reelection thus freeing himself to do the politically unpopular so necssary to any substantive resolution of the country's energy problems. Such acts, all of which have my unqualified support, should be:

First. Immediate mandatory gasoline rationing by coupon.

Second. Immediate ban on all credit card purchases of gasoline.

Third. Immediate decontrol and deregulation of all oil and gas.

Fourth. The Highway Trust Fund be made available to all forms of transportation.

Fifth. Nationalization of all rail passenger service with massive funding being directed toward capital investments in track, cars, and engines.

Sixth. Imposition of a tax on oil and gas producers which resultant funds will be used for Government-assisted development of alternate forms of energy. All discoveries to be in the public domain.

Seventh. An import curb on oil of 1 percent less per month than the preceding month—commencing August, 1979.

Eighth. An energy stamp program to assist the Nation's poor and elderly in the payment of their utility and transportation bills.

These are the nutcrackers that circumstances demanded of last night's performer and today's Nation.

Until they substantially come to pass, deception rather than conservation, deception rather than production, and deception rather than innovation remains the cornerstone of U.S. energy policy. To this extent, Congress and both political parties can share goat's horns with the President.

The American people want the truth both as to situation and response. For the last 5 years and that includes last night, they have been given little of either.

If fewer of us thought about hanging on to our jobs, maybe more of our constituents could remain in theirs.

I yield back the remainder of my time.

NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to the consideration of S. 562, which will be stated by title.

The second assistant legislative clerk read as follows:

A bill (S. 562) to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works with an amendment to strike all after the enacting clause and insert the following:

TITLE I

SECTION 101. (a) There is hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance with the provisions of section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, for the fiscal year 1980 the sum of $373,300,000, to remain available until expended. Of such total amount authorized to be appropriated:

(1) not more than $57,040,000 may be used for "Nuclear Reactor Regulation";

(2) not more than $41,200,000 may be used for "Inspection and Enforcement"; of the total amount appropriated for this purpose, $4,684,000 shall be available for support for 146 additional inspectors for the Resident Inspector program;

(3) not more than $14,270,000 may be used for "Standard Development";

(4) not more than $29,605,000 may be used for "Nuclear Material Safety and Safeguards"; of the total amount appropriated for this purpose, $9,675,000 shall be available for Nuclear Waste Disposal and Man-

agement activities, including support for five additional positions in the Division of Waste Management for implementation of the Uranium Mill Tailings Radiation Control Act (Public Law 95-604, 42 U.S.C. 7901 et seq);

(5) not more than $185,570,000 may be used for "Nuclear Regulatory Research"; of the total amount appropriated for this purpose, $4,400,000 shall be available for implementation of the Improved Safety Systems Research plan required by section 205(f) of the Energy Reorganization Act of 1974, as amended, and $6,700,000 shall be available for Nuclear Waste Research activities;

(6) not more than $14,925,000 may be used for "Program Technical Support"; of the total amount appropriated for this purpose, $4,238,000 shall be available to the Office of State Programs, including support for eight additional positions for training and assistance to State and local governments in radiological emergency response planning and operations and for review of State plans; and

(7) not more than $30,690,000 may be used for "Program Direction and Administration"; of the total amount appropriated for this purpose, $400,000 shall be available for support of eight additional positions in the Division of Contracts, Office of Administration.

(b) No amount appropriated to the Commission pursuant to subsection (a) may be used for any purpose in excess of the amount expressly authorized to be appropriated therefor by paragraphs (1) through (7) of such subsection, if such excess amount is greater than $500,000, nor may the amount available from any appropriation for any purpose specified in such paragraphs be reduced more than $500,000, unless.

(1) a period of forty-five calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) has passed after the receipt by the Committee on Interstate and Foreign Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate of notice given by the Commission containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or

(2) each such Committee before the expiration of such period has transmitted to the Commission a written notification that there is no objection to the proposed action:

Provided, however, That no addition to or reduction from the amount expressly authorized to be appropriated for any purpose in accordance with this subsection shall reduce the amounts available for the Resident Inspector program, Nuclear Waste Disposal and Management, Improved Safety Systems Research, Nuclear Waste Research, the Office of State Programs, and the Office of Administration specified in paragraphs (1) through (7) of subsection (a).

(c) No amount authorized to be appropriated by this Act may be used by the Commission to

(1) place any new work or substantial modification to existing work with another Federal agency, or

(2) contract for research services or modify such a contract

in an amount greater than $500,000, unless such placement of work, contract, or modification is approved by a Senior Contract Review Board, to be appointed by the Commission within 60 days of the date of enactment of this Act. Such Board shall be accountable to and under the direction of the Commission. If the amount of such placement contract, or modification is $1,000,000 or more, approval thereof shall be by majority vote of the Commission. Prior to affording any approval in accordance with this subsection, the reviewing body designated hereunder shall determine that the placement, contract, or modification contains a detailed description of work to be performed, and that alternative methods of obtaining performance, including competitive procurement, have been considered.

SEC. 102. Monies received by the Commission for the cooperative nuclear research programs may be retained and used for salaries and expenses associated with those programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

SEC. 103. Transfers of sums from salaries and expenses may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriation to which transferred.

SEC. 104. Notwithstanding any other provision of this Act, no authority to make payments hereunder shall be effective except to such extent or in such amounts as are provided in advance in appropriations Acts.

SEC. 105. The first sentence of section 234 a. of the Atomic Energy Act of 1954, as amended, is amended by striking all that follows "exceed" the first time it appears and inserting in lieu thereof the following: "$100,000 for each such violation."

SEC. 106. The Commission is authorized and directed to enter into a contract for an independent review of the Commission's management structure, processes, procedures, and operations. The review shall include an assessment of the effectiveness of all levels of agency management in carrying out the Commission's statutory responsibilities, in developing and implementing policies and programs, and in using the personnel and funding available to it. The contract shall provide for submission of a report of the findings and recommendations of the review to the Commission not later than one year from the date of enactment of this Act, and the Commission shall immediately transmit such report to the Congress.

TITLE II

SEC. 201. As used in this title—

(1) the term "the Act" shall mean the Atomic Energy Act of 1954, as amended;

(2) the term "extraordinary nuclear occurrence" shall have the meaning provided therefor by section 11 j. of the act; and

(3) the term "utilization facility" shall mean a facility described by section 11 cc. of the Act which is licensed to operate under section 103 or 104 b. thereof.

SEC. 202. (a) Section 103 of the Act is amended by adding at the end thereof the following new subsection:

"e. As part of each application for an operating license for a utilization facility submitted under this section, the applicant shall provide the plan of the State of situs for emergency response to an extraordinary nuclear occurrence, and to an event or sequence of events which significantly increases the likelihood thereof, at each utilization facility, including the subject facility, licensed to operate within such State under this section or section 104 b. of the act. No such license shall be issued unless the Commission is satisfied that such plan adequately protects the public health and safety."

(b) As soon as practicable, each State wherein a utilization facility has been licensed to operate as of the date of enactment of this act shall submit to the Commission a plan for emergency response to an extraordinary nuclear occurrence, and to an event or sequence of events which significantly increases the likelihood thereof, at each such facility within the State. The Commission shall review each plan for compliance with the guidelines employed prior to the enactment of this section in affording or withholding concurrence in State radiological emergency response plans. In the event the Commission determines that any such plan does not comply with such guidelines and the State fails to correct such noncompliance within six months of the date of enactment of this section, the Commission shall cause such determination to be published in the newspaper of greatest circulation in such State, and shall order each such facility to terminate operations until a plan is submitted which the Commission determines to be in compliance with such guidelines.

(c) As soon as practicable, but not later than six months from the date of enactment of this section, the Commission shall by rule promulgate minimum requirements for State plans for emergency response to an extraordinary nuclear occurrence, and to an event or sequence of events which significantly increases the likelihood thereof, at each utilization facility licensed to operate within the State. Such requirements shall assure protection of the public health and safety to the maximum extent practicable. In the promulgation required hereunder, the Commission shall specify a period for expeditious compliance with such requirements. Pending the promulgation required hereunder, the Commission shall determine plan adequacy as required by section 103 e. of the act on the basis of the guidelines employed prior to the enactment of this section in affording or withholding concurrence in State radiological emergency response plans.

SEC. 203. Within six months of the date of enactment of this section, the Commission shall by rule promulgate a plan for agency response to an extraordinary nuclear occurrence, and to an event or sequence of events which significantly increases the likelihood thereof, at a utilization facility licensed under section 103 or 104 b. of the Act which at a minimum provides for effective and expeditious procedures for—

(1) notification by the licensee of any event or sequence of events at such a facility which may significantly increase the likelihood of such an occurrence;

(2) determination of the existence of such an event, sequence of events, or occurrence;

(3) representation at the facility site vested with the authority to act on behalf of the Commission;

(4) communication among Commission headquarters, the Commission regional office, Commission representatives at the facility site, the Governor of the State of situs and other appropriate State officials, and senior management officers and operator personnel of the licensee;

(5) comprehensive and definitive monitoring of radiation levels within the boundaries of the facility site.

(6) function of the Chairman as spokesman for the Commission in accordance with section 201(a)(1) of the Energy Reorganization Act of 1974, as amended;

(7) making recommendations on evacuation; and

(8) acquiring facility design and construction information, equipment, and technical expertise.

In the promulgation required hereunder, the Commission shall specifically determine which procedures shall be implemented by majority vote of the Commission, and which shall be implemented through delegation of authority.

SEC. 204. (a) Section 170 of the Atomic

Energy Act of 1954, as amended is amended by changing the caption thereof to "Indemnification, Financial Protection, Limitation of Liability, and Emergency Response.", and by adding at the end a new subsection q. as follows:

"q. Within 120 days of the date of enactment of this subsection, the President shall prepare and publish a National Contingency Plan to provide for expeditious, efficient, and coordinated action to protect the public health and safety in case of an extraordinary nuclear occurrence, or an event or sequence of events which significantly increases the likelihood thereof, at a utilization facility licensed under section 103 or 104 b. Such Plan shall include, but not be limited to—

"(1) designation of an interagency task force, including but not limited to the Commission, which shall be the lead agency, the Federal Emergency Management Agency, the Environmental Protection Agency, the Department of Health, Education, and Welfare, the Department of Defense, and the Department of Energy, and consisting of personnel who are trained, prepared, and available to provide necessary services to carry out the Plan;

"(2) assignment of duties and responsibilities among Federal departments and agencies: *Provided, however,* That the Environmental Protection Agency shall have the responsibility for radiation monitoring outside the boundaries of the facility;

"(3) identification of an official of the lead agency as task force coordinator at the facility site;

"(4) establishment of a national center to provide coordination and direction in Plan implementation; and

"(5) identification, procurement, maintenance and storage of equipment and supplies.

The President shall incorporate in the Plan required hereunder the provisions of the plan of the Nuclear Regulatory Commission promulgated pursuant to section 203 of the Nuclear Regulatory Commission Authorization Act for Fiscal Year 1980. To the maximum extent possible, the Federal response to an extraordinary nuclear occurrence, or to an event or sequence of events which significantly increases the likelihood thereof, at a utilization facility licensed under section 103 or 104 b., shall conform to the Plan promulgated hereunder. The President may periodically revise such Plan.".

(b) The analysis of chapter 14 of the Atomic Energy Act of 1954, as amended, is amended by deleting:

"Sec. 170. Indemnification and limitation of liability."

and inserting in lieu thereof:

"Sec. 170. Indemnification, financial protection, limitation of liability, and emergency response."

SEC. 205. (a) Section 103 of the Act is amended by adding at the end thereof the following new subsection f.:

"f. Each license issued under this section for a utilization facility shall require as a condition thereof that in case of any event or sequence of events at such facility which may significantly increase the likelihood of an extraordinary nuclear occurrence, the licensee shall immediately so notify the Commission. Violation of the condition prescribed by this subsection may in the Commission's discretion constitute grounds for license revocation. In accordance with section 187 of this Act, the Commission shall immediately amend each license for a utilization facility issued under this section or section 104 b. which is in effect on the date of enactment of this section to insert the provisions required hereunder.".

(b) As expeditiously as practicable, the Commission shall establish a mechanism for instantaneous and uninterrupted verbal communication between each utilization facility licensed to operate on the date of enactment of this Act, or thereafter, and

(1) Commission headquarters, and

(2) the appropriate Commission regional office.

(c) Within ninety days of the date of enactment of this Act, the Commission shall prepare and transmit to the Congress a plan for remote and instantaneous monitoring of each principal component system of a utilization facility which is designed to prevent substantial health or safety hazards or to measure radioactive releases to the atmosphere.

SEC. 206. (a) The Commission is authorized and directed to undertake a comprehensive investigation and study of the impediments to expeditious and reliable communication among Commission headquarters, the Commission regional office, Commission representatives at the facility site, senior management officials and operator personnel of the licensee, and the Governor of Pennsylvania and other State officials, in the thirty day period immediately following the accident of March 28, 1979, at unit two of the Three Mile Island Nuclear Station in Pennsylvania. Such investigation and study shall include, but not be limited to, a determination of the need for improved communications procedures and the need for advanced communications technology.

(b) The Commission shall report to the Congress by January 1, 1980, on the findings of the investigation and study required by the preceding subsection, including recommendations on administrative or legislative measures necessary to facilitate expeditious and reliable communications in case of an extraordinary nuclear occurrence, or an event, or sequence of events which significantly increases the likelihood thereof, at a utilization facility. The Commission shall implement as soon as practicable each such recommendation not requiring legislative enactment, and shall incorporate the recommendation in the plan for agency response promulgated pursuant to section 203 of this Act.

SEC. 207. (a) The Commission is authorized and directed to prepare a plan for improving the technical capability of licensee personnel to safely operate utilization facilities. Such plan shall include specific criteria for more intensive training and retraining of operator personnel licensed under section 107 of the Act, and for the licensing of such personnel, to assure—

(1) conformity with all conditions and requirements of the operating license;

(2) early identification of events or event sequences which may significantly increase the likelihood of an extraordinary nuclear occurrence; and

(3) effective response to any such event or sequence.

The Commission shall transmit to the Congress the plan required by this subsection within six months of the date of enactment of this Act, and shall implement as expeditiously as practicable each element thereof not requiring legislative enactment.

(b) The Commission is authorized and directed to undertake a study of the feasibility and value of licensing under section 107 of the Act plant managers of utilization facilities and senior licensee officers responsible for operation of such facilities. The Commission shall report to the Congress within six months of the date of enactment of this Act on the findings and recommendations of the study required by this subsection, and shall expeditiously implement each such recommendation not requiring legislative enactment.

SEC. 208. (a) In the conduct of the study required by section 5(d) of the Nuclear Regulatory Commission Authorization Act for Fiscal Year 1979 (Public Law 95-601), the Commission and the Environmental Protection Agency, in consultation with the Secretary of Health, Education, and Welfare, shall evaluate the feasibility of epidemiological research on the health effects of low-level ionizing radiation exposure to licensee, contractor, and subcontractor employees as a result of—

(1) the accident of March 28, 1979, at unit two of the Three Mile Island Nuclear Station in Pennsylvania;

(2) efforts to stabilize such facility or reduce or prevent radioactive releases therefrom; or

(3) efforts to decontaminate, decommission, or repair such facility.

The report required by such section shall include the results of the evaluation required hereunder.

(b) Section 5(d) of the Nuclear Regulatory Commission Authorization Act for Fiscal Year 1979 (Public Law 95-601), is amended by striking "September 30, 1979" and inserting in lieu thereof "March 1, 1980".

The ACTING PRESIDENT pro tempore. Debate on this bill is limited to 1 hour, to be equally divided between and controlled by the Senator from Colorado and the Senator from Wyoming, with 30 minutes on any amendment in the first degree, except a McGovern amendment on State veto of nuclear waste, on which there shall be a 1-hour limit; a Kennedy amendment on review of construction permits, on which there shall be 1 hour; a DeConcini amendment on special powers of NRC in certain cases, on which there shall be 1 hour; a Hart-Simpson amendment, on which there shall be 1 hour; a Johnston amendment on moratorium excavation plans, on which there shall be 40 minutes; and two Dole amendments, on which there shall be 30 minutes each, with 20 minutes on any amendment in the second degree, except a Bumpers amendment to the McGovern amendment, on which there shall be 40 minutes, a Hart amendment to the Kennedy amendment, on which there shall be 40 minutes, and a possible Johnston amendment to the McGovern amendment, on which there shall be 40 minutes; with 10 minutes on any debatable motion, appeal, or point of order.

Who yields time?

Mr. BAKER. Mr. President, I note that the distinguished Senator from Colorado (Mr. HART) has not yet reached the Chamber. I believe he is on his way. Since there is fairly short time for debate on the bill, I am going to ask unanimous consent that it be in order to suggest the absence of a quorum without charging that time to either side.

Mr. President, I make that request at this time.

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

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. HART. Mr. President, I ask unanimous consent that the following mem-

bers of the staff of the Committee on Environment and Public Works be afforded the privilege of the floor during the consideration of and all votes on S. 562:

John Yago, Philip Cummings, Larry Roth, Paul Leventhal, John Austin, Kevin Phelps, Bill Donovan, Bailey Guard, James Asselstine, James Range, Jean Schrag, and Keith Glaser, as well as Sam Ratick of Senator MOYNIHAN's staff; Peter Gold of my staff; and Jim Cubie and David Moulton of Senator KENNEDY's staff.

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

Mr. HART. I thank the Chair.

Mr. DOMENICI. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. HART. Yes.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Charles Trabandt, Will Smith, and Ben Cooper of the Energy and Natural Resources Committee staff; Rick Richards of Senator JOHNSTON's staff, Paul Gillman, Steve Bell, and George Ramonas of my staff be granted floor privileges during the discussion and votes on this measure.

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

Mr. DOMENICI. I thank the Senator from Colorado.

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

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. HART. What is the pending business before the Senate?

The ACTING PRESIDENT pro tempore. S. 562.

Mr. HART. I thank the Chair.

Mr. President, as chairman of the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, I am pleased to present for Senate consideration S. 562, as amended, authorizing appropriations for the Nuclear Regulatory Commission for fiscal year 1980. The NRC authorization bill represents a major element in our oversight of the Commission.

The Nuclear Regulatory Commission sent to Congress a proposed budget of $373.3 million, a 13-percent increase over the estimated obligations for fiscal year 1979 of $326.6 million. The committee accepted the Nuclear Regulatory Commission's total request, although it reallocated some funds within the total to meet certain priority needs.

Mr. President, the NRC authorization bill comes to the Senate in the wake of Three Mile Island, the most serious nuclear accident in the history of the civil nuclear power program. Prior to Three Mile Island, the committee had considered reducing the Nuclear Regulatory Commission's proposed budget increase. In the aftermath of Three Mile Island, however, we recognized the urgency of providing additional resources to meet the substantial responsibilities arising out of the accident. The Three Mile Island accident has triggered an exhaustive reappraisal of our reliance on nuclear power. The results of the committee's special Senate-authorized investigation, and of other investigations, should reveal whether in the past we have too blithely underestimated the potential risks of nuclear power and too blindly ignored the potential benefits of energy alternatives. At the least, these investigations should help point the way to better regulation and control of civilian nuclear power.

The proposed fiscal 1980 authorization for NRC reflects the committee's response to remedying the weaknesses in our nuclear regulatory structure. Exposed by the Three Mile Island accident. For example, the accident caused us to question the adequacy of the Nuclear Regulatory Commission's program for inspecting operating reactors. In fiscal year 1977, the Commission initiated a resident inspection program that would station 83 inspectors at selected sites to monitor the daily operations of the reactors. Prior to Three Mile Island, the Commission had planned to hire only 27 additional resident inspectors during fiscal year 1980. Today's authorization bill, however, mandates that the Commission drastically expand its program by hiring 146 additional resident inspectors.

The committee expects the resident inspector program will improve the effectiveness of NRC by: First, providing more opportunities to observe licensed activities; and, second, giving the inspector greater knowledge of the plant, enhancing his ability to make prompt and accurate technical judgment.

In addition, the bill directs GAO to conduct a study comparing the advantages and disadvantages of the new resident inspector program with the existing regional inspection program. Thus, this portion of the authorization bill begins to grapple with the traditional assumption which underlies the NRC's regulatory philosophy: That the commercial utility companies, and not the Nuclear Regulatory Commission, should have the principal responsibility for insuring that licensed activities comply with NRC regulations.

The committee's preliminary investigation of the accident also revealed that reactor control room personnel, when confronted by serious problems, failed to respond appropriately during the initial sequence of events leading to the crisis. Deficiencies in operator performance included: A lack of vigilance in assuring that the plant was operating in compliance with its license requirements, a failure to understand properly the reactor condition, and a failure to respond promptly and adequately to the emergency situation.

Therefore, the committee, in this bill, directs the Nuclear Regulatory Commission to prepare a plan for improved training, retraining, and licensing of reactor operators. The plan will specifically address the problems of emergency response training. The Commission will also study the feasibility of licensing plant managers and other personnel not now subject to NRC licensing, who have authority to make decisions affecting the operation of a plant.

The Three Mile Island accident also underscored the immediate need for a national contingency plan which insures coordinated Federal response to future emergencies at nuclear powerplants. The authorization bill requires the President to promulgate such a plan, setting up a Federal interagency task force with the NRC as lead agency to facilitate coordination.

The NRC's response to the Three Mile Island crisis disclosed a disconcerting lack of preparation for such an emergency. There was a delay in the arrival of NRC's principal technical experts on site. There was a delay in the availability and coordination of support services. The NRC was unable to obtain and relay accurate and timely information. Certain actions of the utility were unanticipated and unapproved by the NRC.

In response to this set of circumstances, the authorization bill requires the NRC to promulgate a plan for responding to nuclear emergency. The plan will insure prompt notification of an emergency by a plant operator, prompt dispatch of NRC emergency response team to the plant site, swift and accurate communication within the NRC and between the NRC and responsible Federal, State and utility officials, and accurate monitoring of radiation levels on site.

Perhaps the most significant remedial legislative measure spawned by Three Mile Island is the amendment to section 202 in the printed bill which my distinguished colleague, the Senator from Wyoming (Mr. SIMPSON) and I offer in the form of a perfecting amendment. The amendment would require each State without an already concurred-in plan to submit an emergency response plan. New operating licenses could not be issued by NRC to plants in States without an approved plan during this period. States whose plans fail to receive NRC approval for specific plants within 9 months of enactment will face a shutdown of those plants within their borders.

To facilitate the Commission's review of these State emergency response plans, S. 562 authorizes $4,238,000 for the Office of State Programs, an increase of nearly $1.55 million and eight positions over the Commission's original request. New, upgraded emergency plan regulations would be issued by the NRC by the end of this 9-month review period. Our best information from the NRC is that it can do the job in the specified time and that our amendment will serve as an action-forcing mechanism but not force the shutdown of any nuclear powerplants.

Mr. President, as we look into our crystal balls and attempt to divine the future for nuclear energy in this country, we must seek solutions to problems based not on emotionally-charged rhetoric but on dispassionate, reasoned analysis. This the committee, through its investigation, will strive to do. Last month the Senate authorized $401,700 for our committee's special 1-year investigation into the Three Mile Island accident, an investigation that should help the Senate attain this objective with respect to future regulation and control of civilian atomic energy program.

Mr. President, I personally believe that it is unrealistic and simplistic to suggest that we can immediately terminate nu-

clear power. There are currently 70 reactors licensed to operate in the United States. An additional 125 reactors are under construction or are planned. Electricity generated by nuclear powerplants satisfies fully 14 percent of this country's electricity requirements. In some areas of the country, particularly the East and Midwest, nuclear power supplies between 30 and 40 percent of the total electrical output. Thus, although the future of nuclear energy is at the present time at least hazy, it is clear that nuclear energy, safely controlled, should have a future, and that these reactors, safely operated, can significantly contribute to electrical power generation in the years ahead.

This authorization bill can only respond to the most immediate problems. Of course, much work remains to be done. There are no easy answers to the complex problems surrounding this source of energy. But if we are to protect the health and safety of a public growing both increasingly dependent on and anxious about nuclear power, we must search all the harder for the answers.

This authorization bill represents an essential part of our Nation's effort to insure that nuclear power is a safe energy source for as long as we need it. I recommend that the Senate approve this bill as reported and perfected by the committee.

Mr. President, last night I heard the President of the United States address the Nation on the critical problem of our energy supplies and the role that they play in restoring this Nation's selfconfidence. The President chose not to address the complex issue of nuclear power. Perhaps he will do so today or tomorrow, or in the coming days; but it seems to this Senator, having spent almost 3 years on the very difficult issues related to the future of nuclear power in America, that we cannot address the energy future of America without thoughtful consideration of the role nuclear power will play. We cannot address the future role that nuclear power will play without, addressing at the same time, the very difficult problems that the Three Mile Island accident represents, and the very complex issues of safety, proper inspection and regulation that surround the nuclear power industry itself.

That accident, which occurred just 3 months ago, was a rude shock, particularly to those who have felt for the last two or three decades that nuclear power was one of the answers if not the answer to the future role of this country and its energy needs. That situation has changed dramatically, Mr. President, in the last few weeks.

We have not solved the problems created by that accident; we have only begun to consider them. This bill is an initial attempt to address those problems and the new problems which will hereafter be faced by the Government agencies and committees that have responsibility for regulating and controlling nuclear power.

Mr. President, I do not think we will solve this country's energy needs in the abstract, or without addressing the difficulties of nuclear power. Today, with this bill, the Senate begins that process, and I hope begins it wisely.

I ask unanimous consent that a summary of the bill prepared by the committee staff 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 OF NUCLEAR REGULATORY COMMISSION FISCAL YEAR 1980 AUTHORIZATION

NUCLEAR REACTOR REGULATION (SECTION 101 (a)(1))

The bill includes an authorization of $57,040,000, which is equivalent to the Commission's request.

The Commission requested $57,040,000 for Nuclear Reactor Regulation, which is an increase of $9,526,000 over fiscal year 1979. The request also provides for 716 people, which is an increase of 85 over fiscal year 1979.

The primary objective of this program is the assurance of adequate safety, environmental protection and safeguards in the issuance of construction permits, and operating licenses for nuclear power plants. The significant increase in funding and staff positions will support greater focus on such program elements as Operation Reactors, Casework, and Technical Projects.

The 85 new positions for this office will provide additional effort to reduce the backlog of operating reactor amendment/licensing actions. NRC's overall licensing caseload, including operation license applications, limited work authorizations, standardized design reviews, and amendments to operating licenses, has been growing. There has been a growing backlog of license amendment applications (an increase of 400 in calendar year 1978 alone). A total of 1,695 generic actions and 2,294 plant specific actions are currently now outstanding for operating reactors which may be reduced by 1,000 by fiscal year 1980.

INSPECTION AND ENFORCEMENT (SECTION 101(a)(2))

The bill includes an authorization of $41,200,000, which is equivalent to the Commission's request. Of this total amount, $4,684,000 is to be allocated from within Inspection and Enforcement to support 146 additional Resident Inspectors.

The Commission requested an authorization of $41,200,000, for Inspection and Enforcement in fiscal year 1980, which is an increase of $2,274,000 over fiscal year 1979. The request includes support for 9 additional people.

The primary objective for this activity is to assure, through field inspection and investigation, that nuclear reactors, fuel cycle facilities and materials are used in a safe manner and in full compliance with NRC licenses, rules and regulations. The purpose of the funding and personnel increases for this office is the support of the second full year of the NRC's on-site inspection program.

STANDARDS DEVELOPMENT (SECTION 101 (a)(3))

The bill includes an authorization of $14,270,000, which is equivalent to the Commission's request.

The Commission requested authorization of $14,270,000 for Standards Development in fiscal year 1980, which is a decrease of $107,000 from fiscal year 1979. The request includes support of 157 people, equivalent to the staffing level for fiscal year 1979.

This program develops standards which NRC needs to regulate nuclear facilities and materials from the standpoint of safety, safeguards, and protection of public health and the environment. The decrease in funding for fiscal year 1980 reflects the completion in fiscal year 1980 of the epidemiology feasibility planning study (required under Public Law 95-601) and completion of some technical assistance contracts for environmental standards.

NUCLEAR MATERIAL SAFETY AND SAFEGUARDS (SECTION 101(a)(4))

The bill includes an authorization of $29,605,000, which is equivalent to the Commission's request. Of the total, $9,675,000 is for nuclear waste management including activities to implement the Uranium Mill Tailings Radiation Control Act of 1978 P.L. 95-604. To cover these activities fully, an additional $700,000 is to be reallocated from within the program.

The Commission requested authorization of $29,605,000 for Nuclear Material, Safety and Safeguards, which is an increase of $3,326,000 over fiscal year 1979. The request provides for 297 people which is an increase of 3 positions over fiscal year 1979.

This program provides for NRC licensing and regulation of all commercial nuclear materials and facilities except reactors, including safeguarding material from sabotage, theft or diversion. This program additionally represents the Commission's main focus for efforts in spent fuel storage and nuclear waste management.

NUCLEAR REGULATORY RESEARCH (SECTION 101(a)(5))

The bill includes an authorization of $185,570,000, which is equivalent to the Commission's request. Of the total, $4,400,000 is for Improved Safety Systems Research, and $6,700,000 is for nuclear waste research. To cover these activities fully, an additional $3,400,000 is to be reallocated from within the program. The bill prohibits reduction of funds for these purposes through the reprogramming mechanism.

The Commission requested authorization of $185,570,000 for Nuclear Regulatory Research, which is an increase of $25,270,000 over fiscal year 1979. The request provides for 159 people, equivalent to the staffing level for fiscal year 1979.

This program, which accounts for more than half of the Commission's total budget, consists of six major elements, the largest of which is Reactor Safety Research. With an authorization request of $142,000,000, this program is developing analytical methods that can be used to assess the safety of nuclear power reactors, primary conventional light water reactors. The fiscal year 1980 request for this program is $21,820,000 larger than that of fiscal year 1979, and accounts for increased costs associated with the Loss-of-Fluid Test Facility (LOFT). This facility is designed to investigate the behavior of engineered safety features under a number of postulated accident conditions.

Improved Reactor Safety Research, a program element initiated in fiscal year 1979, is authorized at $3,400,000 over the Commission's $1,000,000 request. This will allow NRC to proceed with the three-year Improved Safety Systems Research program submitted to Congress in fiscal year 1978.

PROGRAM TECHNICAL SUPPORT (SECTION 101 (a)(6))

The bill includes $14,925,000, which is equivalent to the Commission's request. Of the total, $4,238,000 is for the Office of State Programs, including support for eight additional positions for training and assistance to State and local governments in radiological emergency response planning and operations, and for review of State plans submitted pursuant to section 202.

To cover these activities, an additional $1,485,000 is to be allocated from within the amount designated for this purpose.

The Commission requested authorization of $14,925,000 for Program Technical Support, which is an increase of $903,000 over fiscal year 1979. The request provides for 246

people, an increase of seven positions over fiscal year 1979.

PROGRAM DIRECTION AND ADMINISTRATION (SECTION 101(a)(7))

The bill includes an authorization of $30,690,000, which is equivalent to the Commission's request. Of the total, $400,000 is to provide support of eight additional positions in the Office of Administration, Division of Contracts. This will require reallocation of $400,000 from within Program Direction and Administration.

The Commission requested $30,690,000 for Program Direction and Administration, which is an increase of $702,000 over fiscal year 1979.

The request provides for 597 positions, an increase of 4 over fiscal year 1979.

TWO-YEAR AUTHORIZATION

The committee dropped title II, the 2-year authorization from the Commission's budget proposal, and included authorizations only for fiscal year 1980.

The Commission's proposal would have authorized such sums as may be necessary for fiscal year 1981. However, detailed budget proposals were submitted only for fiscal year 1980. Without the benefit of comprehensive budget justification for multi-year authorizations, the committee continues to support annual authorizations.

SECTION 101(b)—REPROGRAMMING

The committee has provided a reprogramming mechanism which applies to any reallocation between program offices specified in paragraphs (1) through (7) of section 1(a) resulting in increasing the amount allowed for an office by more than $500,000 or in decreasing the amount by more than that sum. If such a reallocation is contemplated, the Commission is required to notify the House Committees on Interior and Insular Affairs and Interstate and Foreign Commerce, and the Senate Environment and Public Works Committee. Notification must include support for the action intended. If 45 calendar days from receipt of this notification expires, or the Commission receives written assent from each committee prior to the expiration of this period, the Commission may proceed with the reallocation.

CONTRACT MANAGEMENT (SECTION 101(c))

The bill provides for an additional authorization of $400,000, to be used for eight additional positions in the Division of Contracts, Office of Administration, to address contract monitoring and contract close out deficiencies at NRC. This additional funding would be reallocated from within the amount provided for the purpose of Program Direction and Administration.

The bill also requires the establishment of a Senior Contracts Review Board which will review and approve all arrangements with other Federal agencies and all contracts for research services, and modifications to existing contracts and arrangements, in amounts greater than $500,000. The Commission itself is required to approve such contracts and arrangements and modifications in amounts greater than $1,000,000. In either case, the approving entity must determine that there exists a detailed description of the work to be performed and that alternative methods for obtaining performance of the work have been considered.

INCREASE OF CIVIL PENALTIES (SECTION 105)

The bill amends section 234 of the Atomic Energy Act of 1954(1) by increasing the limit on the amount of civil penalty which may be imposed for a single violation to $100,000 from the present level of $5,000; and (2) by eliminating the ceiling on the amount of penalty which may be assessed for continuing violations. Present law provides for a maximum penalty of $25,000 for continuing violations within any 30 day period.

NRC MANAGEMENT STUDY (SECTION 106)

The bill requires the Commission to enter into a contract for an independent study of NRC's management structure, process, procedures, and operation. A report of the findings of the study is to be transmitted to the Commission within 1 year of the date of enactment of the act, and immediately thereafter, submitted to Congress by the NRC.

The Committee has identified a number of concerns regarding the effectiveness of NRC's management structure, process, procedures and operation. These concerns focus on the efficiency with which NRC manages its resources; the strength of its contracts and procurement management; the agency capability for crisis management; the need for improvement in coordination and communication given the agency's statutory structure; and the effectiveness of NRC's personnel management, particularly with regard to equal employment opportunity policies.

STATE EMERGENCY RESPONSE PLANS (SECTION 202)

Effective upon enactment, this provision prohibits the issuance of a license for a new nuclear generating facility unless the Commission is satisfied that the State emergency response plan for that facility as well as for each other facility licensed to operate within the State adequately protects the public health and safety. Further, each State where such a facility is currently licensed to operate is afforded a period of up to six months from the date of enactment to obtain Commission approval of its plan for responding to an emergency at each facility within the State, or face a Commission order directing the shut-down of plants within the State.

The Commission is directed to promulgate minimum requirements for State plans within 6 months of the date of enactment. Pending promulgation of the minimum requirements, the Commission is directed to rely on the guidelines employed in the voluntary concurrence program in assessing the adequacy of State plans. In promulgating these requirements, the Commission is required to specify a period for expeditious compliance by the States in meeting those requirements.

NRC EMERGENCY RESPONSE PLAN (SECTION 203)

NRC is directed, within six months of the date of enactment of the bill, to promulgate, by rule, a plan for responding to an "extraordinary nuclear occurrence," as defined in the Atomic Energy Act. This plan will establish procedures for facilitation notification, information-gathering and communications; for operating an NRC emergency command center and for dispatching high-level NRC representatives to the site of the damaged reactor; for making recommendations on evacuation; for formal votes by the Commission on key emergency decisions; for defining the role of the NRC Chairman as spokesman for the Commission during an emergency; for mobilizing expert assistance from government and non-government sectors; for maintaining key facility design, construction, and other information on nuclear power plants and for maintaining a list of equipment and technical experience that may be required during an emergency.

NATIONAL CONTINGENCY PLAN (SECTION 204)

The provision requires the President to prepare and publish a national contingency plan. This plan, which the President could periodically revise, would include designation of an interagency task force headed by the Commission and including at a minimum the Federal Emergency Management Agency, the Environmental Protection Agency, the Department of Defense, the Department of Energy, and the Department of Health, Education, and Welfare. The plan would also assign agency responsibilities, with the Environmental Protection Agency to provide comprehensive and definitive monitoring outside the facility boundaries. The assignment of Agency responsibilities in plan implementation is not intended to add to or detract from existing statutory authorities. Finally, the plan would identify a lead agency official as task force coordinator, establish a national center for plan implementation, and insure the availability of needed equipment and supplies.

Implementation of this plan shall be triggered by a determination by the Commission of a possible or actual extraordinary nuclear occurrence, pursuant to Section 203(2). Such a determination, which would also trigger NRC's own plan, is to be regarded as conclusive.

The President shall incorporate into the national plan the emergency response plan of the Commission promulgated under section 203. The Federal response to an accident at a nuclear generating facility is required to conform to the national plan to the maximum possible extent.

EMERGENCY NOTIFICATION, COMMUNICATION, AND MONITORING (SECTION 205)

The bill amends the licensing requirements of the Atomic Energy Act to further require immediate notification of the NRC by a plant operator in the event or the likelihood of a "extraordinary nuclear occurrence." Failure to provide such notification could result in revocation of an operating license.

The Commission is also directed to establish a means for instantaneous and uninterrupted verbal communication bewteen a nuclear power plant and the NRC during an emergency.

The Commission is also directed within 90 days of enactment of the bill to prepare and transmit to Congress a plan for remote and instantaneous monitoring by the NRC of the principal safety instruments and radiation monitors at all nuclear power plants.

EMERGENCY COMMUNICATIONS REPORT (SECTION 206)

The comprehensive investigation and study mandated by this provision will explore the serious deficencies in communcations encountered by the various Commission officials, license officers and personnel, and the Governor and other State officials in the 30-day period following the accident of March 28, 1979, at the Three Mile Island unit two nuclear generating facility in Pennsylvania. The investigation and study must include a determination of the need for improved procedures and for advanced technology.

A report to the Congress on the findings of this investigation and study is due by January 1, 1980. The report is to include recommendations on any measures necessary to provide for expenditious and reliable communications in the event of a future accident at a nuclear generating facility. Each recommendation contained in the report that does not require new legislation is to be implemented as soon as practicable as well as included in the emergency response plan of the Commission promulgated pursuant to section 203.

OPERATOR TRAINING, RETRAINING, AND LICENSING (SECTION 207)

NRC is directed to prepare a plan including criteria for improved training, retraining, and licensing programs for reactor operators.

These programs are to emphasize emergency response training and to direct attention to assuring that the plant is operating in accordance with the requirements of the plant license. At the same time, NRC is directed to study the feasibility of licensing plant managers and other utility personnel not now subject to NRC licensing who have

authority to make operating decisions affecting the plant. NRC is to report back to Congress in both areas within 6 months after the bill is enacted.

LOW-LEVEL RADIATION (SECTION 208)

The bill amends 95-601, the NRC Authorization Act for fiscal year 1979, to require NRC and the Environmental Protection Agency (EPA), in consultation with the Secretary of Health, Education, and Welfare to expand the feasibility study of epidemiological research to include populations exposed to low levels of radiation during and after the Three Mile Island Unit 2 accident. Individuals exposed during ultimate decontamination, decommissioning or repair of the facility would also be included in this broader study. Public Law 95-601 is also amended to extend the final reporting date of the feasibility study from September 30, 1979 to March 1, 1980.

EQUAL EMPLOYMENT OPPORTUNITY

Public Law 95-601, the NRC authorization bill for fiscal year 1979, authorized $225,000 for the Commission's Equal Employment Opportunity (EEO) program. This included $125,000 over the Commission's budget request, to support, among other things, the addition of one full-time permanent position. Public Law 95-601 also directed the Executive Director for Operations to report to the Commission at semiannual public meetings on the problems, progress and status of the Commission's program.

The committee is concerned that no additional staff has been allocated during the fiscal year 1979 to the EEO program. However, support for such an additional staff position has been included in NRC's fiscal year 1980 budget request. The committee expects that this additional staff assistance will facilitate the improvement of NRC's EEO performance.

ATOMIC SAFETY AND LICENSING BOARDS

The NRC Authorization Act for fiscal year 1979 (Public Law 95-601) required the Commission to undertake a comprehensive review of procedures for selection and training of Atomic Safety and Licensing Board members. On the basis of this report, the Commission was directed to revise its selection and training procedures, where appropriate.

The Atomic Safety and Licensing Boards play an extremely important role in the nuclear licensing process, and appropriate selection and training of Board members is essential. The committee was impressed by the thoroughness of this report, and wishes to be kept informed of NRC's actions to respond to recommendations outlined in the study.

ALTERNATE FUEL CYCLE EVALUATION

The NRC Authorization Act for fiscal year 1979 (Public Law 95-601) authorized $1 million, to be allocated from within the Commission's total authorization for alternate fuel cycle activities. These activities include participation in the Federal Nonproliferation Alternative Systems Assessment Program (NASAP) and the International Fuel Cycle Evaluation (INFCE) program. In addition, NRC was required to report to Congress on the progress of domestic and international fuel cycle evaluations, including health, safety, and safeguards implications of the leading fuel cycle technologies.

NRC intends to fund these activities with $800,000 in fiscal year 1979, and to further reduce its effort because of the termination of NASAP and INFCE in fiscal year 1980. The committee has an ongoing interest in the Commission's continued participation in the evaluation of alternate fuel cycle and reactor technologies. As an independent regulatory agency with responsibilities for public health and safety, and common defense and security the NRC plays an important consultative role in the selection and pursuit of alternate fuel cycle technologies.

NUCLEAR REGULATORY COMMISSION, OBLIGATIONS BY PROGRAM

[Millions of dollars; fiscal years]

	1979 estimate	1980 request	Change, 1979 to 1980	Committee recommendation	Change from 1980 request	Comments
Nuclear reactor regulation	47.5	57.0	+9.5	57.0	0	Includes $4,000,000 to process backlog of operating license amendments and construction and operating permits.
Standards development	14.4	14.3	−.1	14.3		
Inspection and enforcement	38.9	41.2	+2.3	41.2	0	Provides for expansion and implementation of nuclear plant resident inspector program.
Nuclear materials safety and safeguards	86.3	29.6	+3.3	29.6	0	Reflects new initiatives in nuclear waste management.
Nuclear regulatory research	160.3	185.6	+25.3	185.6	0	Includes $19,600,000 for full year costs of transfer of loss-of-fluid test facility from DOE to NRC.
Program technical support	14.0	14.9	+.9	14.9	0	
Program direction administration	30.0	30.7	+.7	30.7	0	
Total	[1] 331.4	373.3	+41.9	373.3	0	

[1] Includes $4,300,000 for proposed fiscal year 1979 pay raise supplemental.

Note: NRC 5-year projections—fiscal year 1980, $373,000,000; fiscal year 1981, $409,000,000; fiscal year 1982, $426,000,000; fiscal year 1983, $449,000,000; fiscal year 1984, $475,000,000.

Mr. HART. I yield to the Senator from Wyoming.

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

Mr. SIMPSON. Mr. President, I am very pleased to assist in the floor management and support of this nuclear regulatory authorization bill for fiscal year 1980. I am very pleased to have enjoyed the opportunity of working closely with GARY HART, the chairman of the subcommittee, and to have had the support and the assistance of the full committee chairman, JENNINGS RANDOLPH, and the ranking Republican member, BOB STAFFORD. All of them have been most helpful to this freshman Senator in his early days on this important issue.

I especially commend Senator HART. There was every opportunity, in this instance, to parlay Three Mile Island into an extravaganza or a grand circus. It was high drama indeed. He did not do so. I commend him for his sense of balance and restraint; I think they are to be admired. I have enjoyed his counsel and support, and that of his staff.

The authorization bill, as reported by the Senate Environment and Public Works Committee, authorizes $373,300,000 for activities of the Commission during fiscal year 1980. This was the NRC's request to the committee and is a 13-percent increase over the estimated fiscal year 1979 obligations.

The committee's consideration of NRC's fiscal year 1980 authorization was, of course, very much affected by the events at Three Mile Island on March 28, 1979. The authorization bill includes a number of provisions which specifically address concerns raised by Three Mile Island. Before I discuss those, however, I would like to address other ongoing initiatives of the Nuclear Regulatory Commission.

The Subcommittee on Nuclear Regulation held a number of hearings on the Nuclear Regulatory Commission's budget request for fiscal year 1980 and received testimony from agency representatives from several of NRC's major programs.

Special attention was focused on NRC's nuclear reactor licensing and safety program, which accounted for a large portion of the increase over last year's budget. NRC requested this increase for the purpose of reducing the growing backlog of reactor licensing amendments. The committee believes that this increase in money and personnel is well warranted because of the impact that licensing amendments have on the safe operation of reactors.

Several other important initiatives and areas needing increased effort were also identified by testimony presented at our hearings. These include additional resident inspectors for the inspection and enforcement program; resources to implement the Uranium Mill Tailings Radiation Control Act of 1978; improved safety systems research; and additional support for the Office of State Programs in the area of radiological emergency response planning.

In addition, the committee has directed the Commission to improve practices and procedures in its use of contractors by establishing a Senior Contracts Review Board to review and approve all contracts and arrangements of more than $500,000.

The committee has also increased the limit of the amount of civil penalty which can be imposed for a violation from $5,000 to $100,000 and has eliminated the ceiling which can be imposed for continuing violations.

Finally, S. 562 requires the Commission to enter into a contract for an independent study of NRC's overall management structure. I believe this type of review is particularly and critically important in light of the scenario of occurrences during the Three Mile Island accident.

This brings me then to those provisions which directly resulted from the events at Three Mile Island. There were a number of actions that the committee believed could be taken immediately with a sense of some urgency—to address the concerns raised by the accident.

First, the committee was concerned about NRC's capabilities to respond immediately and effectively to an emergency situation such as Three Mile Island. We have directed the Commission to formulate an emergency response plan to respond to an "extraordinary nuclear occurrence" within 6 months after this bill becomes law. The purpose of the plan is to facilitate communications, coordinate resources, and delineate lines of responsibility.

To complement NRC's emergency response plan, the President is required to prepare a national contingency plan which would assign specific responsibilities to several agencies comprising an interagency task force. Responsibilities assigned to the agencies would include off-site monitoring and coordination of equipment.

The committee found credible evidence of serious communications breakdown during the Three Mile Island accident. We believe it is essential to immediately correct this deficiency. We have directed the Commission to establish a means for maintaining constant verbal communication between a nuclear powerplant and NRC during an emergency. The plant operator is also required to notify NRC immediately in the event or likelihood of an extraordinary nuclear occurrence. NRC is currently exploring several alternatives which would allow them to remotely monitor certain instruments at all nuclear powerplants. The committee believes it is important to carefully explore this capability since we believe it has much merit.

Based on the committee's preliminary examination of the events at Three Mile Island, valid and serious questions have been raised concerning the operators' performance. Nuclear plant operators—of course—do receive a period of intensive training and they must meet certain experience requirements. However, we believe there is clear justification to reexamine the adequacy and content of this training, particularly in the areas of emergency response and assuring that the plant is operating within the requirements of its license. NRC is directed to report back to Congress with a plan for improving the training of operators, and is to conduct a study of the feasibility of also certifying plant managers or other utility personnel in high decisionmaking positions.

I feel the committee has acted expeditiously and responsibly in addressing a number of the immediate and serious concerns raised by Three Mile Island.

The areas I have just reviewed are those which deserve immediate attention, and are also areas where I believe that we do have adequate information to move ahead quickly—hopefully with effective solutions. Indeed, there are other areas which deserve further attention and will require a good deal of further study. There will be an ongoing national examination of the lessons we have learned from Three Mile Island. Much of this examination on the congressional level will be accomplished through the investigation the Committee on Environment and Public Works is currently conducting.

Finally, since Three Mile Island there has been much discussion surrounding the issue of the adequacy of State emergency planning. The committee wholly concurred that this was an area requiring prompt attention. There was some rather spirited division within the committee over the particular approach to be followed in order to assure effective State emergency plans. These differences have been resolved, and the chairman of the subcommittee, Senator HART, and I intend to offer a perfecting amendment on this subject.

Mr. President, I have appreciated your attention and, with that perfecting amendment, I strongly support the measure and urge its passage.

Mr. DOMENICI. Mr. President, will the Senator yield me 5 minutes on the bill to comment on his opening remarks?

Mr. HART. Will the Senator withhold for a moment?

Mr. DOMENICI. I will be pleased to withhold.

The PRESIDING OFFICER (Mr. DECONCINI). The Senator from Colorado.

Mr. HART. First of all, let me thank my colleague from Wyoming for his kind remarks. There was a great deal of responsibility, I believe, demonstrated by almost every Member of this Senate who was involved in the handling of that accident, including by the Senator from Wyoming. Although I appreciate his remarks, I do not think any individual, including myself, should be singled out for any particular awards.

I think our new Member of the Senate from Wyoming played an extremely important role in this matter, and has been very critical as well.

MODIFICATION OF UNANIMOUS-CONSENT AGREEMENT

Mr. President, the leadership has worked very carefully in developing a fine-tuned time agreement. Through inadvertence, an amendment by the Senator from New Mexico, relating to the overall question of waste disposal policy, was not included in that agreement.

With the understanding and acceptance of the leadership on both sides of the aisle, I ask unanimous consent at this time to amend the time agreement to include 1 hour on the pending amendment by the Senator from New Mexico, amendment No. 264, 1 hour to be equally divided. I wish to add that to the time agreement already arrived at.

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

Mr. DOMENICI. Mr. President, will the Senator yield me 5 minutes from the minority time on the bill?

Mr. SIMPSON. I yield.

Mr. DOMENICI. Mr. President, I, too, commend the chairman, Senator HART, for his diligent efforts to bring a bill here in the wake of the accident. It certainly would have been easy to overplay the situation and have a much different bill before the Senate.

I commend the distinguished Senator from Wyoming for his tremendous efforts, for his diligent work. Certainly, I thank both of them for assisting me this morning in seeing to it that a printed amendment on State concurrence which has been pending for some time will be considered here today.

I would like to make it clear that I do not think this is the bill to attach a State concurrence policy for America or a State veto policy or a Federal override policy with reference to nuclear waste disposal. I think they are issues of such magnitude that they are appropriately pending before substantive committees of the Senate.

Certainly, this issue will be joined and reported by the Energy and Natural Resources Committee and perhaps other committees which have been interested in this issue.

I do not offer my amendment in an effort to change the law of our land here on the floor of the Senate with reference to the power, the rights, and the privileges of our States with reference to nuclear waste. I am a staunch advocate of State participation in decisionmaking. This has come out as meaning concurrence by the States' agreement, voluntarily entered into by the States and the Federal Government.

There is no State in a position such as my State. My State has been promised concurrence. My State has been promised by the National Government that it can play a vital role in determining the propriety of a geological deposit of low-level nuclear waste.

We have, relying upon that issue, passed a State statute which will set this concurrence in motion. I want everyone in the Senate to know that our State has been most reasonable. I think it would be unfortunate if here, on the floor of the Senate, by way of amendment, we wipe out all of that good work that has been done, which is now becoming a reality.

The participants under a State statute are meeting with the Federal Government to establish a concurrence mechanism for the State to be intimately involved prior to anything occurring of an irreparable nature. It is for that purpose that I stand early to remind my friends in the Senate of our State's need to have a workable concurrence statute which will recognize my State's progressiveness in passing State law to permit concurrence.

It was in that spirit that my statute was introduced. It is pending before the Energy Committee, and I hope that, ultimately, it will become the law of the land. I think it is tough to do that on the floor, but I want mine pending if others are going to be pending, because I think it is the most workable process submitted. It is the result of true field work being tested monthly out there in the field. It has been tested by a State legislature, which has made its judgment and passed a procedure for concurrence.

If I have any remaining time, I yield it at this point and thank both my friends, the Senators from Colorado and

Wyoming, for yielding me 5 minutes and for amending the unanimous-consent chronology to permit 1 hour on my amendment.

I thank the distinguished Senator for yielding time.

Mr. HART. Mr. President, I yield 5 minutes to the distinguished Senator from West Virginia, the chairman of the Committee on Environment and Public Works.

Mr. RANDOLPH. Mr. President, I speak on behalf of S. 562, the proposed Nuclear Regulatory Commission Authorization Act for fiscal year 1980. In this year of the Three Mile Island accident, it has been a difficult task for the Subcommittee on Nuclear Regulation, as well as for the full committee on Environment and Public Works, to formulate this legislation now pending. I particularly commend Senators GARY HART and ALAN SIMPSON, the subcommittee chairman and ranking minority member for their tireless and responsible approach in preparation of this bill.

The accident at Three Mile Island poses serious questions for virtually every area of the current regulatory program. It has fallen to the members of our subcommittee and full committee to determine which of these questions can be usefully addressed in the near term and which must await the considerations and recommendations of the various investigations and studies now underway. I am gratified to report to this body that the Environment and Public Works Committee's own investigation is off to a most encouraging start.

The area of State emergency planning is a case in point where the time is ripe for legislation. Under existing law, there is no requirement that an acceptable State plan be in place before the Nuclear Regulatory Commission licenses a new nuclear generating facility. At this time, only 12 States have voluntarily secured the Commission's concurrence in their emergency plans. The Commonwealth of Pennsylvania is only one among 16 States where nuclear facilities are licensed to operate without such a plan.

Closely related to State emergency planning is the question of facility siting. The siting requirements currently in force were issued as interim regulations 17 years ago. Surely the wealth of operating experience in the period since that time allows for refining these regulations, particularly as they relate to the population density in the area surrounding the nuclear plant site.

We have proceeded on a number of other Three Mile Island-related fronts, including accelerating and expanding the resident inspector program, requiring both a Nuclear Regulatory Commission and an interagency response plan for serious incidents, providing more effective procedures for Commission monitoring and communications and for emergency notification by the licensee, and directing improved operator training and licensing. But Three Mile Island should not distract us from a number of regulatory improvements effected in S 562 which are only marginally related to the accident.

For example, the bill bars the Commission from reallocating sums to detract from areas of congressional priority. One such area identified by the bill is improved safety systems research. Although this program has been exploring technical improvements to a number of systems and concepts which may have contributed to the accident at Three Mile Island, its funding had been severely curtailed in the budget submitted by the administration. Those funds have been fully restored in S. 562.

This measure also provides the Commission with a credible enforcement tool for the first time. It increases the maximum civil penalty from $5,000 to $100,000, and removes the limit of $25,000 for continuing violations within a 30-day period.

These are only the highlights of Senate 562. This is both a balanced and a responsible bill. While it would be premature to go much beyond the scope that is envisaged in this bill, it would certainly be derelict for the Congress to do less.

In closing, I reiterate that speedy resolution of the waste management problem is absolutely essential to the future viability of commercial nuclear power in this country. While S. 562 does not address this problem, I am today introducing a comprehensive waste bill which provides a framework for a coordinated and effective Federal response to the variety of issues presented by nuclear waste management. It is inexcusable that this Government has, for 20 years, permitted the commercial generation of these extremely hazardous and long-lived substances on the basis of a waste policy consisting of no more than bland and simplistic assurances that safe disposal is feasible.

We must first determine whether, in fact, safe disposal is feasible. If so, we must assure a meaningful and dispositive voice for the State or States where a site is proposed, as well as assure licensing and related regulation of any disposal facility to effective standards by the Nuclear Regulatory Commission. Finally, we must provide a timetable for expeditious action in implementing a waste management program.

Mr. HART. Mr. President, I suggest the absence of a quorum, the time to be equally divided.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT NO. 349

Mr. JOHNSTON. Mr. President, I have an amendment which I send to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON), for himself and Mr. MCCLURE, proposes an unprinted amendment numbered 349.

Mr. JOHNSTON. 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 11, line 7, strike all after "within" through the period on line 12, and insert in lieu thereof, "twelve months of the date of enactment of this section, the Commission, in consultation with the Director of the Federal Emergency Management Agency and the Governor of the State, shall immediately establish an interim emergency plan for each such facility which complies with such guidelines. Any such plan established by the Commission shall be extended at ninety day intervals, until the Commission concurs in a State plan."

On page 12, at the end of line 3, add, "In the event the Commission withholds such concurrence for any state emergency plan under this subsection, the Commission, in consultation with the Director of the Federal Emergency Management Agency and the Governor of the state, shall immediately establish an interim emergency plan for any such facility which complies with the guidelines. Any such plan established by the Commission shall be extended at ninety day intervals, until the Commission concurs in a State plan."

On page 10, line 7, strike subsection (a) through line 19 and redesignate following subsections accordingly; and on page 11, line 25 strike all after "adequacy" on such line.

Mr. JOHNSTON. Mr. President, this amendment is simplicity itself. It differs not at all from the bill proposed by the committee and, indeed, from the end result requested by the distinguished Senator from Colorado (Mr. HART) and the distinguished Senator from Wyoming (Mr. SIMPSON), save in one important detail. That difference is that under my amendment an evacuation plan is submitted, as under the Hart-Simpson bill, but when the process breaks down under my amendment the NRC proposes an interim plan, whereas under the Hart-Simpson approach the nuclear plant shuts down.

It is just as simple as that, Mr. President. There is no difference in our desire to have evacuation plans for nuclear plants. There is no difference, as far as I know, in the procedures under which the plan is perfected.

Under the amendment, however, when the process breaks down, then the NRC simply proposes a plan.

Mr. President, I believe in States rights, and that is why under this amendment it is the responsibility of the State to come up with its initial plan.

However, I know that there are some Governors in this country who do not want nuclear plants to operate within their States. Just last night, following the President's address, Governor Jerry Brown of California reiterated his desire not to have any nuclear plants, not only in California, but in the United States.

So, if anything is clear, Mr. President, it is the intention of one Governor, at least, not to allow, so far as he can help it, nuclear plants to operate in his State.

Mr. President, this Congress in past years has made it clear that nuclear plants licensing is a Federal responsibility. For that reason, we set up the Nuclear Regulatory Commission.

It is not the duty, the right, of a Governor of one State to stand in the way of

that nuclear license to operate—any Governor, including the Governor of California, who has already made it entirely clear he is not going to allow nuclear plants, so far as he has anything to do with it.

I do not believe, Mr. President, that the Governor ought to have that power. Hence, under this amendment, should he fail to submit a plan, should he fail to make a good-faith effort to submit a plan and, therefore, submit one that is obviously and clearly deficient, then under my amendment the NRC submits the plan, and puts it into effect. Under the Hart-Simpson approach, the plant shuts down.

Mr. President, that is simply unacceptable in a country that is energy short, to make the people of a State pay the price for the disagreement between two sets of bureaucrats.

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

Mr. HART. Mr. President, this is the issue of the preparation of emergency response plans for reactors around the country. It was an issue that occupied a considerable amount of time in our subcommittee and full committee deliberations. It was the subject of considerable debate and disagreement. Section 202 of our bill is the result of the actions taken by the committee.

Since that time, however, the members of the committee have spend additional time studying the question of who should prepare emergency evacuation response plans, when they should be approved, who should have the responsibility for approving them, in what time period, and most importantly what penalty should be available in the law for failure to have such a plan.

One of the many things we learned in the Three Mile Island accident was that a great number of States have no plan at all, and, certainly, no plan approved, as required by law, by the NRC for evacuating people in case of an emergency, or reactor meltdown, or any serious nuclear incident.

That seemed to me and other members of the committee to be a deplorable situation. It is unthinkable that we could have had in this country for two or three decades a full-blown domestic nuclear energy industry and yet not had preparations in the State of Pennsylvania, or in a variety of other States, for handling emergency situations, for protecting public health and safety.

Traditionally, this has been a responsibility of the States. Some States have acted and some States have not. Unfortunately, those who have not far outnumber those who have.

Mr. President, it seems to me, intolerable that we should have reactors operating in this country, 3 months after the Three Mile Island accident, where there is no preparation whatsoever for moving people or handling the emergency that may be occasioned by an accident at that reactor.

Consequently, our committee did address the issue. We have refined our efforts to address this issue and that amendment will be offered by myself and the distinguished Senator from Wyoming.

It is a very carefully constructed proposal which, unlike that of the Senator from Louisiana, keeps the sole responsibility for emergency and civil defense planning with the States, limits the NRC and the Federal Government to an approval role and not a planning role, and which, most important, keeps a realistic time frame in which these emergency plans have to be developed.

I think the people of this country would be shocked and dismayed to learn that this planning has not been done. I think they would be even more shocked and dismayed, after the Three Mile Island accident, if we were to take the step proposed by the Senator from Louisiana to provide even more delay, even more than is necessary and more than most States agree is necessary, and further delay the very important and immediate need to protect public health and safety in the case of an accident.

I think the amendment of the Senator from Louisiana is defective in all these regards, particularly in the amount of time it provides for carrying out this activity. It is a proposal which this Senator cannot accept.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. HART. On the Senator's time.

Mr. JOHNSTON. Yes.

On the question on time, frankly, I wanted to accommodate it to the study of the subcommittee, on the question of these plans. I would be willing to amend this amendment to conform to whatever time schedule the Senator thinks is proper and appropriate.

It was somewhat of a moving target, as the Senator knows, in his subcommittee, because the time schedules have been changed. But if that would solve at least part of the Senator's objection, I would be glad to change the time schedule to whatever the Senator thinks is sufficient time to come up with a plan.

Mr. HART. That would be one accommodation that would be necessary for us to accept it.

Mr. JOHNSTON. What time schedule?

Mr. HART. I say to the Senator that I think we will be offering our own proposal, which has several features different from the Senator's amendment. Time is only one.

Mr. JOHNSTON. That was the principal one I heard.

Mr. HART. The principal one from my point of view. But it certainly would not sufficiently correct the amendment of the Senator from Louisiana for this Senator to support it.

Mr. JOHNSTON. I understand that. I do want to try to accommodate this amendment to whatever the Senator from Colorado thinks is the proper time schedule. I understand that the Senator is not going to support it, but I want to get together as closely as we can. The Senator from Colorado would prefer 6 months?

Mr. HART. Section 202 of the bill requires a 6-month planning period. Because the guidelines of the emergency evacuation planning are being revised, the NRC has asked for an additional 3 months; and with the additional personnel we are offering, they feel that is sufficient.

Mr. JOHNSTON. So, in lieu of 12, if I put in 9, it would conform to the amendment the Senator from Colorado intends to submit. Is that correct?

Mr. HART. In a certain rough degree. There is very specific language in which these time periods are cast, so it is not just the gross time period. It is what goes on in that time period, also.

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

Mr. JOHNSTON. Mr. President, can we make clear on whose time we are?

The PRESIDING OFFICER. On the time of the Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I ask that the word "twelve," which appears in the second line of my amendment, be stricken and that, in lieu thereof, the word "nine" be inserted.

The PRESIDING OFFICER. Is that a unanimous-consent request?

Mr. JOHNSTON. I ask unanimous consent that that be done.

Mr. HART. Mr. President, reserving the right to object, a parliamentary inquiry: If the Senator is permitted to amend his amendment, would that preclude another amendment to his amendment in the nature of a substitute?

The PRESIDING OFFICER. The Senator is attempting to modify his amendment. This would not preclude a subsequent amendment to his amendment.

Mr. HART. Then, I will not object.

Mr. JOHNSTON. In that case, Mr. President, I ask that "12" be changed to "9".

The PRESIDING OFFICER. Without objection, the amendment is modified accordingly.

Mr. JOHNSTON. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Louisiana has 13 minutes remaining.

Mr. JOHNSTON. Mr. President, I should like to make clear that there is only one real distinction between the approach of the Senator from Colorado and mine, and that is the question of what happens if you do not get an approved plan.

Under the approach of the Senator from Colorado, you shut down the plant. The people of the area have no electricity. How that is more desirable than having a plan put in by the Nuclear Regulatory Commission, I do not know and I do not understand.

The only thing I contend is that those who wish to have a moratorium, in whole or in part, on nuclear plants certainly would oppose my approach, because my approach does not involve moratoria on plants.

Mr. President, the energy crisis, the energy need in this country is much too serious to let it get bogged down in fights between Governors of States who want no nuclear energy and the Nuclear Regulatory Commission. That matter should be resolved, and it should be resolved in a manner that gives the maximum amount of predictability by allowing the

plant to continue and having the plan put in by the Nuclear Regulatory Commission.

I hope the Senator will understand that my plan, just as does the committee plan, provides for an evacuation plan confected in the first instance by the States, and it is expected that the State plan will be approved under guidelines declared by the Nuclear Regulatory Commission. The only difference is what happens if it is not approved. In my case, you do not shut down the plant. In the case of the committee's bill you do shut down the plant. It is as simple as that.

Mr. HART. I yield myself 2 minutes on the amendment.

Mr. President, first of all, the proposal of the committee and the substitute that will be offered shortly by my colleague from Wyoming is not a moratorium amendment, and it is not offered in the disguise of a moratorium. It is important that we have electricity and that we have energy in this country. There is no question about it. It is also important that we do not kill people or radiate them in the process.

That is the real issue here—whether we should permit a nuclear reactor to operate in this country if, after 6 or 9 months, there is no plan whatsoever to evacuate the people in the case of an accident. That is the issue.

I believe, and I think it is the belief of the Senator from Wyoming and the majority of our committee, that that plant should not operate unless that plan is in effect.

The Senator from Louisiana seems to be concerned that some Governors will use this as a device to shut down plants in their States. If he has in mind the Senator from California, the State of California has been more advanced in preparing its evacuation and emergency response plans than any other State, in terms of getting its plans prepared, having them in detail, and getting them approved. If he has a fear about that State, it is not well founded.

I believe the amendment of the Senator from Louisiana is a giant step in the direction of putting the Federal Government in the civil defense preparedness area—where it has not played a great role in the past—and in imposing plans on States. If people are concerned about States' rights, I do not think they will want to go along with the Senator from Louisiana.

I yield to the Senator from Wyoming.

Mr. SIMPSON. Mr. President, in his amendment, the Senator from Louisiana raised an issue which has recently occupied a great amount of my time and attention, as the ranking minority member of the Nuclear Regulatory Subcommittee, while working on this piece of legislation

The possibility that an operating nuclear plant can have its license suspended or that a plant under construction could have its permit terminated because the State where it is sited has failed to form a plan or to obtain concurrence by the NRC in its emergency response plan surely is not a matter to which we should give only cursory attention. It has deeply concerned me.

Within the amendment which is presented on this subject, there is the possibility, remote as it is, that any faction opposed to nuclear power could use the mandatory planning requirements spelled out in this bill to arbitrarily shut down the operation or construction of a nuclear powerplant.

I feel that we have effectively alleviated that issue by what we have done and what we are suggesting—extending the period for NRC review of State plans, making concurrence with the plan site specific, using existing and not new guidelines as the standard for initial concurrence, and waiving the need to reexamine the existing voluntary State plans which the NRC has concurred in previously.

To propose that Congress now authorize the NRC to invade an area of traditional State authority in providing for the planning of the evacuation and sheltering of its citizens during times of natural or man-made disaster is against my sense of inherent distinction between State and Federal Governments.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question on my time?

Mr. SIMPSON. I yield on that question with the Senator's time.

Mr. JOHNSTON. I thank the Senator.

The Senator is aware that Gov. Jerry Brown of California has called a press conference and stated that as to the Diablo plant, which has been completed but which has not yet been issued an operating license, as I understand it, he is going to do everything he can to keep that plant from operating.

Now, as I understand it, there is no evacuation plan yet approved for the Diablo plant. Am I correct in that?

Mr. SIMPSON. I am not aware of that.

Mr. JOHNSTON. If that is so and if the Governor as late as last night stated that he was going to do all he could to oppose nuclear energy not only at the Diablo plant, not only in California, but nationwide, is it not reasonable to expect that there is a possibility that the Governor could use the power under the Senator's amendment simply not to submit an evacuation plan or to submit one that he knew would not be acceptable and thereby effect a moratorium on the operation of the Diablo plant or any other plant for which an evacuation plan would be required to be submitted by him? Is that not so?

Mr. SIMPSON. Mr. President, I am not aware of that fine distinction. We already have issues of State concurrence. We already have issues of the careful NRC approval requirements. The NRC presently requires a certain modicum of State emergency planning. It is felt through our investigation that that type of State emergency planning is not adequate. For that reason we are requesting the States to prepare their own. When we are now into a deviation where we are allowing the Federal Government to intrude into this area, we are actually in the most sensitive of areas because we are saying to the States, "You cannot do your own State land-use planning."

I think that is a very important issue here and that is where we are.

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

Mr. JOHNSTON. If the Senator will yield——

Mr. HART. Mr. President, I think I can answer the Senator's question.

Mr. JOHNSTON. Very well.

The PRESIDING OFFICER. The time is running against the time of the Senator from Louisiana.

Mr. HART. The State of California, as has been indicated, does have an approved emergency response plan that covers each and every site in the State. Their Diablo plant will be covered. If the Senator from Louisiana is concerned about the policy of the Governor of California with regard to nuclear power——

Mr. JOHNSTON. I am indeed.

Mr. HART. Then I think the best remedy would not be to pass this amendment but to guarantee that the Governor of California does not achieve his long-range political goal.

Mr. JOHNSTON. I am concerned about any Governor who wants to put a moratorium on anyone who even in good faith simply fails to dot an "i" or cross a "t." I think there should be a period of consultation between the States and the NRC so that the plant is not shut down. It seems to me a very inappropriate remedy to shut down the plant.

I thank the Senator from Wyoming for yielding.

Mr. SIMPSON. Mr. President, I will continue my remarks in opposition to the amendment and cite with a little more definition the fact that in my own State where we have grappled with heavy issues such as statewide land-use planning, a highly emotional type of situation which is often referred to in some circles as the grand Communist plot, land use planning is a very difficult thing to deal with. The only way you deal with it is with local control with local people at the local level with perhaps State observation and in that situation it will work. If at any time there is an intrusion of the Federal Government, it will not work.

I think here the power to even develop and later if necessary to implement the Federal interim plan on behalf of a sovereign State for responding to an emergency is just too extreme a measure for me and could only provide, I think, a future vehicle in a rationale for continual encroachment on vital State prerogatives in other areas where State efforts do not pass the Federal muster.

Emergency planning in the State is really land-use planning plus, with oak leaf clusters. It consists of evacuation zones, shelters, highway usage and much, much more.

It is my sincere feeling that the concern that prompted this amendment has been laid to rest by this new proposal and that the additional measures of the Senator from Louisiana and others, I think, can and should be taken during the formal review-making process which will occur after the initial 9-month review.

I might add, Mr. President, this rulemaking will also be able to incorporate all of the findings of the investigations

now being undertaken by the Presidential commission, the electric utility industry, the senatorial investigation being conducted by our committee and the House of Representatives' investigation.

Mr. RANDOLPH. Mr. President, will the able Senator yield to me?

Mr. SIMPSON. I yield.

Mr. RANDOLPH. Is it not true that the Senator from Wyoming, in mentioning the opposition from some sources to realistic planning, himself last week voted for increased sums for planning because he felt it was important in connection with housing that an adequate plan be carried forward? I think that his argument today on this issue squares with his vote and his feeling of last week. Am I correct on that matter?

Mr. SIMPSON. Mr. President, that is correct. I spoke and supported the issue of the regional concept of local government planning done on the local level in the local areas without Federal intervention, and that is what we were speaking on in connection with housing at that time.

Mr. RANDOLPH. That is very correct.

Is there not a cooperative approach written into the measure as now drafted that really should cause no discomfort to the Governor from California? What is the Senator's feeling on that?

Mr. SIMPSON. I think he is an obstructionist with regard to nuclear power and will do all in his province to destroy the use of nuclear power in the State of California, and with that foreknowledge we will deal with him accordingly.

Mr. RANDOLPH. Mr. President, I ask the Senator to yield further.

Mr. SIMPSON. I yield.

Mr. RANDOLPH. Certainly, I have been very careful not to polarize coal as against nuclear power or nuclear power as against coal. I am sure there is no greater advocate of the use of coal in this body or on Capitol Hill than the Senator now speaking. I do believe, however, that we have to be very careful to consider all the possibilities to meet the energy crisis of the United States. Further, I must oppose the efforts to thwart careful planning that I read in the amendment offered by the Senator from Louisiana, because I do feel that he bases his case on the opposition of the Governor of California to the plan envisaged in this bill. Am I correct on that?

Mr. JOHNSTON. The Senator is not correct. What I have done, if the distinguished chairman will yield, is to take the committee bill and adopt all of the procedures up to the point where the State has failed after the requisite period of time to submit a plan.

Under the committee bill you shut the nuclear plant down so you have neither plan nor electricity. Under my amendment at that point, the point where they can agree, then the NRC puts in its own interim plan and thereafter works with the State to get the State to come up with its own plan. So, in substance, the only difference is under the Johnston amendment you have a plan and electricity. Under the committee bill you have no plan and no electricity.

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

Mr. JOHNSTON. I yield.

Mr. RANDOLPH. I have a very genuine respect for any amendment that is offered by the Senator from Louisiana and he knows that to be true.

I do feel, however, what I have said is valid in reference to the Governor of California and other Governors who might attempt to use the amendment offered here today as the backdrop of their absolute opposition to nuclear power. That is the point I made, and I believe it is valid.

Mr. JOHNSTON. I agree with the distinguished Senator.

Mr. SIMPSON. Mr. President, at this time I would wish to present on behalf of myself and the subcommittee chairman, Senator HART, what is known as a substitute amendment to that portion of the bill which addresses State emergency plans in section 202. I sent that amendment to the desk and I ask unanimous consent that it be read.

The PRESIDING OFFICER. The amendment is not in order until all time is used on the first degree amendment. The Senator could ask unanimous consent to present the amendment at this time.

Mr. SIMPSON. As I understand the request of Senator HART at the time he requested a parliamentary inquiry, this was an appropriate amendment at that time. That was previously asked by Senator HART.

Mr. HART. Mr. President, how much time is remaining on the amendment of the Senator from Louisiana.

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. HART. How much on the opposition side?

The PRESIDING OFFICER. Five minutes.

Mr. HART. We are prepared to ask unanimous consent or yield back the time.

Mr. JOHNSTON. This is a substitute for what?

Mr. SIMPSON. For your amendment, it would be a substitute for your amendment.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that it not count against the time for either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. 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. JOHNSTON. Mr. President, we have worked out an accommodation between the distinguished Senator from Colorado, the distinguished Senator from Wyoming, and myself for handling the present parliamentary situation we are in.

The amendment which I have introduced cannot be amended by the proposed amendment of the Senators from Wyoming and Colorado. For that reason, I am willing to withdraw my amendment at this point and put my amendment in as an amendment in the second degree to the amendment proposed to be offered by the Senator from Wyoming.

So, Mr. President, I ask unanimous consent that I be permitted to withdraw my amendment and to offer it as an amendment in the second degree to the amendment proposed to be offered by the Senator from Wyoming (Mr. SIMPSON) and the Senator from Colorado (Mr. HART).

The PRESIDING OFFICER (Mr. NELSON). The Senator needs unanimous consent only to withdraw his amendment. The rest is a matter of right.

Mr. JOHNSTON. Mr. President, I assume the same time limitations——

The PRESIDING OFFICER. Without objection, the amendment is withdrawn.

Mr. JOHNSTON. Very well. Mr. President, I assume the same time limitations apply.

The PRESIDING OFFICER. The Senator is correct.

UP AMENDMENT NO. 350

Mr. SIMPSON. Mr. President, I call up an amendment which I have at the desk and ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. SIMPSON), for himself and Mr. HART, offers an unprinted amendment numbered 350.

Mr. SIMPSON. 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:

AMENDMENT NO. 350

Beginning of Page 10, line 7, strike section 202 and insert in lieu thereof the following:

SEC. 202. (a) Section 103 of the Act is amended by adding at the end thereof the following new subsection:

"e. As part of each application for an operating license for a utilization facility submitted under this section, the applicant shall provide the plan of the State of situs for responding to accidents or unanticipated events at each utilization facility, including the subject facility, license to operate within such State under this section or section 104 b. of the Act, which accidents or unanticipated events, due to the existence or the imminent possibility of off-site releases of radioactivity, create the need for action to protect the public health and safety. No such license shall be issued unless the Commission is satisfied that such plan, as it applies to the subject facility only, adequately protects the public health and safety."

(b) As soon as practicable, each State wherein a utilization facility has been licensed to operate as of the date of enactment of this Act which has not obtained the Commission's concurrence in its State radiological emergency response plan, shall submit to the Commission and the Director of the Federal Emergency Management Agency a plan for responding to accidents or unanticipated events at each such facility within the State, which accidents or unanticipated events, due to the existence or the imminent possibility of off-site releases of radioactivity, create the need for action to protect the public health and safety. The Commission, in consultation with the Director of the Federal Emergency Management Agency, shall review each plan for compliance with the guidelines employed by the Commission in affording or

withholding concurrence in State radiological emergency response plans which were in effect on July 16, 1979, and shall specifically consider the findings of the Director of the Federal Emergency Management Agency on such compliance. In the event the Commission determines that any such plan, as it applies to each specific facility, does not comply with such guidelines and the State fails to correct such noncompliance within nine months of the date of enactment of this section, the Commission shall cause such determination to be published in the newspaper of greatest circulation in such State, and shall order each such facility with respect to which the plan does not comply to terminate operations until a plan is submitted which the Commission determines to be in compliance with such guidelines as it applies to the facility.

(c) As soon as practicable, but not later than six months from the date of enactment of this section, the Commission shall by rule promulgate minimum requirements for State plans for responding to accidents or unanticipated events at each utilization facility licensed to operate within the State, which accidents or unanticipated events, due to the existence or the imminent possibility of off-site releases of radioactivity, create the need for action to protect the public health and safety. In the promulgation required hereunder, the Commission shall specify a period for expeditious compliance with such requirements. Prior to promulgating the rule required by this subsection, the Commission shall consult with the Director of the Federal Emergency Management Agency. Pending the promulgation required hereunder, the Commission shall determine plan adequacy as required by section 103 e. of the Act on the basis of the guidelines employed by the Commission in affording or withholding concurrence in State radiological emergency response plans, which were in effect on July 16, 1979, and any plan which had received the Commission's concurrence prior to enactment of this Act shall be deemed adequate for the purposes of that section.

(d) The minimum requirements to be promulgated under subsection (c) shall assure protection of the public health and safety to the maximum extent practicable, and shall at a minimum provide for:

(1) Designation of appropriate planning zones surrounding each facility on the basis of such factors as reactor size, probable release patterns from possible accident sequences, and demographic and land use patterns;

(2) Capability to quickly and safely implement protective measures such as evacuation and sheltering;

(3) Initial and periodic testing of plan feasibility in actual drills of State and local organizations which are assigned responsibilities to carry out portions of the plan;

(4) Vesting of responsibility for the development and revision of the plan in a single agency;

(5) Participation of facility licensees, local governments, and appropriate State agencies in that development and revision;

(6) Delineation of respective organizational roles in implementation of the plan; and

(7) Identification of procedures for expeditious and reliable notification and communication.

(e) Any person may bring a proceeding in the United States District Court for the District of Columbia to require the Commission to promulgate the rule required in subsection (c) of this section if the Commission has not promulgated such rule within the time period specified therein.

Mr. SIMPSON. Mr. President, at this time I offer, on behalf of myself and the subcommittee chairman (Mr. HART), this amendment to that portion of the bill which addresses State emergency plans in section 202.

The committee unanimously reported this bill to the floor although some serious division had existed on the particular approach adopted in section 202 toward State emergency plans. These differences have now been reconciled and my amendment will effect five specific changes in the following areas related to State emergency plans:

First. The period in which the nuclear regulatory commission will review State emergency plans for responding to nuclear reactor accidents or other events which result either in the actual release of offsite radioactivity or the imminent possibility that such release could result, is extended from 6 to 9 months. The NRC has stated that using existing guidelines, they can concur in all State plans within 8 months of enacting this legislation.

Second. The standard which NRC will employ in determining whether a State emergency plan would receive concurrence during the initial 9-month review period would be set by those guidelines presently being used rather than those which may be adopted in the interim period after passage and prior to enactment of this bill. This change will have the practical effect of eliminating the necessity for NRC to thoroughly reexamine plans for those 12 States which have secured concurrence for the 30 power plants licensed to operate in those States.

These States are: Alabama, Arkansas, California, Connecticut, Delaware, Florida, Iowa, Kansas, New Jersey, New York, South Carolina, and Washington.

Specific language is added to clarify the interpretation of the terms "compliance" and "adequate plan" to mean that existing concurrences satisfy the requirement of this section.

Third. The decision to concur with a State emergency plan will be made upon "site-specific" review for each operating nuclear powerplant in the State concerned. The purpose of this modification is to insure that existing nuclear powerplants which have satisfactory emergency response plans cannot have their operating licenses suspended due to possible inadequacies in emergency plans in for other facilities sited in their State.

Fourth. New language is substituted to define the type of nuclear reactor safety problem for which a mandatory State emergency plan is now required. The committee's earlier proposal had incorporated by reference the "extraordinary nuclear occurrence" phraseology of the Price–Anderson Act to define such events. It is now our position that it is improper to link State emergency planning with financial indemnification by using such wording The substitute language uses the more descriptive, if not lengthy definition. "Accidents or events which, due to the existence or imminent possibility of offsite releases of radioactivity, create the need for action to protect public health and safety" as a separate definition for describing the scope of State emergency plans.

Fifth. I concur in the desirability for specifically making NRC's duty to propose rules and regulations for State emergency response plans subject mandamus proceedings. Therefore, I have included in my amendment language which provides that any person may bring a mandamus proceeding in the U.S. District Court for the District of Columbia to require that the Nuclear Regulatory Commission promulgates the rules required under subsection C, if the NRC has not engaged in such rulemaking within the specified time period.

Finally, Mr. President, this amendment includes two revisions suggested by the chairman of the full committee, Senator RANDOLPH. These additions involve the designation of minimum requirements which the Nuclear Regulatory Commission must address when they propose formal regulations for mandatory State emergency response plans and also the specific authorization for the Federal Emergency Management Agency (FEMA) to review State plans in consultation with the NRC before concurrence with those plans is obtained.

The specific standards are:

Delineation of emergency planning zones around reactors.

The ability to implement timely evacuation and sheltering.

Drills and testing.

Participation by utilities, States, and local agencies, et cetera in the initial planning and later revisions of the plan.

Delineation for emergency responsibilities.

Expeditious communication procedures.

The periodic revisions of emergency plans.

I wish to extend my appreciation to the distinguished Senator from West Virginia (Mr. RANDOLPH), the delightful and courteous committee chairman, and the distinguished Senator from Colorado (Mr. HART), the very effective chairman of the subcommittee, as well as their staffs who assisted in the preparation and formulation of this amendment, for the spirit of cooperation they have shown.

Mr. President, this is the sum and substance of the Hart-Simpson amendment: I believe that we have been able to evolve a mechanism for State emergency planning that is responsive to the need identified in the wake of Three Mile Island and which is fundamentally fair in the manner in which it will be applied to the States and utility companies now engaged in the construction and operation of nuclear powerplants.

Mr. HART. Mr. President, as I indicated in my opening remarks——

The PRESIDING OFFICER. Who yields time? Since the Senator from Colorado does not have the opposition time, it would be the sponsor of the amendment.

Mr. HART. The amendment is offered by the Senator from Wyoming on behalf of himself and the Senator from Colorado. Does the Senator from Wyoming yield me time?

Mr. SIMPSON. He certainly does, Mr. President.

The PRESIDING OFFICER. How much time is yielded?

Mr. HART. Five minutes?

Mr. SIMPSON. Any time you wish.

Mr. HART. I think 5 minutes will be sufficient.

Mr. President, as I indicated in my opening remarks, the issue of how to get the States to prepare emergency response plans to reactor accidents is one of the most difficult that our committee faces. We have in our bill at the present time section 202, which addresses the issue and was offered by the Senator from Colorado. It would have required the States to have plans prepared and approved within 6 months after the enactment of this law, or have the reactors in those States shut down.

As a result of extensive consultations with the Nuclear Regulatory Commission, the amendment which the Senator from Wyoming has offered on behalf of both himself and the Senator from Colorado seeks to perfect the procedures established in that section 202, and refine them.

This is a very difficult and very complex area. Consequently, the Senator from Colorado resists the amendment which has been offered by the Senator from Louisiana. It does require State and Federal cooperation. It does accomplish the refined purpose of making the planning site specific so that every reactor in the State is not closed down if plans are not available for only one of them.

It does expand the time 3 more months, because the Nuclear Regulatory Commission says that that was necessary to establish its approval mechanism.

It does provide, I believe, implicitly and explicitly, pressure upon the States to act, because of their need for electricity generated by the reactor. Citizens who believe that their Governor or State leaderships are not moving on this have plenty of opportunity to express their wishes and feelings on the matter.

It also provides through the established oversight mechanisms plenty of opportunity for the Congress to bring pressure to bear on the NRC to approve the plans in a timely manner.

There are two fundamental issues involved here, Mr. President. One is whether we learned anything from the Three Mile Island accident. For myself, I learned that we should not have reactors operating in this country, certainly no longer than 9 months after the enactment of this bill, that do not have fundamental plans made to accommodate an accident and to protect the lives, the safety, and the health of the people in the area. That is a fundamental issue.

The proposal of the Senator from Louisiana would not guarantee that protection. That is the issue here.

The second is whether the planning should be done by Federal or State agencies.

What is contemplated here by the Senator from Louisiana, who will offer an alternative to this carefully crafted proposal, is a fundamental shift in governmental authority. It is a fundamental tampering with the Federal system. It would give some authority to the Federal Government which has never before been obtained by the Federal Government in this area. I think Senators who vote on this should understand that. It is a very, very fundamental political point.

For myself, and I think other members of our committee, we came down in terms of protecting the system as it presently exists; namely, planning done by the States, approved by the appropriate Federal agency, in this case the Nuclear Regulatory Commission, with an action-enforcing mechanism; namely, if States have not done that planning, if the NRC has not approved it, then the reactor that has not been planned for, where plans have not been made to protect public health and safety, would be shut down.

Under the proposal to be offered by the Senator from Louisiana there is no action-enforcing mechanism. This procedure could go on relatively indefinitely with no concrete plan available in the case of an accident such as Three Mile Island.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I would like to make it very clear that I am not in opposition to the Hart-Simpson amendment. It is indeed a very carefully crafted amendment. It is indeed an amendment which provides a detailed proceeding for the issuance of guidelines by the NRC, for the cooperative work between the NRC and the State in coming up with a plan.

The Johnston-McClure perfecting amendment, which will very shortly be proposed, differs with the Hart-Simpson amendment in a very narrow way which in no way upsets the carefully crafted procedures as provided in Hart-Simpson.

What we do is provide that if the emergency plan proposed by the State under the procedures they outline is not accepted by the NRC, then the NRC shall simply establish an interim plan.

The NRC establishes an interim plan in lieu of shutting down the plant. The plant remains in effect for continuing intervals of 90 days until a State emergency plan is accepted.

Consequently, once the deadline occurs there will always be an acceptable plan and there will always be assured electricity. This will be clearly predictable now and in the future.

Mr. President, this does not upset any careful crafting of amendments or any carefully thought out scheme of the committee. Indeed, they have put in a great deal of very effective work on this matter. The issue is narrow; the issue is clear. Do you want a moratorium on a plant where a State either refuses, as in the probable case of California, or, through inadvertence or through honest mistake or through whatever reason, fails properly to submit a workable plan within the deadline?

The whole question then becomes what do you want to do? Do you want to let the plant operate with the NRC having submitted a proper interim plan, or do you want to shut it down? It is as simple and clear as that.

Mr. President, my drafters will soon be here with the amendment. I do not have it at this point. Unless the distinguished Senator from Wyoming or another Senator would wish to speak at this time, I will suggest——

Mr. SIMPSON. Mr. President, I will come back to the theme I previously stressed, that is that I think generally I certainly concur with what Senator JOHNSTON is doing with relation to assuring that there will be continuous operation of nuclear power plants. But the issue here to me is much more fundamental. That is by doing what his amendment will do, we are intruding upon an inherently State function.

I know that that bit of hysteria has been bandied about the Chamber for many years, and I do not bring it out in that form. I say that the reality of it is who will know better what to do with emergency State planning, which again I refer to as a form of land use in its highly emotional form. Who will be better able to determine which agency of the State government can perform, who more than the Governor and the elected officials of that State, the legislature of that State? Who will determine who is best able to determine which hospitals will be used in the evacuation procedure in the event of an onsite release? Who better than the Governor will know better when to order the evacuations? The burden is one the State government, exactly where it should be.

The final critical thing is civil defense officials cannot be nationalized and galvanized into action. Civil defense officials are part of the State organizations for emergency planning. They conduct their drills and their training efforts in local communities daily, although they get a good deal of high levity as they conduct their efforts because the people of America are not serious about civil defense. Nevertheless, those civil defense officials cannot be nationalized.

All these things cause me great concern, and I see no way but to see the diminution of the rights of the Governor, the State leigslature, and the State elected officials if we allow an intrusion by the Federal Government to come into this issue. It will come because there will be serious things which will be grappled with by the States, serious things that will have public hearings, serious things that will have a great deal of public debate. These are my reasons for resisting the amendment in total.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. SIMPSON. I yield for a question on the Senator's time.

Mr. JOHNSTON. Does the Senator not see a problem in the Federal Government intruding into the affairs of the State by shutting off its resources, such as electricity?

Mr. SIMPSON. Mr. President, I do not see that that is an intrusion. The area we are discussing is more critical than that. That is we must have State emergency plans in America. We saw that from our investigation of Three Mile Island, that we must have plans.

Mr. JOHNSTON. I agree with the Senator. There is absolutely no disagreement in the approach of the Senator's amendment or with my perfecting

amendment. There is no difference in the initial approach of allowing the State or the State civil defense people working to put together their own plans.

The only question relates to the sanction. To say we are talking about States' rights in an area where we are getting ready to legislate a shutdown of a plant, it seems to me, is beside the point. We have already taken over the area of nuclear energy; indeed, this very statute concerns Federal control of nuclear energy.

The whole question is one of moratorium, or of shutdown of the plant. The whole question is one of a sanction as to what happens if we do not get an agreed plan put together by the State.

Mr. HART. Will the Senator from Wyoming yield to me?

Mr. SIMPSON. I yield to the Senator from Colorado.

Mr. HART. Mr. President, I wish the issue were as simple as the Senator from Louisiana suggests. I think it is much more profound, however.

Let me hypothesize a situation, a worst case, that concerns the Senator from Louisiana, a State which, in one way or another, fails to prepare a plan or prepares an inadequate plan. The Senator proposes that that undertaking then becomes the responsibility of the Federal Government.

Mr. JOHNSTON. As an interim plan.

Mr. HART. Well, interim until what?

Mr. JOHNSTON Interim in 3-month increments until the State does present its own plan which is acceptable.

Mr. HART. I shall come back to that, because the problem is a continuing one. If what the Senator from Louisiana is concerned about is the so-called recalcitrant Governor, who may just be antinuclear, that 3-month period is going to keep going on until that Governor is replaced, which could be up to 4 years. The profound problems are these: What happens if the Federal Government imposes a plan on a State which may not have the resources to carry that plan out? What guarantee does the Senator from Louisiana have that a plan imposed on a State can be implemented? It may not have State acts. It may involve activities that that State has no resources to accommodate, may not even have the budget to carry out.

Furthermore, even more profoundly, the Senator's proposal may, in fact, even be unconstitutional. What he contemplates is the Federal Government imposing some burden on the State which the State may be legally incapable of carrying out under its constitution or under its laws.

The Senator's suggestion borders on very serious tampering, I think, with State police powers and other responsibilities of that sort. That is why I said earlier that this is a very profound question of federalism here. I do not think the Senator from Louisiana really wants to venture into this thicket, because it is a very, very difficult one.

Mr. JOHNSTON. Mr. President, if the Senator will yield, the question of venturing into the area of federalism and States rights is really a red herring. What we have here is a carefully crafted amendment by the committee, where they put out guidelines so we know essentially what the major framework for an evacuation plan is. That is already decided upon and mandated by the guidelines provided in the amendment, which I not only do not object to, but certainly approve of.

Then we have this process, under the amendment of the Senator from Colorado, where the NRC works with the State and with the civil defense people coming out with a State plan, so that, by the time we get to the NRC, by the time the plan is turned down, there have been consultations, there have been guidelines, there has been examination of the State plan.

We are not talking about substituting wholesale a Federal plan with Federal marshals for that of the State or of requiring States to do things that are impossible to do.

Mr. HART. If the Senator will yield, it seems to me the reason he has proposed his amendment is that he fears the States, or a particular State or particular Governor will not work with the NRC. Is that not the reason he is proposing the amendment?

Mr. JOHNSTON. That is one of the principal reasons, because it may be, in effect, killed by the Governor. Jerry Brown is a perfect example, because he said as late as last night that he opposes nuclear energy in any form and wants to do away with existing plants.

Mr. HART. Even though his State, as I have indicated, has a very workable and progressive emergency evacuation plan.

Mr. JOHNSTON. It may have at this point, but understand, the issue of his killing nuclear plants or an evacuation plan would not have been available to him but for the amendment of the Senator from Colorado. The amendment of the Senator from Colorado, if it passes, gives him a weapon with which to kill, if you will, the Diablo plant.

Mr. HART. That is not the case at all. The States have always had, since the nuclear power industry was developed, the responsibility for preparing these plans. The problem was that there was nothing to force them to do it. They just have not done it. What that means is that, because of that delay and because there are no teeth in the law, there are an awful lot of citizens whose lives, in my judgment, are in jeopardy. Unless we have some mechanism to force States to do that, that situation is going to continue. The mechanism suggested by the Senator from Louisiana is not only inadequate in that regard, but also creates a host of other problems of the Federal Government imposing some responsibilities on States that they may not be capable of carrying out.

I ask the Senator from Louisiana to contemplate the situation, if we are talking about worst cases, of a runaway Nuclear Regulatory Commission that is totally unmindful of the resources of a particular State, suggesting to that State that it has to have all sorts of transportation devices and facilities, all sorts of police capabilities and powers that may not even be accommodated with some constitution or laws and, in fact, may even be contrary to its constitution or laws.

Mr. JOHNSTON. I have stated that I have not substituted my mechanism for that of the Senator from Colorado but, to the contrary, have adopted his mechanisms and changed only the sanction, the sanction being the NRC's plan in my case; the sanction in his case being a shutdown of the nuclear plant.

To sum it up, my bill provides for electricity with an evacuation plan. The amendment of the Senators from Colorado and Wyoming provides, in the case of no plan, for no electricity, either. I think that is an inappropriate sanction.

Mr. SIMPSON. Will the Senator yield for one moment?

Mr. JOHNSTON. Yes.

Mr. SIMPSON. I have one further distinguishing point, I think, which I think is the most serious flaw in what the Senator's amendment proposes. Actually, under the language of his amendment, we have the interim period of time, which is set for 90 days. Then we also have additional extensions of the 90-day period, which is a subversive type of intrusion, which can continue on and on. I think that should be carefully pointed out before we get to a result on this.

What it really means is that everything could stay interim for many, many months until the Federal Government finally makes the State do it the way they wanted them to do it in the first place, intruding in their particular inherent State obligations. They will hammer at the interim plan and we will get a 90-day extension, and the State will not respond and we will have another 90-day extension. We shall have much less of a red herring and more of a cold turkey in that situation. I think that is the difference.

UP AMENDMENT NO. 351

Mr. JOHNSTON. Mr. President, I now have my amendment prepared. If the Senators are ready at this time, I am ready to introduce the amendment and, as a matter of fact, have it voted on. It seems to me the amendment has been adequately discussed, unless the Senators desire further discussion.

The PRESIDING OFFICER. The amendment is not in order until the time on the pending amendment is yielded back or used. Do the Senators yield back their time?

Mr. SIMPSON. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Wyoming has 17 minutes. On this amendment, there will be 10 minutes on each side; that is, on the amendment proposed by the Senator from Louisiana.

Mr. SIMPSON. Mr. President, I yield back my time on the amendment.

The PRESIDING OFFICER. All time is yielded back. The amendment is in order. The Clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON), for himself and Mr. MCCLURE, proposes an unprinted amendment numbered 351.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 351

In the last sentence of subsection (b) of section 202 strike all after the phrase "greatest circulation in such State" and insert in lieu thereof, "and, in consultation with the Director of the Federal Emergency Management Agency and the Governor of the State, shall immediately establish an interim emergency plan for each such facility which complies with such guidelines. Any such plan established by the Commission shall be extended at ninety day intervals, until the Commission concurs in a State plan."

In the last sentence of subsection (c) strike the phrase "as required by section 103 e. of the Act" and add at the end of subsection (c) the following new sentence: "In the event the Commission withholds such concurrence for any state emergency plan under this subsection, the Commission, in consultation with the Director of the Federal Emergency Management Agency and the Governor of the state, shall immediately establish an interim emergency plan for any such facility which complies with the guidelines. Any such plan established by the Commission shall be extended at ninety day intervals, until the Commission concurs in a State plan."

Strike new subsection 202(a) and redesignate following subsections accordingly:

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the time on this amendment be shortened to 2 minutes on each side.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. JOHNSTON. Mr. President, I have previously discussed this amendment. I think it is very clear. It is just a question of the choice on the sanction. In my amendment, the sanction is for no plan, for the NRC to come up with an interim plan for 90 days. On the question of the pending amendment, it will be the shutdown of the plant.

I reserve the remainder of my time.

Mr. HART. Mr. President, as I understand, on a brief reading of the amendment by the Senator from Louisiana, it has, in addition to the defects that have been already pointed out, an additional one which is a substantial divergence of the proposal of the committee. That is, it decouples the preparation of emergency response plans from the licensing of new plants as well, which is an important feature of the committee proposal.

In our amendment, we attempted throughout committee deliberations, to continue not only the conditional operation of reactors in existence on the acceptance of an emergency evacuation plan, but also the issuance of operating licenses to future plants under construction.

What this means is that if the Senate adopts the amendment of the Senator from Louisiana, plants presently under construction for which an operating license will be sought can go into operation without the approval of an emergency evacuation plan.

In my judgment, Mr. President, in addition to all the other objections, this is an intolerable situation. We have either, as I said before, learned something from Three Mile Island, or we have not.

In this case, it is not a question of whether we will continue to use electricity being generated by existing plants. In addition, it is a question of whether we will permit new plants to be licensed to operate where there is no plan available to protect the people in the area in case of an accident.

That is a serious divergence in the case of the proposal by the Senator from Louisiana from that of the committee approach, and I think it is a fatal one.

We will either look after the protection of citizens in the areas of reactors presently operating, or not.

We are additionally going to look after the protection of people living in the area of reactors which have not been licensed, or we are not.

In the case of the committee proposal, we contemplate doing both, and without imposing by the Federal Government, or even permitting the case to arise, a situation where the Federal Government could impose——

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

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

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. How much time was there on the amendment?

The PRESIDING OFFICER. Two minutes to a side.

Mr. HART. I thank the Chair.

Mr. JOHNSTON. Mr. President, under our amendment, a newly licensed plant, or a plant just coming on line, would have to have an approved plan, an approved evacuation plan. It is decoupled only in the sense that it is not brought into the licensing process.

So it is no ground to withhold an operating license to have this plan in effect.

However, it may not go into effect, the plant may not operate without a proper evacuation plan.

Mr. President, the issue is very clear. We both want maximum protection. We want an approved evacuation plan.

Under my amendment, we get both an evacuation plan and electricity.

Mr. President, I yield back the remainder of my time, and I ask for the yeas and nays.

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

The yeas and nays were ordered.

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

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

The question is on agreeing to the amendment (UP No. 351) of the Senator from Louisiana. 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 North Dakota (Mr. BURDICK), the Senator from Florida (Mr. CHILES), the Senator from New Hampshire (Mr. DURKIN), the Senator from Nebraska (Mr. EXON), the Senator from Hawaii (Mr. MATSUNAGA), the Senator from Maine (Mr. MUSKIE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Illinois (Mr. STEVENSON), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

I further announce that the Senator from Montana (Mr. BAUCUS), the Senator from Oklahoma (Mr. BOREN), the Senator from New Jersey (Mr. BRADLEY), the Senator from Missouri (Mr. EAGLETON), the Senator from Michigan (Mr. LEVIN), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. PRYOR), and the Senator from Michigan (Mr. RIEGLE) are absent on official business.

I further announce that, if present and voting, the Senator from Michigan (Mr. LEVIN), and the Senator from New Jersey (Mr. BRADLEY) would each vote "nay."

Mr. STEVENS. I announce that the Senator from Colorado (Mr. ARMSTRONG), the Senator from Tennessee (Mr. BAKER), the Senator from Missouri (Mr. DANFORTH), the Senator from Nevada (Mr. LAXALT), the Senator from Idaho (Mr. MCCLURE), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

The PRESIDING OFFICER. Have all Senators voted?

The result was announced—yeas 37, nays 40, as follows:

[Rollcall Vote No. 170 Leg.]

YEAS—37

Bellmon	Huddleston	Schmitt
Bentsen	Humphrey	Stennis
Byrd, Harry F., Jr.	Jackson	Stevens
Church	Jepsen	Stewart
Cohen	Johnston	Stone
Domenici	Kassebaum	Talmadge
Hatch	Magnuson	Thurmond
Hatfield	Metzenbaum	Tower
Hayakawa	Morgan	Warner
Heflin	Nunn	Weicker
Helms	Pell	Young
Hollings	Percy	Zorinsky
	Sasser	

NAYS—40

Bayh	Garn	Moynihan
Biden	Glenn	Nelson
Boschwitz	Goldwater	Packwood
Bumpers	Gravel	Pressler
Byrd, Robert C.	Hart	Proxmire
Cannon	Heinz	Randolph
Chafee	Inouye	Roth
Cochran	Javits	Sarbanes
Cranston	Kennedy	Schweiker
Culver	Leahy	Simpson
DeConcini	Lugar	Stafford
Dole	Mathias	Williams
Durenberger	McGovern	
Ford	Melcher	

NOT VOTING—23

Armstrong	Durkin	Muskie
Baker	Eagleton	Pryor
Baucus	Exon	Ribicoff
Boren	Laxalt	Riegle
Bradley	Levin	Stevenson
Burdick	Long	Tsongas
Chiles	Matsunaga	Wallop
Danforth	McClure	

So Mr. JOHNSTON's amendment (UP 351) was rejected.

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

Mr. SIMPSON. 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 question now occurs on agreeing to the amendment of the Senator from Wyoming.

UP AMENDMENT NO. 352

Mr. GLENN. Mr. President, I send to the desk a substitute amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

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

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

Mr. GLENN. Mr. President, I view the amendment I send to the desk as being between the two positions that have been debated here this morning.

I think we need to remember that shutting down a nuclear-powered electric generating plant in most areas of this country——

The PRESIDING OFFICER. The Chair calls to the attention of the Senator from Ohio that the Parliamentarian advises the Chair that the substitute is not properly drafted as a substitute.

Are there any further amendments to be proposed?

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

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

The yeas and nays were ordered.

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

The assistant legislative clerk called the roll.

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

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

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk proceeded to read the amendment.

Mr. GLENN. 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:

UP AMENDMENT NO. 352

At the end of section 202(a) insert the following: *Provided, however,* That until July 1, 1980, such licenses may be issued in the absence of a State plan concurred in pursuant to Commission guidelines employed prior to the enactment of this section in affording or withholding concurrence in State radiological emergency response plans, if, upon issuing such license, the Commission implements compensatory measures to safeguard the public health and safety."

In lieu of subsection "202(b)" as written, insert the following subsections:

(b) Within sixty days from the enactment of this section, the Commission shall implement compensatory measures to safeguard the public health and safety against the risks associated with the operation of any utilization facility for which the Commission has issued an operating license and with respect to which existing State radiological emergency response plans do not conform to Commission guidelines employed prior to the enactment of this section in affording or withholding concurrence in such plans.

(c) On July 1, 1980, the Commission shall suspend the operating license of any utilization facility for which there exists no State radiological emergency response plan concurred in by the Commission pursuant to guidelines employed prior to the enactment of this section. Such suspension shall remain in effect until a plan is submitted which the Commission determines to be in compliance with such guidelines.

In section 202(c), delete "(c)", insert "(d)".

Mr. HART. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. Is the amendment offered in the nature of a substitute or a perfecting amendment?

The PRESIDING OFFICER. The amendment is offered as a perfecting amendment.

Mr. HART. I thank the Chair.

The PRESIDING OFFICER. It is an amendment in the second degree, and there will be 10 minutes for each side.

Mr. GLENN. Mr. President, the amendment I propose to offer has a threefold purpose: to insure the development of optimum State plans for radiological emergency response; to provide for measures to compensate for the interim deficiencies in those plans; and to avoid unnecessary curtailment of significant energy sources.

Mr. President, rarely has the need for expanded and intensified protection of the public been as clear as in the area of emergency planning around nuclear powerplants. This type of emergency planning is largely a State function; but, until the accident at Three Mile Island, the idea of standardizing, overseeing, and approving State efforts received scant attention. Now we realize that the certification of such plans must become an integral part of the Federal regulatory process.

But we must also realize several other things: First, we do not have a full set of acceptable plans right now. Second, we cannot stop the clock—or the country's need for energy—while the States perfect their plans. And finally, we should not deny the Nuclear Regulatory Commission a certain amount of flexibility in dealing with States plans that are at different stages of development.

The public needs adequate safeguards, both before and after all the State plans are approved. It does not need a rush to shutdowns or unnecessary denials of operating licenses for new plants to achieve that measure of safety.

I am therefore proposing that the NRC be required to implement compensatory measures—that is, measures that will temporarily fill in the gaps in State planning—in two types of situations. The first involves operating plants in States that do not yet have approved emergency plans, and the second involves new plants in that same category of States.

I propose that until July 1, 1980, such plants be permitted to maintain or begin operations if the NRC implements measures to compensate for the inadequacies in existing State emergency plans. Such measures would have to safeguard the public health and safety in accordance with the NRC's statutory mandate.

These measures could include derating a plant—that is, operating it at partial power; increasing the number of NRC inspectors, the frequency of their inspections, or both; temporarily increasing the number of certain types of personnel employed by the licensee; and, in extreme cases, shutting down the plant altogether.

Other measures might aim at improving offsite preparedness in order to alleviate the consequences of a potential accident. The NRC could loan equipment such as radiation monitors, telephone lines, hookups and emergency warning systems; it could order a licensee to contribute to the cost of such hardware. NRC could support increased testing of emergency plants; again, it might order its licensees to help out. The Commission might order a licensee to establish a temporary offsite emergency center. It could, in coordination with the new Federal Emergency Management Agency, concentrate the capabilities of Federal emergency response personnel in vicinities where State plans have been found wanting.

Mr. President, the Commission can insure via these types of action that the public is as safe as it would be if all State plans had been approved. With such measures in place, therefore, there is no immediate need to shut down operating plants or to withhold licenses that would allow new plants to begin operating. I emphasize, of course, that these measures should not continue ad infinitum. At a certain point the Commission must impose its toughest sanction—plant shutdown. I propose that the NRC not be forced to confront that situation until July 1, 1980. It is my understanding that they will very likely not have to confront it at all, because NRC officials foresee all State emergency plans being in conformity with current guidelines by May 15, 1980. And in the interim, a number of avenues exist by which the public can be protected in accordance with the Commission's own standards without forfeiting major and much-needed sources of energy.

I would add to my statement, Mr. President, that it is a rare electrical generating plant in this country that does not furnish electrical power across State lines. Therefore, the deficiencies of a plan in a particular State, and the shutdown of a plant there, will affect not only that particular State, but other States around its area.

There might be very little need to shut down if the plant is operating satisfactorily, particularly if the NRC can come in with compensatory measures to allow that plant to keep operating and help supply some of the 13 percent of this Nation's electrical power that is now supplied by nuclear generating plants across this country.

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

Mr. HART. Mr. President, first let me assure the Senator from Ohio that the Committee on Environment and Public

Works is not rushing to shut down reactors. The bill we have before us and certainly the clarifying amendment offered by the ranking minority member of the subcommittee (Mr. SIMPSON) and myself represent a very considered, very carefully calibrated, very well worked out effort to respond to what is a deplorable and unacceptable situation; namely, that there are dozens and dozens of reactors operating in this country without acceptable emergency response plans to protect the safety and health of the people in the area of those reactors.

The Senator seeks to extend this period of time, among other things, for 3 months beyond the 9 months which our amendment would suggest. We did not pick 9 months out of the air. That was a length of time that was arrived at after very careful consultation with the Nuclear Regulatory Commission and other officials and responsible individuals knowledgeable in this area.

It is my thought, having seen what has gone on here this morning, that if our committee had proposed 15 or 18 months, someone would have come in with an amendment to make it 24 or 30 months; that is, any period of time our committee, having taken testimony and held hearings, had come up with, I feel perhaps there would have been those in the industry who felt it was not enough. Nine months, I repeat, is not a rabbit picked out of a hat.

The Senator from Ohio proposes some very detailed compensatory measures. It seemed to me, in listening to those, that if a State or operating utility can put into place those very complex so-called compensatory measures, there is no reason in the world why that State could not come up with the kind of emergency response plan outlined in existing regulations. It seems to the committee that the kind of technical and administrative complexities involved in these compensatory measures would be more difficult to put in place than the kind of emergency response plan that 10 States already have in existence.

With regard to the Senator's so-called downrating proposal, in our investigation of the Babcock and Wilcox reactors in the light of or in the aftermath of the Three Mile Island accident, our committee was told that downrating a plant does not protect the people in the area. It is not a sufficient technical or administrative remedy for the absence of emergency planning.

Finally, Mr. President, the amendment presently before the Senate contains many of the same defects contained in the amendment of the Senator from Louisiana which the Senate has just rejected. There is no final action, just a mechanism in the amendment, nothing that really gives the message to the States that this is a fundamental priority the States must carry out and get done in a reasonable period of time.

Finally, the Senate has already rejected the idea of the Federal Government imposing its will on the States in the area of emergency planning. This is an area traditionally set aside for the States. It is an area the States can carry out, as 10 or 12 States have already done, and it is something the Federal Government has a responsibility of ordering or getting the States to do in a timely manner.

The amendment offered by the Senator from Wyoming and myself does that, and for that reason I think the committee would be forced to resist the amendment offered by the Senator from Ohio.

Mr. SIMPSON. Mr. President——

The PRESIDING OFFICER. Who yields time?

Mr. HART. I yield such time as I have remaining to the Senator from Wyoming.

Mr. SIMPSON. Mr. President, I would simply add, in accord with the Senator from Colorado (Mr. HART), that I firmly believe that the figure of 9 months is realistic. It is something that can be lived with by the NRC, with whom we have checked thoroughly on this issue.

They feel that within 8 months the plans will be made, the various State emergency plans, and we are allowing 1 more month under this proposal.

I believe I would get back to the real issue in the entire debate. It is the critical surprise that this committee was faced with when we found out that various States had not prepared State emergency plans. They will do so now. There is no question but that they will. I see no need to extend the time. I think the impetus is here. I hope we can keep moving with this time limit of 9 months, because I think that extending the time will reduce the incentive.

Then I feel my other very real concern, that relation of compensatory measures. I know not what that can be. But I can assure you, Mr. President, that if there are compensatory measures now in the bill with regard to NRC's administrative procedures, they will be using them. I think that is the critical thing for us to recall.

There are compensatory measures that the NRC can use now and we may be assured that they are doing so.

I have a grave concern about the definition in this amendment as to the lack of perfection of the term compensatory measure.

I hope we might defeat the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I feel the amendment I have proposed does provide additional safety under the existing language for this reason: In the existing amendment that I am attempting to change, there is nothing that gives any authority to NRC to go out and do anything except shut down at the end of that 9-month period.

The amendment I am proposing would mean that within 60 days after passage of this legislation, NRC would be able to take these compensatory measures, additional inspections, immediately, and cover these plants with additional safety over the next 9 months while these safety plans are worked out.

So I would submit that rather than waiting until the end of that period, making a cutoff and using that as the enforcing measure, we would be providing additional safety in the interim period while these plans are worked out. I feel it would be better protection for the American public and for anyone living near one of these generating plants. I would hope that the floor managers would reconsider and accept this provision for the bill.

Mr. HART. If the Senator will yield on my time, I would agree with what he has said. I think it is a good idea to spell out what the compensatory features are. That feature of the Senator's amendment would be completely acceptable to the committee. But lifting the sanction, in the absence of the plan, is not one that the committee is capable of accepting. The other feature would be acceptable to the committee.

Mr. GLENN. Mr. President, we do have plant shutdown under my amendment at the end of this year, July 1, 1980, which would be 9 months into the new fiscal year. So we do not eliminate that enforcing mechanism of keeping their feet to the fire. I reserve the remainder of my time.

Mr. HART. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Colorado has 2 minutes 25 seconds and the Senator from Ohio has 4 minutes 33 seconds.

Mr. HART. How much time remains on the bill?

The PRESIDING OFFICER. The Senator from Colorado has 6 minutes remaining on the bill and the Senator from Wyoming has 7 minutes remaining.

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

The PRESIDING OFFICER. On whose time?

Mr. HART. Mr. President, I ask unanimous consent that a quorum call be in order with the time to be charged to neither side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT NO. 352 (AS MODIFIED)

Mr. GLENN. Mr. President, I send to the desk a modification to my amendment previously submitted and ask for its consideration.

The PRESIDING OFFICER. Is there objection to modifying the amendment?

Mr. HART. Mr. President, reserving the right to object, can we find out the specifics of it before the unanimous consent is entered into so we all agree as to what is being offered?

All right.

Mr. McCLURE. Mr. President, reserving the right to object, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. McCLURE. If there is a modification to the Glenn amendment will the modification then be subject to the time remaining on the original Glenn amendment, or will it be treated as a new amendment with a new time limit?

The PRESIDING OFFICER. The modification will be considered as the old amendment so it will be the old time limit.

Mr. McCLURE. Mr. President, further reserving the right to object, if the Senator from Ohio withdrew his original amendment and submitted another one, would it then be a new amendment subject to a new time limit?

The PRESIDING OFFICER. It would.

Mr. McCLURE. Mr. President, I wonder if the managers of the bill or the Senator from Ohio would have objection to doing it in that manner so we would have an opportunity to discuss and understand what is in the new amendment?

Mr. HART. Mr. President, as the Senator from Idaho knows, we have been involved here 45 minutes or more in negotiations on this. It is my understanding it is acceptable to the committee. If the Senator wishes to debate it some more, I guess we can.

Mr. McCLURE. I wish to understand it and I understood the Senator from Colorado is indicating that, in spite of the 45 minutes of discussion, he wishes to understand it also.

Mr. HART. The Senator from Colorado is assured that it is the agreement that is entered into. But the Senator, of course, can protect his own rights.

Mr. McCLURE. Does the Senator from Ohio object to withdrawing his earlier amendment and submitting this modification as a new amendment?

Mr. GLENN. I will not object. I think I can explain it in about 1 minute. If the Senator from Idaho wishes to discuss it, I would be happy to accommodate him.

Mr. McCLURE. Under the time constraints there is very little time remaining, and I do not know if it will take all the time, but at least I think it affords all the Members of the Senate a little greater protection in trying to understand what is in the modified Glenn amendment.

Mr. HART. Mr. President, the Glenn amendment was debated almost to the limits of the allotted time. These changes I understand to be rather minor.

I ask unanimous consent that there be 10 minutes allocated to the modified amendment, equally divided.

Mr. McCLURE. Five minutes on each side, is that correct?

Mr. HART. That is 10 minutes.

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

The amendment is so modified.

The modified amendment is as follows:

Following subsection 202(e) insert the following subsection:

(f) Within sixty days from the enactment of this section, the Commission shall implement compensatory measures to safeguard the public health and safety against risks associated with the operation of any utilization facility for which the Commission has issued an operating license and with respect to which existing State radiological emergency response plans do not conform to Commission guidelines employed prior to the enactment of this section in affording or withholding concurrence in such plans.

In section 202(b) strike "within nine months of the date of this section," and insert in lieu thereof "before June 1, 1980,".

The PRESIDING OFFICER. Who yields time?

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

This modification requires compensatory measures starting in 60 days for plants operating with a deficient State plan. It also extends to June 1, 1980, the deadline for shutting down plants where State plans are not yet approved, and it agrees with the original amendment in providing that no new plants will open until a satisfactory State emergency plan is in effect.

I ask the distinguished floor manager of the bill, as I just outlined it, is that his understanding of the agreement?

Mr. HART. The Senator is correct.

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

The PRESIDING OFFICER. Who yields time?

Mr. GLENN. Mr. President, I yield such time as necessary to the Senator from Idaho if he wishes to speak.

Mr. McCLURE. Mr. President, I thank the Senator from Ohio for yielding.

As I understand the essential difference in the Glenn perfecting amendment, as modified, it changes the original Hart-Simpson language only to the extent that it says for old operating plants compensatory measures will be undertaken immediately for all plants where there is no approved State emergency plan.

Mr. GLENN. If the NRC agrees, though, that such compensatory measures will add to the safety of operating those plants. The Senator is correct.

Mr. McCLURE. And rather than the time limits specified in the Hart-Simpson language, the closed-down order, where there was no State-approved plan in place, would occur on July 1, 1980, but not before; is that correct?

Mr. GLENN. June 1, 1980.

Mr. McCLURE. June 1, 1980. Then the Hart-Simpson language is tied to the passage of this legislation. And if as a matter of fact the legislation is not passed until sometime toward the end of October the time is virtually the same under the two?

Mr. GLENN. That is correct.

Mr. McCLURE. Mr. President, I have had some discussion with the Senator from Wyoming concerning the constraints-of-time problems where the State legislatures are not now in session and the Governor does not now have the authority under existing State law to promulgate such a plan, and in most of those instances the State legislature would not be in session until the 1st of January. So we have essentially 5 months next year in those instances for a State administration, a State legislature, and the NRC to come to an agreement upon a very, very complex and difficult question of the emergency measures to take.

Mr. President, I think that timeframe is so constrained that it becomes almost impossible for them to comply.

Second, under either language of the Hart-Simpson or the Glenn-perfecting amendment, the NRC has an alternative choice, and that is all they have. They have the choice to accept a defective State plan or close down the nuclear plan in question within that State. They have no balancing that they are permitted to do of a social or economic value of closure or continuation. It becomes an absolute: approve the plan or shut them down.

And that would be true as of June 1 next year under the Glenn amendment as well. Am I not correct?

Mr. GLENN. That is what we were trying to avoid with the original version of this and what still is a possibility, as the Senator has outlined it, under the way this is going to be passed. NRC, however, has advised us they expect all plans to be in compliance with current guidelines by next May.

Mr. McCLURE. Mr. President, if the Senator will yield further, I am advised that that is making three very favorable assumptions in order to come to that conclusion. If any of those three very favorable assumptions fail, then the assurance will not materialize and we will be up against that very Draconian choice in which the NRC again has no option. They cannot balance the benefits or risks of closure against the benefits or risks of continuation of operation of the plant. They must order the plant closed.

Mr. HART. Mr. President, will the Senator yield for a question?

Mr. McCLURE. I do not have the time.

The PRESIDING OFFICER (Mr. RANDOLPH). The time that the Senator from Ohio then yielded to the Senator from Idaho has expired.

There are 5 minutes remaining as the Senator from Colorado (Mr. HART) knows. He can move from that point.

Mr. HART. As I understand the question, or objection that the Senator from Idaho has, has to do with the role of State legislatures and the problem of them not being in session. Is that correct?

Mr. McCLURE. Yes; in essence, I have two objections. One is the time it takes for the State legislatures to act if, as a matter of fact, State law requires their involvement.

Mr. HART. That is exactly my question. Does the Senator know how many States of that sort there are and whether any of those States in fact are the States involved in this problem?

Mr. McCLURE. I cannot tell the Senator from Colorado whether that is a fact or not, whether it would affect any of the material plants in question or not since the scope of the Glenn amendment has been narrowed to exclude those which are not now licensed for operation.

Mr. HART. Does the Senator know of any State where an emergency response or evacuation plan with regard to the operation of a nuclear plant requires the approval of the State legislature?

Mr. McCLURE. Mr. President, I know if there is to be the testing which is required under the proposed amendment of the Senator from Colorado and the Senator from Wyoming it would require an affirmative action of the State legislature to fund and to provide the mech-

anism for the implementation of the plan. It could not be done until after State approval. That would be true of every State so far as this Senator knows.

Mr. HART. Well, Mr. President, having laboriously negotiated this perfecting amendment of the Senator from Ohio, I can say on behalf of the majority side of the committee that we find the proposal put forward by the Senator from Ohio acceptable to us. In some regard at least it strengthens the amendment of the Senator from Colorado and the Senator from Wyoming, and would be acceptable to this side of the aisle.

Mr. SIMPSON. Mr. President, if I might inquire of Senator HART just a little comment of understanding——

The PRESIDING OFFICER. Did the Senator yield to the Senator from Wyoming?

Mr. HART. Yes.

Mr. SIMPSON. Would it be your understanding that if we should get into a procedure with the conference committee that it is the intention of yourself and myself, as the ranking minority member, that we do have at least 9 months to bring these plants into fruition; is that correct?

Mr. HART. That is the intention of the Senator from Colorado and, I think, the committee; it is based, I believe, on all the contacts and information we have had with the NRC.

Mr. SIMPSON. I thank the Senator very much.

Mr. HART. Mr. President, I move the adoption of the perfecting amendment.

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

Mr. McCLURE. Mr. President, is the amendment the Glenn amendment?

The PRESIDING OFFICER. That is correct.

The amendment, as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 353

Mr. McCLURE. Mr. President, I have a substitute which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The second assistant legislative clerk read as follows:

The Senator from Idaho (Mr. McCLURE) proposes an unprinted amendment numbered 353 in the nature of a substitute.

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

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

The amendment is as follows:

On page 10, line 7, in lieu of the language of the pending amendment UP 350 insert the following:

202(a) As soon as practicable, each State wherein a utilization facility has been licensed to operate as of the date of enactment of this Act which has not obtained the Commission's concurrence in its State radiological emergency response plan, shall submit to the Commission and the Director of the Federal Emergency Management Agency a plan for responding to accidents or unanticipated events at each such facility within the State, which accidents or unanticipated events, due to the existence or the imminent possibility of off-site releases of radioactivity, create the need for action to protect the public health and safety. The Commission, in consultation with the Director of the Federal Emergency Management Agency, shall review each plan for compliance with the guidelines employed by the Commission in affording or withholding concurrence in State radiological emergency response plans which were in effect on July 16, 1979 and shall specifically consider the findings of the Director of the Federal Emergency Management Agency. In the event the Commission determines that any such plan, as it applies to each specific facility, does not comply with such guidelines and the State fails to correct such noncompliance within nine months of the date of enactment of this section, the Commission shall cause such determination to be published in the newspaper of greatest circulation in such State, and, in consultation with the Director of the Federal Emergency Management Agency and the Governor of the State, shall immediately establish an interim emergency plan for each such facility which complies with such guidelines. Any such plan established by the Commission shall be extended at ninety day intervals, until the Commission concurs in a State plan.

(b) As soon as practicable, but not later than six months from the date of enactment of this section, the Commission shall by rule promulgate minimum requirements for State plans for responding to accidents or unanticipated events at each utilization facility licensed to operate within the State, which accidents or unanticipated events, due to the existence or the imminent possibility of off-site releases of radioactivity, create the need for action to protect the public health and safety. In the promulgation required hereunder, the Commission shall specify a period for expeditious compliance with such requirements. Prior to promulgating the rule required by this subsection, the Commission shall consult with the Director of the Federal Emergency Management Agency. Pending the promulgation required hereunder, the Commission shall determine plan adequacy on the basis of the guidelines employed by the Commission in affording or withholding concurrence in State radiological emergency response plans, which were in effect on July 16, 1979, and any plan which had received the Commission's concurrence prior to enactment of this Act shall be deemed adequate for the purposes of that section.

"In the event the Commission withholds such concurrence for any state emergency plan under this subsection, the Commission, in consultation with the Director of the Federal Emergency Management Agency and the Governor of the state, shall immediately establish an interim emergency plan for any such facility which complies with the guidelines. Any such plan established by the Commission shall be extended at ninety day intervals, until the Commission concurs in a State plan."

(c) The minimum requirements to be promulgated under subsection (c) shall assure protection of the public health and safety to the maximum extent practicable, and shall at a minimum provide for:

(1) Designation of appropriate planning zones surrounding each facility on the basis of such factors as reactor size, probable release patterns from possible accident sequences, and demographic and land use patterns;

(2) Capability to quickly and safely implement protective measures such as evacuation and sheltering;

(3) Initial and periodic testing of plan feasibility in actual drills of State and local organizations which are assigned responsibilities to carry out portions of the plan;

(4) Vesting of responsibility for the development and revision of the plan in a single agency;

(5) Participation of facility licensees, local governments, and appropriate State agencies in that development and revision;

(6) Delineation of respective organizational roles in implementation of the plan; and

(7) Identification of procedures for expeditious and reliable notification and communication.

(d) Any person may bring a proceeding in the United States District Court for the District of Columbia to require the Commission to promulgate the rule required in subsection (c) of this section if the Commission has not promulgated such rule within the time period specified therein.

The PRESIDING OFFICER. Twenty minutes on the amendment; is that correct?

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

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. I assume from the parliamentary point of view the amendment is in order as a substitute?

The PRESIDING OFFICER. It is in order drafted as a substitute for the pending amendment.

Mr. McCLURE. Mr. President, I am disturbed that the Senate earlier today in turning down the Johnson-McClure amendment may well not have understood some of the ramifications of that action. I did not oppose the perfecting amendment of the Senator from Ohio because I think it is a measured improvement over the Hart-Simpson language.

But, Mr. President, I think there is still the choice I outlined just a moment ago, which is not closure of a plant, Mr. President, it seems to me that there ought to be better ways to assure the safety of the American people by assuring that the plant continues, but continues under safe conditions.

The substitute which I have offered is essentially the original language offered by the Senator from Louisiana on his and my behalf that was subject to the very close vote taken earlier.

When I was talking with the Senator from Louisiana last week about the amendment which was to be offered today, it was my understanding that that amendment would not be voted on until last in the day. I had made arrangements to be in Idaho yesterday giving a speech to a group of high school students last evening, and I was able, by flying all night, to be back here today to participate in the debate and discussion of that amendment, only to arrive here and find that rather than coming up late in the day it had come up as the first item of business virtually, and had been voted on.

That was somewhat distressing to the Senator from Idaho—and I say that not with any particular unhappiness directed toward any individual but as just the unhappiness about the course of events that made that possible.

The vote was very close. I have consulted with the Parliamentarian to make certain this could be offered as a substitute, and I have been advised by the Parliamentarian that indeed it can be offered as a substitute since the original language was offered as an amendment perfecting the language of the Hart-Simpson amendment.

This has been redrafted. It contains additional provisions that were not in the Johnston-McClure amendment in the first instance, picking up upon the Hart-Simpson amendment in some of its essential provisions.

Mr. President, I think this is a good way to try to resolve the question as far as this Senator is concerned in that certainly if the Johnston-McClure amendment or the now McClure substitute is not adopted, we fall back on the Hart-Simpson amendment as perfected by the Glenn amendment which, I think, presents the issue and the opportunity for a choice.

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

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. HART. Mr. President, a parliamentary inquiry so that I understand the situation we find ourselves in.

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. The last vote that occurred in the Senate was on the Johnston amendment which, I understand, was defeated. Do I understand we now have an amendment which is essentially the same amendment that is now being offered as a substitute?

The PRESIDING OFFICER. The Chair advises the Senator from Colorado that this amendment is different in several respects from the Johnston amendment and, therefore, would be in order.

Mr. HART. Hopefully the Senator from Idaho will tell us what those differences are at some point in the debate, since we have already litigated, if you will, the Johnston amendment. I am not quite sure what is going to be gained from first redebating it and second voting on it again.

I suppose we could plow the same old ground that we plowed an hour or an hour and a half ago at some length. But so far I have heard nothing in the presentation of this amendment that is really new or adds to the edification of the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. McCLURE. Mr. President, I will respond—not to prolong the debate because I think the essential understanding of the Senate on the issue will be the same—but I am careful in how I say that because I do not want to indicate that the amendment is identical to the one amendment that was defeated, because it is not. But it picks up the language, a portion of the language, of the Hart-Simpson amendment as well as the language contained in the Johnston-McClure amendment.

Mr. HART. Mr. President, if the Senator will yield, the amendment is either the same or, if it is not, we can proceed further. If it is the same, we have already voted on it. If it is not, we ought to know what the differences are.

Mr. McCLURE. We run into the difficulty, and the Senator understands, of some of the legalisms that are involved, and it is a different amendment in a technical sense.

Mr. HART. But substantively the same.

Mr. McCLURE. I will not say substantively the same because if I say that, the Senator might well then attempt to raise a point of order, and I must insist that this is a different amendment, as indeed it is.

Mr. HART. What is it in this amendment that the Senator wishes to use to justify another vote? We can vote on the same amendment all night long by just making changes in commas and in apostrophes. This is either a different amendment from the Johnston amendment, which the Senate just defeated, or it is not.

Mr. McCLURE. If the Senator desires, I could withdraw my request that the reading of the amendment be dispensed with, and the Senator can have it read if he wishes.

Mr. HART. I do not want to have it read. I want the Senator to tell me the difference between the Johnston amendment and the Senator's substitute which justifies its consideration by the Senate.

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

Mr. HART. Yes.

Mr. SIMPSON. I, as one of the floor leaders of the bill, would very much appreciate having a copy of the amendment, because I am certainly not going to concur until I do.

The PRESIDING OFFICER. Time is running on the amendment.

Mr. HART. Mr. President, being completely in the dark as to whether this amendment is different from the one the Senate just defeated, and not apparently having the proponent of the amendment prepared to argue it on its merits, I am afraid I will be forced to move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. The time must be used or yielded back before such a motion is in order.

Mr. HART. I am prepared to yield back the remainder of my time.

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

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. The question is on agreeing to the motion to lay on the table the amendment (No. UP–353) of the Senator from Idaho. The yeas and nays have been ordered. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Florida (Mr. CHILES), the Senator from New Hampshire (Mr. DURKIN), the Senator from Nebraska (Mr. EXON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

I further announce that the Senator from Montana (Mr. BAUCUS), the Senator from Missouri (Mr. EAGLETON), the Senator from Michigan (Mr. LEVIN), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. PRYOR), the Senator from Michigan (Mr. RIEGLE), the Senator from Oklahoma (Mr. BOREN), the Senator from New Jersey (Mr. BRADLEY), and the Senator from North Carolina (Mr. MORGAN) are absent on official business.

On this vote, the Senator from Michigan (Mr. LEVIN) is paired with the Senator from North Carolina (Mr. MORGAN).

If present and voting, the Senator from Michigan would vote "yea" and the Senator from North Carolina would vote "nay."

Mr. TOWER. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Missouri (Mr. DANFORTH), the Senator from Nevada (Mr. LAXALT), the Senator from Alaska (Mr. STEVENS), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

Mr. HART. Regular order, Mr. President.

The PRESIDING OFFICER. Is there any other Senator in the Chamber who has not voted?

Several Senators voted.

Mr. HART. Mr. President, regular order.

The PRESIDING OFFICER (Mr. MOYNIHAN). Is there any Senator in the Chamber who has not voted? If so, let them make their votes known.

Additional Senators voted.

Mr. HART. Regular order.

The PRESIDING OFFICER. The regular order is being followed. Are there Senators who have not voted? If so, will they do so now? If not, the clerk will tally the vote.

Additional Senators voted.

Mr. HART. Mr. President, regular order.

The PRESIDING OFFICER. The clerk is tallying the vote.

The result was announced—yeas 41, nays 40, as follows:

[Rollcall Vote No. 171 Leg.]

YEAS—41

Bayh	Gravel	Nelson
Biden	Hart	Packwood
Boschwitz	Hatfield	Pell
Bumpers	Heinz	Pressler
Burdick	Inouye	Proxmire
Byrd, Robert C.	Javits	Randolph
Cannon	Kennedy	Roth
Chafee	Leahy	Sarbanes
Cochran	Mathias	Schweiker
Cranston	Matsunaga	Simpson
Culver	McGovern	Stafford
DeConcini	Melcher	Weicker
Durenberger	Moynihan	Williams
Ford	Muskie	

NAYS—40

Armstrong	Heflin	Percy
Bellmon	Helms	Sasser
Bentsen	Hollings	Schmitt
Byrd, Harry F., Jr.	Huddleston	Stennis
Church	Humphrey	Stevenson
Cohen	Jackson	Stewart
Dole	Jepsen	Stone
Domenici	Johnston	Talmadge
Garn	Kassebaum	Thurmond
Glenn	Lugar	Tower
Goldwater	Magnuson	Warner
Hatch	McClure	Young
Hayakawa	Metzenbaum	Zorinsky
	Nunn	

NOT VOTING—19

Baker	Eagleton	Ribicoff
Baucus	Exon	Riegle
Boren	Laxalt	Stevens
Bradley	Levin	Tsongas
Chiles	Long	Wallop
Danforth	Morgan	
Durkin	Pryor	

So the motion to lay on the table UP amendment No. 353 was agreed to.

Several Senators addressed the Chair.

Mr. HART. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

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

The PRESIDING OFFICER. Is there a sufficient second for the yeas and nays on a motion to reconsider?

There is a sufficient second.

Mr. SIMPSON. I ask for the yeas and nays on my motion to table.

The PRESIDING OFFICER. A motion to lay on the table has been made.

Is there a sufficient second on the motion to table?

There is a sufficient second. The yeas and nays are ordered.

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

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. What is the pending business before the Senate?

The PRESIDING OFFICER. The pending business is the motion to table.

Let me restate that: The pending motion is the motion to lay on the table the motion to reconsider the vote by which the McClure amendment was laid on the table.

The yeas and nays have been ordered. No debate is in order. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from New Hampshire (Mr. DURKIN), the Senator from Nebraska (Mr. EXON), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Massachusetts (Mr. TSONGAS), and the Senator from Florida (Mr. CHILES) are necessarily absent.

I further announce that the Senator from Montana (Mr. BAUCUS), the Senator from Oklahoma (Mr. BOREN), the Senator from New Jersey (Mr. BRADLEY), the Senator from Missouri (Mr. EAGLETON), the Senator from Michigan (Mr. LEVIN), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. PRYOR), and the Senator from Michigan (Mr. RIEGLE) are absent on official business.

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

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Mississippi (Mr. COCHRAN), the Senator from Missouri (Mr. DANFORTH), the Senator from Nevada (Mr. LAXALT), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

The PRESIDING OFFICER. Is there any Senator in the Chamber who has not voted?

The result was announced—yeas 43, nays 39, as follows:

[Rollcall Vote No. 172 Leg.]

YEAS—43

Bayh	Hart	Pell
Biden	Hatfield	Pressler
Boschwitz	Heinz	Proxmire
Bumpers	Inouye	Randolph
Burdick	Javits	Roth
Byrd, Robert C.	Kennedy	Sarbanes
Cannon	Leahy	Sasser
Chafee	Mathias	Schweiker
Cranston	Matsunaga	Simpson
Culver	McGovern	Stafford
DeConcini	Melcher	Talmadge
Durenberger	Moynihan	Weicker
Ford	Muskie	Williams
Glenn	Nelson	
Gravel	Nunn	

NAYS—39

Armstrong	Helms	Percy
Bellmon	Hollings	Schmitt
Bentsen	Huddleston	Stennis
Byrd, Harry F., Jr.	Humphrey	Stevens
	Jackson	Stevenson
Church	Jepsen	Stewart
Cohen	Johnston	Stone
Dole	Kassebaum	Thurmond
Domenici	Lugar	Tower
Garn	Magnuson	Warner
Goldwater	McClure	Young
Hatch	Metzenbaum	Zorinsky
Hayakawa	Morgan	
Heflin	Packwood	

NOT VOTING—18

Baker	Danforth	Long
Baucus	Durkin	Pryor
Boren	Eagleton	Ribicoff
Bradley	Exon	Riegle
Chiles	Laxalt	Tsongas
Cochran	Levin	Wallop

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

Mr. HART. Mr. President, I move to reconsider the vote by which the motion was agreed to.

The PRESIDING OFFICER. A motion to reconsider the vote on a motion to table a motion to reconsider is not in order.

The question occurs on unprinted amendment numbered 350, as amended. The yeas and nays have been ordered.

The Senator from Colorado.

Mr. HART. Mr. President, I ask unanimous consent to vitiate the order for the yeas and nays.

Mr. McCLURE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

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 Florida (Mr. CHILES), the Senator from New Hampshire (Mr. DURKIN), the Senator from Nebraska (Mr. EXON), the Senator from Connecticut (Mr. RIBICOFF), and the Senator from Massachusetts (Mr. TSONGAS) are necessarily absent.

I further announce that the Senator from Montana (Mr. BAUCUS), the Senator from Oklahoma (Mr. BOREN), the Senator from New Jersey (Mr. BRADLEY), the Senator from Missouri (Mr. EAGLETON), the Senator from Michigan (Mr. LEVIN), the Senator from Louisiana (Mr. LONG), the Senator from Arkansas (Mr. PRYOR), and the Senator from Michigan (Mr. RIEGLE) are absent on official business.

I further announce that, if present and voting, the Senator from New Jersey (Mr. BRADLEY) and the Senator from Michigan (Mr. LEVIN) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Missouri (Mr. DANFORTH), the Senator from Nevada (Mr. LAXALT), and the Senator from Wyoming (Mr. WALLOP) are necessarily absent.

The PRESIDING OFFICER (Mr. CULVER). Are there any Senators now in the Chamber who have not yet been recorded on this vote?

The result was announced—yeas 64, nays 19, as follows:

[Rollcall Vote No. 173 Leg.]

YEAS—64

Armstrong	Glenn	Nunn
Bayh	Gravel	Packwood
Biden	Hart	Pell
Boschwitz	Hatch	Percy
Bumpers	Hatfield	Pressler
Burdick	Heflin	Proxmire
Byrd, Harry F., Jr.	Heinz	Randolph
	Huddleston	Roth
Byrd, Robert C.	Humphrey	Sarbanes
Cannon	Inouye	Sasser
Chafee	Javits	Schweiker
Church	Jepsen	Simpson
Cochran	Kennedy	Stafford
Cohen	Leahy	Stevenson
Cranston	Mathias	Stewart
Culver	Matsunaga	Stone
DeConcini	McGovern	Talmadge
Dole	Melcher	Warner
Domenici	Metzenbaum	Weicker
Durenberger	Moynihan	Williams
Ford	Muskie	Zorinsky
Garn	Nelson	

NAYS—19

Bellmon	Johnston	Stennis
Bentsen	Kassebaum	Stevens
Goldwater	Lugar	Thurmond
Hayakawa	Magnuson	Tower
Helms	McClure	Young
Hollings	Morgan	
Jackson	Schmitt	

NOT VOTING—17

Baker	Durkin	Pryor
Baucus	Eagleton	Ribicoff
Boren	Exon	Riegle
Bradley	Laxalt	Tsongas
Chiles	Levin	Wallop
Danforth	Long	

So Mr. SIMPSON's amendment (UP 350, as amended) was agreed to.

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

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

The motion to lay on the table was agreed to.

(The following proceedings occurred later:)

Mr. STONE. Mr. President, I ask unanimous consent that my rollcall vote on the previous rollcall be changed from nay to yea. It does not change the result of the vote.

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

(The foregoing rollcall vote has been changed to reflect the above order.)

UP AMENDMENT NO. 354

Mr. DOMENICI. Mr. President, I have an uprinted amendment that has to do with mill tailings that I send to the desk, and I offer it on behalf of myself and the Senator from Colorado (Mr. HART).

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Mexico (Mr. DOMENICI), for himself and Mr. HART, proposes an unprinted amendment No. 354.

Mr. DOMENICI. 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 19, after line 16, insert the following:

SEC. 209.(a) Section 204(h) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding at the end thereof a new paragraph to read as follows:

"(3). Notwithstanding any other provision of this title, where a State assumes or has assumed, pursuant to an agreement entered into under section 274.b of the Atomic Energy Act of 1954, authority over any activity which results in the production of byproduct material as defined in section 11.e (2) of that Act, the Commission shall not, until the date three years after the date of enactment of this Act, have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated. If, upon expiration of the three-year interim, a State has not entered into such an agreement with respect to byproduct material as defined in section 11.e (2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material."

(b) Section 204(h)(1) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended to read:

"Sec. 204(h)(1). On or before the date three years after the date of enactment of this Act, notwithstanding any provision of this title, any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to Section 274 of the Atomic Energy Act of 1954, as amended) respecting (a) byproduct material, as defined in section 11 e.(2) of the Atomic Energy Act of 1954, or (b) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the enactment of this Act; provided, however, that nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 as may be necessary to implement title I of this Act."

(c) The last sentence of section 83a. of the Atomic Energy Act of 1954, as amended, is amended to read:

"Any license in effect on the effective date of this section and subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination."

(d) Section 204(e) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding at the end thereof a new paragraph to read as follows:

"(2) This subsection shall be effective on the date three years after the date of enactment of this Act.".

(e) Section 83(b)(1)(A) of the Atomic Energy Act of 1954, as amended, is amended by—

(1) striking all that follows "transferred to—" down through "Unless" and inserting in lieu thereof the following:

"(i) the United States, or

"(ii) the State in which such land is located, at the option of such State, unless", and

(2) striking "section 84b." and inserting in lieu thereof "section 81 of this Act".

Mr. HART. Mr. President, I ask unanimous consent that the chairman of the Public Works Committee, Senator RANDOLPH, be added as an original cosponsor.

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

Mr. DOMENICI. Mr. President, I offer this amendment which would make certain technical changes in Public Law 95–604, the Uranium Mill Tailings Radiation Control Act of 1978.

These changes are to title 2 of that act as title 2 addresses the authority of the Nuclear Regulatory Commission and the Agreement States to license and regulate uranium mills and mill tailings. Specifically, NRC was given immediate authority to regulate uranium mill tailings in States which do not elect to regulate uranium mills and mill tailings under the Agreement States program. Significant new substantive and procedural requirements were also imposed on the Agreement States by that act. In recognition of that fact, the Agreement States were given a period of 3 years to impose their regulatory programs to meet the new requirements. At the end of the period, an Agreement State which failed to fully satisfy the new requirements would lose its regulatory authority and NRC would assume licensing responsibility.

Mr. President, on April 26 of this year, the principal authors of the regulatory portion of the Uranium Mill Tailings Radiation Control Act wrote the Nuclear Regulatory Commission on this subject. That letter expressed their concern that certain possible ambiguities in the wording of the statute might be interpreted to conflict with the statutory intent which I have described. On May 30, the Commission advised the Subcommittee on Nuclear Regulation that in the view of a majority of the Commission, the Mill Tailings Act, as presently written, could not be interpreted to meet this intent. At the same time, the Commission proposed legislation to correct these ambiguities and to bring the language of the statute into accord with our intent. Those proposed changes, which are supported by the full Commission, are incorporated into my amendment.

Mr. President, unless these changes are enacted swiftly, the Commission will be required to exercise dual licensing jurisdiction in the Agreement States for the 3-year interim period. This would result in needless and costly duplication, and would be disruptive of the spirit of cooperation and support which has been carefully developed between NRC and the Agreement States. This amendment would eliminate that problem and insure that the implementation of the act's important improvements will proceed in an orderly and expeditious manner.

I urge the adoption of the amendment.

Mr. President, I ask unanimous consent that the April 26 letter from the principal authors of the legislation to NRC, the May 30 letter from NRC to the Nuclear Regulation Subcommittee, and a section-by-section analysis of the amendment be included in the RECORD at this point.

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

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., April 26, 1979.

Hon. JOSEPH HENDRIE,
Chairman, Nuclear Regulatory Commission, Washington, D.C.

DEAR CHAIRMAN HENDRIE: During your testimony last monht on the NRC fiscal year 1980 budget request before the Senate Environment and Public Works Committee and the House Interior and Insular Affairs and Interstate and Foreign Commerce Committees, you referred to potential problems in implementing Public Law 95–604, the Uranium Mill Tailings Radiation Control Act of 1978.

Specifically, you mentioned that there may exist some uncertainty based upon the language of the statute regarding the date by which the Agreement States must meet the new requirements in the statute and the need for the Commission to exercise within the Agreement States its new licensing authority for uranium mill tailings. At that time, you indicated the Commission's continued support for the three year grace period in making these requirements effective, but expressed the view that any interpretation of the present statutory language on these points would likely lead to litigation.

It is our view that these questions should be resolved promptly, in accordance with the intent of the Congress, and in a manner which will not cause disruptions in the ongoing regulatory programs and activities of NRC and the Agreement States. In that regard, we are concerned that the statute might be interpreted to require the Agreement States to immediately meet the new requirement of the Act in all cases or to require the duplicate licensing by NRC of all uranium mills and mill tailings in the Agreement States. Such interpretations, in our view, would be contrary to the intent of Congress and would discourage rather than encourage the Agreement States from making every effort to meet the new requirements of the Act as early as possible.

As the principal authors of the legislation in the House and the Senate, we are confident the Congress intended for NRC to exercise authority over mill tailings in the Non-Agreement States immediately, and intended to provide for a period of up to three years for Agreement States which license uranium milling operations or mill tailings to meet the new requirements of the statute. During this three year period, an Agreement State could continue its licensing activities under previously existing authority. New standards and requirements would be applicable to the maximum extent practicable, and NRC is expected to make every effort to encourage and assist the States in upgrading their licensing programs to meet the new requirements as early as possible.

The Congress did not intend for NRC to immediately exercise licensing authority within Agreement States which were exercising authority over uranium milling operations or mill tailings on the date of enactment. At the expiration of the three year interim period, however, NRC would exercise its authority in any State which did not then have in effect a licensing program satisfying all of the applicable new standards and requirements.

If the Commission would benefit in future enforcement of this intent and interpretation from clarifying legislation, we would be happy to provide our assistance.

Truly,

Senator JENNINGS RANDOLPH.
Senator GARY HART.
Senator PETE DOMENICI.
Congressman JOHN D. DINGELL.
Congressman MORRIS K. UDALL.
Congressman ROBERT E. BAUMAN.

NUCLEAR REGULATORY COMMISSION,
Washington, D.C., May 30, 1979.

Hon. GARY HART,
Chairman, Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Nuclear Regulatory Commission would like to request your support for legislation to resolve questions arising from the effective date provisions of the Uranium Mill Tailings Radiation Control Act of 1978 enacted by the last Congress. The Commission received a letter dated April 26, 1979 and signed by the principal authors of this legislation in both the Senate and House of Representatives which expressed the intent of the drafters regarding the date on which licensing authority and procedural requirements under the Act would become effective with respect to the Commission and affected State governments. The letter supports the position that existing authority of Agreement States to license uranium mills and to control mill tailings should not be disrupted during the three-year interim period following enactment and that during this period the NRC should not be required to exert concurrent licensing authority over tailings produced in milling activities regulated by the Agreement States.

The Commission is mindful of and sympathetic with these views. Nonetheless, after a careful analysis of the language of the 1978 Act, a majority of Commissioners have concluded that without amendments to the Act the NRC is required to license tailings at Agreement State-regulated uranium mills during the three-year period before the Act permits renegotiated agreements to become effective. Pursuant to this decision as to the meaning of the Act, implementing regulations and associated arrangements are now being prepared.

Enclosed with this letter is a draft of statutory language and a section-by-section analysis which would accomplish the intent of the principal authors of the legislation, as expressed in the April 26, 1979 letter. All Commissioners agree that such clarifying language is desirable. Some additional clarification which the Commission believes necessary are also included and are described in the section-by-section analysis. The Commission believes that prompt enactment of this legislation is necessary to assure that the intent expressed by the authors of the Act may be carried out during the remainder of the three-year interim period.

Sincerely,

JOSEPH M. HENDRIE.

Enclosures:
1. Draft Legislation.
2. Analysis.

cc: The Honorable Alan Simpson.
The Honorable Jennings Randolph.

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

SECTION 1. Section 204(h) of the Uranium Mill Tailings Radiation Control Act of 1978 is amended by adding at the end thereof a new paragraph to read as follows:

"(3). Notwithstanding any other provision of this title, where a State assumes or has assumed, pursuant to an agreement entered into under section 274b of the Atomic Energy Act of 1954, authority over any activity which results in the production of byproduct material as defined in section 11e.(2) of that Act, the Commission shall not, until the date three years after the date of enactment of this Act, have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated. If, upon expiration of the three-year interim, a State has not entered into such an agreement with respect to byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material."

SEC. 2. Section 204(h)(1) of the Uranium Mill Tailings Radiation Control Act is amended to read:

SEC. 204(h)(1). On or before the date three years after the date of enactment of this Act, notwithstanding any provision of this title, any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to Section 274 of the Atomic Energy Act of 1954, as amended) respecting (a) byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, or (b) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the enactment of this Act: *Provided, however,* That nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 as may be necessary to implement title I of this Act."

SEC. 3. The last sentence of section 83a. of the Atomic Energy Act of 1954 is amended to read:

"Any license in effect on the effective date of this section and subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination."

SEC. 4. Section 204(e) is amended by adding at the end thereof a new paragraph to read as follows:

"(2) This subsection shall be effective on the date three years after the date of enactment of this Act.".

SECTION-BY-SECTION ANALYSIS

The Uranium Mill Tailings Radiation Control Act of 1978 contains certain provisions regarding dates of effectiveness which, if left to stand, may be subject to differing legal interpretation. Specifically, two questions of immediate concern have arisen regarding the timing of State and NRC implementation of title II of the Act:

(1) Do both the States and the Federal Government have authority to license uranium mill tailings (i.e., exercise concurrent licensing jurisdiction) for the three years following enactment of the Uranium Mill Tailings Radiation Control Act?

(2) Are the requirements of new section 374o of the Atomic Energy Act pertaining to procedures to be followed by Agreement States in issuing source material licenses for uranium mills immediately effective?

These questions have arisen because one section of the Uranium Mill Tailings Radiation Control Act (section 208) makes the provisions of the regulatory program in title II of the Act immediately effective unless otherwise specified, and another section of the Act (section 204(h)(1)) delays the effectiveness of certain provisions of the Act regarding State authorities for three years after the date of enactment. Accordingly, the Nuclear Regulatory Commission has proposed amendments to clarify the effective dates of title II.

These amendments generally provide a three-year interim period before the requirements in title II of the Uranium Mill Tailings Radiation Control Act (Mill Tailings Act) apply to milling operations and tailings licensed by Agreement States.

In non-Agreement States, the NRC would have immediate authority to implement the regulatory program in title II. Although section 204(h)(1) preserves prior State authority for three years, in case of conflict between Federal and State law, the Federal would prevail.

One of the provisions in title II (section 206) adds a new section 275 to the Atomic Energy Act of 1954. Section 275 authorizes certain Environmental Protection Agency standards which are, under section 108(a)(2) of the Mill Tailings Act, a prerequisite to the remedial actions authorized in title I. Thus it is stressed that these clarifying amendments are not intended to prevent the Administrator of the Environmental Protection Agency or the Nuclear Regulatory Commission from taking such action under section 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

Sec. 209. (a) During the three years following enactment of the Mill Tailings Act, this section prohibits the NRC from exercising duplicative authority over tailings produced in activities licensed by Agreement States unless the agreement is terminated within that period. The EPA and NRC may, however, take such action under 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

Sec. 209. (b) This section makes the provision in section 204(h)(1) of the Mill Tailings Act preserving State authority over tailings and wastes for the three-year interim conform to the new requirements of the Mill Tailings Act which apply to *both* byproduct material *and* milling operations that result in the tailings and wastes now defined as byproduct material. As enacted, section 204(h)(1) mentions only byproduct material specifically, although the regulatory program generally covers both milling and tailings. As amended, this section explicitly covers both byproduct material and milling operations and applies also to States that enter into agreements during the three-year interim.

Further provision is made so that EPA and NRC may take such action under section 275 of the Atomic Energy Act of 1954 (as added by the Mill Tailings Act) as may be necessary to implement the remedial action program in title I of the Mill Tailings Act immediately.

Sec. 209. (c) As originally enacted, section 83 of the Atomic Energy Act of 1954 may be subject to various interpretations regarding its timing. Its provisions are not, under section 202(b) of the Mill Tailings Act, to become effective until three years from their date of enactment. Nonetheless, section 83a (as added by section 202 of the Mill Tailings Act) states that licenses in effect on the date of enactment of this section must comply with 83a (1) and (2) upon their renewal or termination, which first occurs. Conceivably this renewal or termination could take place during the three-year period in which section 83 is not supposed to be effective. The sentence as amended applies section 83a only to licenses that are renewed or terminated after the effective date of section 83.

Moreover, it might be argued that a loophole was left for licenses issued after the date of enactment but before the effective date of section 83. It could be argued that such licenses would not be covered by section 83a. As amended, the section applies the requirements of section 83a to any license in effect on the effective date of section 83.

Sec. 209. (d) This section amends section 204(e) of the Mill Tailings Act to make it clear that the new Agreement State responsibilities regarding tailings and milling operations in new section 274o of the Atomic Energy Act are not effective until three years after the enactment of the Mill Tailings Act. The States are, however, encouraged to implement the new standards and requirements of the Mill Tailings Act to the maximum extent practicable.

Sec. 209. (e) This section makes a technical amendment to section 83 (b)(1)(A) of the Atomic Energy Act, as amended, to include the correct reference to the licensing

provision of the Act and to make other wording of the Act and to make other wording corrections in the section.

SECTION-BY-SECTION ANALYSIS

A product of the hectic final days of the 95th Congress, the Uranium Mill Tailings Radiation Control Act of 1978 contains certain provisions regarding dates of effectiveness which, if left to stand, may be subject to differing legal interpretation. Specifically, two questions of immediate concern have arisen regarding the timing of State and NRC implementation of title II of the Act:

(1) Do both the States and the Federal Government have authority to license uranium mill tailings (i.e., exercise concurrent licensing jurisdiction) for the three years following enactment of the Uranium Mill Tailings Radiation Control Act?

(2) Are the requirements of new section 274o of the Atomic Energy Act pertaining to procedures to be followed by Agreement States in issuing source material licenses for uranium mills immediately effective?

These questions have arisen because one section of the Uranium Mill Tailings Radiation Control Act (section 208) makes the provisons of the regulatory program in title II of the Act immediately effective unless otherwise specified, and another section of the Act (section 204(h)(1)) delays the effectiveness of certain provisions of the Act regarding State authorities for three years after the date of enactment. Accordingly, the Nuclear Regulatory Commission has proposed amendments to clarify the effective dates of title II.

These amendments generally provided a three-year interim period before the requirements in title II of the Uranium Mill Tailings Radiation Control Act (Mill Tailings Act) apply to milling operations and tailings licensed by Agreement States.

In non-Agreement States, the NRC would have immediate authority to implement the regulatory program in title II. Although section 204(h)(1) preserves prior State authority for three years, in case of conflict between Federal and State law, the Federal would prevail.

One of the provisions in title II (section 206) adds a new section 275 to the Atomic Energy Act of 1954. Section 275 authorizes certain Environmental Protection Agency standards which are, under section 108(a)(2) of the Mill Tailings Act, a prerequisite to the remedial actions authorized in title I. Thus it is stressed that these clarifying amendments are not intended to prevent the Administrator of the Environmental Protection Agency or the Nuclear Regulatory Commission from taking such action under section 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

Sec. 1. During the three years following enactment of the Mill Tailings Act, section 1 prohibits the NRC from exercising duplicative authority over tailings produced in activities licensed by Agreement States unless the agreement is terminated within that period. The EPA and NRC may, however, take such action under 275 of the Atomic Energy Act as may be necessary to implement title I of the Mill Tailings Act.

Sec. 2. This section makes the provision in section 204(h)(1) of the Mill Tailings Act preserving State authority over tailings and wastes for the three-year interim conform to the new requirements of the Mill Tailings Act which apply to *both* byproduct material *and* milling operations that result in the tailings and wastes now defined as byproduct material. As enacted, section 204(h)(1) mentions only byproduct material specifically, although the regulatory program generally covers both milling and tailings. As amended, this section explicitly covers both byproduct material and milling operations and applies also to States that enter into agreements during the three-year interim.

Further provision is made so that EPA and NRC may take such action under section 275 of the Atomic Energy Act of 1954 (as added by the Mill Tailings Act) as may be necessary to implement the remedial action program in title I of the Mill Tailings Act immediately.

Sec. 3. As originally enacted, section 83 of the Atomic Energy Act of 1954 may be subject to various interpretations regarding its timing. Its provisions are not, under section 202(b) of the Mill Tailings Act, to become effective until three years from their date of enactment. Nonetheless, section 83a (as added by section 202 of the Mill Tailings Act) states that licenses in effect on the date of enactment of this section must comply with 83a (1) and (2) upon their renewal or termination, whichever first occurs. Conceivably this renewal or termination could take place during the three-year period in which section 83 is not supposed to be effective. The sentence as amended applies section 83a only to licenses that are renewed or terminated after the effective date of section 83.

Moreover, it might be argued that a loophole was left for licenses issued after the date of enactment but before the effective date of section 83. It could be argued that such licenses would not be covered by section 83a. As amended, the section applies the requirements of section 83a to any license in effect on the effective date of section 83.

Sec. 4. This section amends section 204(e) of the Mill Tailings Act to make it clear that the new Agreement State responsibilities regarding tailings and milling operations in new section 274o of the Atomic Energy Act are not effective until three years after the enactment of the Mill Tailings Act. The States are, however, encouraged to implement the new standards and requirements of the Mill Tailings Act to the maximum extent practicable.

Mr. DOMENICI. Mr. President, I simply wish to call a couple of matters to the attention of the Senate.

Included in the subject matter that I have made part of the RECORD by unanimous consent is a letter from Senator JENNINGS RANDOLPH, Senator HART, myself, Chairman DINGELL of the House committee, Chairman UDALL, and Congressman BAUMAN. This letter is dated April 26, 1979, to the Chairman of the Nuclear Regulatory Commission and sets forth the perfecting amendment clarifying the language that the principal sponsors of this bill think is necessary.

On May 30, 1979, we received a response from the Nuclear Regulatory Commission indicating that they, too, felt the dual jurisdiction during the first 3 years of the implementation of this law needed clarifying and specifically stated how.

The State of New Mexico which has this problem confronting it now as to the dual regulatory scheme during the first 3 years of this new national law has also under date of June 8, 1979, in a letter from Gov. Bruce King to me set out in detail the problems they are having with dual control indicating that they would like a clarification also in the State of New Mexico.

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

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

JUNE 8, 1979.

Re Certain Requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

Hon. PETE DOMENICI,
U.S. Senate, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR PETE DOMENICI: The State of New Mexico needs your assistance in a matter of utmost importance concerning the status of New Mexico's uranium mill licensing program as an Agreement State under Section 274 of the Atomic Energy Act of 1954, as amended, for the following reasons:

(a) On May 17, 1979, the NRC Commissioners, by a 3 to 2 vote interpreted the language of the UMTRCA of 1978 as authority to assume immediately licensing of uranium mill tailings in all states and to issue a general license for existing mill tailings in all states. These general licensees would be subject to remedial action orders of the Commission, if the Commission decides such orders are needed.

(b) The split Commission vote indicates confusion in interpreting the UMTRCA of November 8, 1978. The Commission's decision ignores the language of Section 204(h)(1) which states:

"On or before the date three years after the date of the enactment of this Act, notwithstanding any amendment made by this title, any State may exercise any authority under State law respecting byproduct material, as defined in section 11e(2) of the Atomic Energy Act of 1954, *in the same manner and to the same extent, as permitted before the enactment of this Act.*" (Emphasis added.)

New Mexico, under the 1954 Atomic Energy Act and the State's Radiation Protection Act, has exercised complete and sole authority in the issuing of licenses for uranium mills and their tailings since May 1, 1974. The decision of the NRC to impose dual jurisdiction immediately over the licensing of uranium mill tailings is not in accordance with the UMTRCA provision quoted above, the UMTRCA as a whole, or the 1954 Atomic Energy Act.

(c) The May 17, 1979, Commission decision also runs counter to the intent of UMTRCA's primary Congressional sponsors as indicated by the attached letter signed by Senators Randolph, Hart and Domenici and Congressmen Dingell, Udall and Bauman.

(d) The Commission has not adopted a formal order, rule, or regulation concerning this matter. In other words, the Commission has not taken any formal action pursuant to procedures which allow public comment and a clear route of appeal through the courts.

(e) Since May 17th, the NRC staff has been actively putting into operation the "interim" policy of "a." above, by contacting a New Mexico mill applicant and instructing the applicant to forward its New Mexico application to Oak Ridge National Laboratory (ORNL) so that ORNL can prepare an Environmental Impact Statement.

In view of the above activity on the part of NRC, we are now faced with an unworkable situation in attempting to operate an efficient and effective mill licensing program in New Mexico. New Mexico has always considered the mill and tailings as inseparable and therefore issues one license for both activities as a prudent regulatory control of radioactive material. The State's concern with regulatory overlap caused by concurrent licensing over uranium mill tailings include the following:

(a) Dual licensing by both NRC and New Mexico of mill tailings will be unworkable since no one will be in control and the applicant will be caught in an impossible situation. Only one regulatory body can be responsible for efficient and effective regulation.

(b) Dual licensing by regulatory bodies is contrary to Congressional and Administration policies for non-duplication of regulatory activities and is an unnecessary cost to the taxpayers.

(c) Interference with and encroachment on the regulatory program of New Mexico by NRC may weaken the Agreement State Program which in the past has been exemplary example of Federal-State cooperation.

(d) Preparation of an Environmental Impact Statement by the NRC (actually done by a national lab) is a long and expensive process and will delay even further the licensing process. This is counter to the Administration's policy of expediting regulatory reviews; and in practice offers no substantial improvement over the environmental review conducted currently by New Mexico.

To prevent further encroachment on the regulatory program of the State of New Mexico, and mitigate the untoward effects that stem from the recent Commission action, I urge your assistance in swift passage of remedial legislation designed to correct this intolerable situation.

I would also like to explore with you any other methods you may suggest to resolve this pressing issue.

Sincerely,

BRUCE KING,
Governor.

Mr. DOMENICI. Mr. President, as I understand it, the chairman and ranking minority member agree with the technical changes of a clarifying nature, dispelling any ambiguity as to who has control over the first 3 years, and they concur with this amendment.

Since that is the case, I reserve the remainder of my time.

Mr. HART. Mr. President, the Senator from New Mexico is correct. The Senator from Colorado joined him and others as Senate sponsors in addressing a letter to the Nuclear Regulatory Commission in April. The fundamental purpose of that letter was to clarify the situation which the Senator from New Mexico presently described: The role of the NRC's licensing authority in an interim 3-year period over uranium milling operations or mill tailings. I think the amendment offered by the Senator from New Mexico complies with that letter and with the intent of the original sponsors of the legislation. As manager of the bill, I find the amendment acceptable.

Mr. SIMPSON. Mr. President, I certainly concur in that and I find the work of the Senator from New Mexico (Mr. DOMENICI) to be very appropriate, and I urge its passage and adoption.

Mr. DOMENICI. Mr. President, I want to say that last year I believe Senator Hart and the Senate took a very significant step forward when the Senate passed the bill that became law, the subject matter of this technical clarifying amendment.

However, at the close of the year and with conferences and other matters all kind of pushing together in the waning moments, it seems we left out a few words here and there, and the construction is kind of cloudy.

We certainly never intended, as we understood it, and I think my good friend from Colorado agrees, that during the interim period to have both State and Federal jurisdiction in the mill tailings area.

This will in no way diminish the protection, but will clarify what a State has to do in order to remain in control and prevent the Federal Government from being there at the same time kind of looking over its shoulder.

Having said that, I yield the remainder of my time and ask the Senate to adopt this amendment.

The PRESIDING OFFICER. Does the Senator from Wyoming yield back the remainder of his time?

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

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

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 355

(Purpose: To provide emergency authority for the Nuclear Regulatory Commission)

Mr. DECONCINI. Mr. President, I send to the desk an 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 Arizona (Mr. DECONCINI) proposed an unprinted amendment numbered 355.

Mr. DOMENICI. 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 an appropriate place, insert the following:

42 U.S.C. Sec. 2021 is amended by renumbering subparagraph (j) as new subparagraph (j)(1), and adding a new subparagraph (j)(2):

"(j)(2) The Commission, upon its own motion or upon request of the governor, may temporarily suspend all or part of its agreement with the State without notice or hearing if, in the judgment of the commission:

(a) an emergency situation exists creating danger to the health or safety of persons in the State or an area within the State, and

(b) the State has failed to take steps necessary to contain or eliminate the cause of the danger within a reasonable time after the situation arose;

provided, however, that a temporary suspension under this subparagraph shall authorize the Commission to exercise its authority only to the extent necessary to contain or eliminate the danger, and only for such time as the emergency situation exists."

The PRESIDING OFFICER. Will the Senator from Arizona yield at this point?

Mr. DECONCINI. I yield.

The PRESIDING OFFICER. Is this the amendment the Senator requested 1 hour's time on?

Mr. DECONCINI. That is correct. I do not intend or anticipate the hour having to be used on this amendment.

Mr. President, My amendment to S. 562 is designed to correct a dangerous loophole in existing law, a loophole that has resulted in tragic consequences for residents of my state. As I am sure my colleagues know from accounts in the national press, residents of Tucson living near the American atomics plant have been exposed to unsafe levels of tritium, a radioactive material used by the company to manufacture digital watch faces. The emissions from the plant have contaminated the food in school cafeterias in Tucson Unified School District, the water in the swimming pool of St. Ambrose School, and the general environment of the neighborhood.

A high level of tritium, over four times the level now considered safe, was found in the urine sample of a young boy who lives near the plant. The swimming pool of one area resident was found to contain 20 times the safe level. Incredibly, the State Atomic Energy Commission allowed the plant to continue operations at a reduced level even after early test results showed possible contamination of the school cafeteria food. The school district cafeteria processing center, as well as the St. Ambrose pool, a cafeteria in a neighborhood service center for the aged, and other local activities closed down in fear of contamination while the plant continued to operate. I personally asked the owner of the plant to voluntarily close, and asked the NRC to step in and shut down the plant. My requests were not acted upon. Finally under tremendous political pressure, the Arizona Atomic Energy Commission closed the plant down on June 15, more than 2 weeks after the Nuclear Regulatory Commission suggested to the Arizona Commission that the plant be closed.

Mr. President, the ties of the State commission to the nuclear industry in Arizona have been well publicized in the press. A former State commissioner was an officer of the American atomics plant, and in the past had accompanied State inspectors when they toured the site. The current commission's failure to act highlights the serious problem with existing law.

The Atomic Energy Act of 1954, as amended, provides that the NRC can agree to allow a State to regulate certain uses of nuclear materials in the State. Such an agreement is in effect in Arizona; 42 U.S.C. section 2021(j) further provides that the NRC may suspend all of part of an agreement and assume regulatory control upon request of the Governor or by its own motion. However, this can take place only after notice and hearing.

Mr. President, notice and a hearing take time. A nuclear accident such as Three Mile Island, or a nuclear health threat such as American atomics requires swift action.

My amendment provides the NRC with the ability to take swift action. Where

an emergency exists that threatens the health or safety of persons in an area, and the State fails to take the steps necessary to eliminate or contain the danger in a reasonable time, my amendment would allow the NRC to step in and assume control without notice or hearing.

Mr. President, I am not an advocate of Federal control over the details of our daily lives. I frankly dislike having to author such an amendment. However, despite my dislike of Federal regulation, the great potential for harm posed by the use of radioactive materials and the demonstrated failure of a State agency to act responsibly to contain that harm lead me to conclude that there must be a provision for emergency Federal authority. I have drafted this provision so that the Federal authority would be limited and temporary. Upon its termination the State authority would resume unimpaired.

Mr. President, if this amendment had been existing law, the residents of my State living near American atomics would have been spared 2 weeks additional exposure to low-level radioactive contamination. We have no way of ascertaining what damage has been done to those people during those 2 weeks. We have no way of knowing what the life of that 6-year-old boy will be like in 20 or 30 years. We have no way of telling him whether his children and grandchildren will be normal and healthy or crippled and deformed. We simply do not know. I hope that a situtation like American atomics nevers occurs again, and that the authority this amendment provides is never needed. But, Mr. President, we owe it to the citizens of this country to enact this amendment.

Mr. HART. Mr. President, I commend the Senator from Arizona for his attention to a very important matter. His amendment addresses the issue of what the Nuclear Regulatory Commission's authority should be in emergency situations, and I think it strengthens the regulatory program as it relates to the so-called agreement States and, therefore, for the majority side of the bill I accept the amendment and recommend it be adopted.

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

Mr. DECONCINI. I yield.

Mr. SIMPSON. Mr. President, I just have a question or two of the sponsor of the amendment and would inquire of the Senator from Arizona these questions.

The amendment speaks in terms of emergency situations. Is it the Senator's intention that the authority given to the Commission under this provision would be strictly limited to those situations in which a true emergency exists which poses an imminent and serious risk to the public health and safety?

Mr. DECONCINI. The Senator is correct. The provision would require an express determination that such an emergency exists and that the State has failed to act to correct the emergency. Even then, the Commission's authority would continue only so long as necessary to remedy the risk posed by the emergency.

Mr. SIMPSON. I might ask and inquire of the Senator, as I understand, the agreement State program permits those States with compatible programs to regulate certain nuclear activities in lieu of Federal regulations. This amendment would, for the first time, permit the Federal Government to reassume regulatory control on a case-by-case basis. I just wish to clarify that the Senator's intention is not to disrupt the agreement States program by permitting NRC to substitute its judgment for that of the State on regulatory matters on a routine basis.

Mr. DECONCINI. The Senator is correct. The intent of the provision is to provide only a very limited authority for the Commission to act on a case-by-case basis. Only when it makes the stringent emergency findings in the provision could the Commission exercise authority. This should not disrupt the beneficial arrangements under the agreement State program.

Mr. SIMPSON. Mr. President, I appreciate the work of the Senator from Arizona, and I find his amendment quite acceptable and I urge its adoption.

Mr. DECONCINI. Mr. President, I thank the Senators from Colorado and Wyoming for their assistance and for their keen awareness of the necessity to protect the rights of the States involved in the agreement.

Mr. President, I ask unanimous consent that the senior Senator from Arkansas be named as a cosponsor of this amendment.

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

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

The PRESIDING OFFICER. Does the Senator from Wyoming yield back the remainder of his time?

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

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

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 356

Mr. METZENBAUM. Mr. President, I now call up my amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio (Mr. METZENBAUM) proposes an unprinted amendment numbered 356.

Mr. METZENBAUM. 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 end of the bill insert the following:

The Nuclear Regulatory Commission shall by October 1, 1979, promulgate regulations providing for timely notification to state and insular areas prior to the transport of nuclear waste, including spent nuclear fuel, to, through, or across the boundaries of the state or insular area. Provided, however, that such notification requirements shall not apply to nuclear wastes in such quantities and of such types as the commission specifically determines do not pose a potentially significant hazard to the health and safety of the public.

Mr. METZENBAUM. Mr. President, this amendment requires the Nuclear Regulatory Commission to notify State authorities when it intends to transport shipments of nuclear waste across State lines. The committee has proposed modifying language that would allow the Commission to exempt from these notification procedures the small quantities of medical, laboratory, and other wastes that are specifically considered and deemed not to present a risk to the population. I concur with that language, and I understand that my amendment as modified is acceptable to both the committee majority and minority.

Mr. President, State officials and local citizens are becoming increasingly concerned with the nuclear waste that is being shipped through their States. Just last week, on July 10, 1979, the Governors of three States—Washington, Nevada, and South Carolina—which now accept nuclear waste sent a letter to the Federal Government charging that NRC and the Department of Transportation have shown a "serious and repeated" disregard of existing regulations that control the shipments of nuclear waste. Many shipments of nuclear waste are coming into their States in a badly damaged condition, exposing local populations to unnecessary risk from waste radiation. The Governors added that they will prohibit the disposal of nuclear waste in their three States, which now accept 80 percent of the country's nuclear waste, unless those transportation procedures are improved.

This amendment will help alleviate many of the problems that States are having with nuclear waste shipments. When States are given advance notification of such shipments, as required by this amendment, they can take the precaution of inspecting the shipments, routing the shipments through population centers during off-peak hours, or require shipments to have a police escort across the State. I should point out that this problem first came to my attention when Ohio officials learned much to their surprise that waste from the Three Mile Island reactor was being shipped on the Ohio Turnpike through populous regions of the State without prior notification.

Mr. President, this amendment has been approved by both the House Commerce and House Interior Committees. I urge my colleagues to accept it. I also ask unanimous consent to print an article from the July 11 Washington Post into the RECORD.

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

UNITED STATES GETS ULTIMATUM ON NUCLEAR WASTE

(By David S. Broder)

LOUISVILLE, July 10.—The governors of the only three states now accepting low-level nuclear wastes today gave the federal government three weeks to tighten the enforcement of safety rules on waste shipment, saying that controls must be "drastically improved" if their states are to continue receiving the radioactive materials.

Govs. Dixie Lee Ray of Washington, Richard Riley of South Carolina and Robert List of Nevada, in a letter to the Nuclear Regulatory Commission and the Department of Transportation, said they were acting jointly because of "the serious and repeated disregard" of existing regulations.

The three governors said a blueprint for tightened safety practices must be delivered to them by Aug. 1, to be put in effect a month later, or they will move on their own to "protect the health and safety of our citizens."

The letter did not spell out what actions the governors might take, but Riley noted that he had cut off shipments from the stricken Three Mile Island plant and that List had imposed a temporary blockade on shipments to his state.

Riley, Ray and List issued their ultimatum as the National Governors Association wound up its meeting here with a spirited battle over energy tax policy. After heated debate, the governors said that proceeds of the Carter administration's proposed oil company "windfall profits" tax should be used for conservation practices and relief to hard-hit homeowners, as well for development of new energy sources.

The resolution was approved by 19 of the 28 governors remaining at the end of the three-day session—the bare two-thirds needed for adopting a policy resolution. Earlier, a move to ask Congress to let the oil companies escape the tax by plowing all their earnings into exploration failed by a 14-to-12 vote.

In a preview of the coming congressional debate, Republicans and some oil-state Democrats argued that the profits resulting from decontrol of domestic oil prices should be devoted to expanded energy production, either by allowing the oil companies to retain reinvested profits or by financing government energy efforts from a tax on the profits.

"I concede there is a humanitarian side to the issue," Texas Republican William Clements said, "but relief for the homeowners is a completely separate question."

However, Arizona Democrat Bruce Babbitt said that the oil companies would use the extra profits to "buy up clothing stores and circuses," not to develop new energy sources.

The resolution, as approved, puts the governors on record as supporting the Carter administration's proposal for phased decontrol of oil and endorsing a plowback credit for the oil companies, but includes as beneficiaries of the windfall profits tax energy conservation and "energy emergency impact assistance programs" for hard-hit users of fuel oil.

In another action today, the governors asked Congress for a law setting an 80-ton load limit and 60-foot maximum length for trucks on interstate highways—effectively raising the limits in 11 states. The administration is seeking temporary higher limits as part of the compromise that ended an independent truckers' strike, but the governors said the limits should be lifted permanently as an energy conservation measure.

In their letter to the NRC and Transportation Department, Ray, Riley and List complained about "the total lack of corrective measures" to reduce the hazards involved in the shipment of nuclear wastes.

Riley said in an interview that he and his colleagues were "out of patience" with federal officials and had decided on the joint letter as "the only way to force some action."

They said the plan to be delivered by Aug. 1 must include the dispatch of teams of inspectors to the producers and collectors of nuclear wastes and "the consistent and uncompromising enforcement of sanctions imposed whenever violations are discovered."

For the longer term, the three governors also called for a plan for regional waste-disposal centers. Riley said 80 percent of the nation's nuclear wastes are being dumped or shipped within his state's borders, and he complained that the federal government has taken no effective steps to force states generating nuclear wastes to provide for disposal.

The disposal of low-level radioactive material has become a major point in the broader national debate over the future of nuclear power.

Mr. HART. Mr. President, I share the legitimate, very legitimate, concern of the Senator from Ohio as to the right of the States to be informed of pending shipments of hazardous material, particularly radioactive wastes, through those States so that appropriate officials can monitor the transportation of these materials and can exercise whatever surveillance is necessary when those materials are within their borders.

Of course, there is an increasing volume of radioactive materials in transit and, consequently, it is incumbent, I think, on all of us to insure that appropriate surveillance by every level of government is undertaken.

With the modification of the amendment in accordance with the desires of the committee, I am prepared to support the Senator in this effort and I would urge the adoption of the amendment.

Mr. METZENBAUM. I thank the Senator from Colorado.

Mr. SIMPSON. Mr. President, I certainly concur in the substance of the amendment of the Senator from Ohio. We have also become aware of such transportation activities across my own State. I think if we begin to take the opportunity, here, to give fair warning and notification, we will eventually have better methods of transporting and disposal, certainly after the lessons of Three Mile Island and with a clearer public knowledge of what is happening.

I concur in the amendment.

Mr. METZENBAUM. I appreciate the cooperation of the Senator from Wyoming as well as his helpfulness in suggesting amendatory language to the amendment as originally offered.

I yield back the remainder of my time.

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

Mr. SIMPSON. Mr. President, allowing for the opportunity for Senator BOSCHWITZ to distract me, I yield back the remainder of my time.

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

The amendment was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. METZENBAUM. I thank the Senator from Colorado and the Senator from Wyoming.

Mr. HART. 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. DOMENICI. Mr. President, on whose time?

Mr. HART. Mr. President, I ask unanimous consent that it be in order to have a quorum call without the time being charged to either side.

Mr. DOMENICI. Reserving the right to object, I will not object as long as——

The PRESIDING OFFICER. The Senators are advised that a quorum call is now in progress.

Mr. HART. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HART. Now, Mr. President, I ask unanimous consent that it be in order to suggest the absence of a quorum without the time for the quorum call being charged to either side.

Mr. DOMENICI. Mr. President, reserving the right to object, I personally want to complete this bill this evening, because of plans that I have as I have told the managers of the bill. So I will not agree unless we state that it will not take longer than 10 minutes before this quorum call will be called off. I think we have to notify Senators, but I think we have to set some limit on the time.

The PRESIDING OFFICER. You cannot impose a time limit on a quorum call.

Mr. DOMENICI. He is asking unanimous consent that the time be charged to neither side, and I would object unless it be no longer than 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. That is the objection. I object.

The PRESIDING OFFICER. Objection is heard.

If neither side yields time, the time will be charged equally to both sides.

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

The PRESIDING OFFICER. The Senator will state it.

Mr. HART. What is the parliamentary situation?

The PRESIDING OFFICER. The time is being charged equally against both sides.

Mr. HART. I ask unanimous consent that it be in order to suggest the absence of a quorum without the time being charged to either side.

Mr. DOMENICI. Mr. President, I have heretofore objected, but I will not. It is not my intention that the chairman and the ranking minority member——

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT 357

Mr. WEICKER. 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 Connecticut (Mr. WEICKER) proposes an unprinted amendment numbered 357.

On page 19, immediately after line 16, insert the following:

SEC. 209. No funds appropriated under this Act may be used for the purpose of providing for the disposal of nuclear wastes in the oceans.

Mr. WEICKER. I ask unanimous consent that Mr. Al Stayman of my staff be granted the privileges of the floor during the debate on this legislation.

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

Mr. WEICKER. Mr. President, the amendment you have before you would put a moratorium on the ocean dumping of all nuclear wastes.

The amendment I am now offering will serve to protect the oceans from pollution by radioactive wastes. I am deeply concerned that in the search for new disposal sites for the Nation's nuclear waste we may be tempted to turn to the oceans before we are aware of the dangers of such an action. Now is the time to assess the dangers of such action before there is a critical need.

Currently, title I of the Marine Protection, Research and Sanctuaries Act prohibits ocean dumping of "high-level radioactive waste." However, the definition of "high-level" given in the law does not include many potentially dangerous wastes.

The classification of radioactive waste is extremely complicated.

In addition to the radiation level there are many other factors that must be considered, such as the concentration of particularly hazardous or long-lived isotopes and the chemical state of the waste; for instance, is the waste a stable solid or a corrosive liquid,

Currently, classification as "high-level" and "low-level" is recognized as oversimplistic. The NRC is making an effort to better classify radioactive wastes but still many "grey areas" exist. An excellent example of one of these poorly defined categories is the radioactive water now flooding the Three Mile Island Nuclear Reactor containment building.

The oceans are one of the greatest resources of this Nation, and indeed, this planet. I believe it is an essential precaution to call a moratorium on the dumping of any radioactive wastes in the ocean until they are better classified and studies show that they pose no threat to the seas. Because the United States has not dumped any radioactive wastes in the oceans since 1962, this moratorium should have no immediate impact. However, as pressure increases to find new waste dump sites in the future this amendment will have provided us with foreknowledge of any dangers and will help us to avoid regrettable decisions made in haste.

I urge adoption of the amendment.

Mr. HART. Mr. President, I am extremely sympathetic with the amendment offered by the Senator from Connecticut. I understand and appreciate, and generally agree, with his motives and intentions in offering this amendment. I must say, however, I have several concerns in the way the amendment is drafted in that on the one hand to a certain degree it does tend to duplicate or overlap prohibitions already in the Clean Water Act and Marine Protection Act. Further, it does prohibit funds from being used by the NRC for increased or enhanced research into the whole waste disposal question, including deep-ocean disposal, research which may be necessary to dispose of the arguments of those who favor this.

In other words, I think what the Senator may be doing in this amendment or potentially could be doing, is preventing the kind of definitive scientific evidence from being accumulated which would, in fact, lead to the conclusion which he wishes. That concerns me to a certain degree. For example, the NRC in developing its waste disposal regulations and guidelines may want to draft guidelines or regulations in such a way that, in fact, ocean disposal is prohibited.

In the narrowest construction, this amendment would prohibit that, since no funds could be used. I do not think that is exactly what the Senator wishes to accomplish.

What I would strongly prefer at this point, unless some accommodation can be worked out here, is for the Senator to continue to work with the committee on a comprehensive waste disposal program, which I suppose, on the one hand, keeps options open but, on the other hand, permits funds to be used or included, in a way that would prevent disposal of nuclear wastes in the ocean, if that is the scientific judgment.

Again, I sympathize and support that idea, but we do not have the hearings completed yet. We do not have the best scientific and technical information yet that would support the conclusion that I think this amendment seeks to achieve.

Mr. WEICKER. Mr. President, I say to my distinguished colleague (Mr. HART) that, in a conversation with the ranking minority member of the committee, the language has been suggested that the amendment read:

No funds appropriated under this Act may be used for the purpose of providing for the—

then add:

licensing and approval of any disposal of nuclear wastes in the oceans.

I think that will satisfy the point the Senator raises, which is valid, that investigation of the consequences of such an act should certainly continue. At the same time, the point I am trying to raise is that I do not want somebody willy-nilly dumping in the oceans. What bothers me is that we are protected under the present law insofar as highly radioactive waste is concerned, but low-level radioactive waste is not covered. I think my amendment with new language would do it and cover both points. I should be glad to modify my amendment to include that language.

Mr. SIMPSON. Mr. President, I appreciate the willingness of the sponsor of the amendment to include language which I think does remove one of my principal concerns, the language, "licensing or approval of any disposal of nuclear waste in the oceans."

It is a real concern that high- and low-level waste disposal is one of the real issues of the day that we are going to have to address in the Senate, especially during and after the investigations.

I had another concern, but perhaps that is fleeting, the one that nuclear plants, of course, sometimes have minor very low-level radioactivity discharges that go into water courses through the cooling apparatus. I think that with the Senator's oral clarification that this does not address that, the amendment would be acceptable.

Mr. WEICKER. Mr. President, I certainly do agree in the construction of the legislative history of the comments made by the distinguished Senator from Wyoming. I ask unanimous consent at this time that my amendment be so modified as to include the words "licensing or approval of any" between the words "the" and "disposal."

The PRESIDING OFFICER. The Senator has the right to modify his amendment. Is there objection? Without objection, it is so ordered.

The amendment was modified.

The PRESIDING OFFICER. Is there any other modification of the amendment that the Senator from Connecticut wishes to offer at this point?

Mr. WEICKER. I do not have any further modification, Mr. President. It seems to me that fairly well clarifies the points that have been raised on all sides of the issue, unless somebody else has a suggestion. I do not want to foreclose that.

Mr. HART. Mr. President, the modification is a substantial improvement and, I think, responds to a couple of the observations that the Senator from Colorado is making. Once again, the only hesitation I have is that, while we are in the very delicate process of trying to arrive at what the best nuclear waste disposal sites are, there is the very slim possibility that, under some peculiar geological circumstances, deep-ocean disposal that is hedged about with all sorts of protection might conceivably turn out to be one option, a safer option than even land disposal.

It is that narrow possibility that is of concern. Understanding that this amendment is to the fiscal 1980 authorization bill and that it would have the time constraints of that bill, I am inclined to accept it.

Mr. WEICKER. I thank my distinguished colleagues.

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

Mr. HART. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question

is on agreeing to the amendment of the Senator from Connecticut.

The amendment was agreed to.

Mr. WEICKER. I move to reconsider the vote by which the amendment was agreed to.

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

The motion to lay on the table was agreed to.

Mr. HART. Mr. President, I ask unanimous consent that it be in order to call a quorum with the time not being charged to either side.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

UP AMENDMENT NO. 358

(Subsequently numbered amendment No. 334.)

Mr. McGOVERN. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Dakota (Mr. McGOVERN) proposes unprinted amendment numbered 358, in the nature of a substitute.

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

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

The amendment is as follows:

On page 19, insert the following after line 16:

SEC. 208. Chapter 19 of the Atomic Energy Act of 1954 is amended by inserting the following new section after section 241:

"SEC. 242. Notice to States With Regard to Disposal of Nuclear Waste.—

"a. Except as may otherwise be provided, the Chairman shall notify (and publish such notice in the Federal Register) the Governor, the presiding officers of the various chambers, where applicable, of a State legislature, and where applicable, the Tribal Council of any affected Indian tribe, of its intent to explore a site in such State, or within an Indian reservation, for the purpose of establishing, evaluating, or contracting for construction of facilities intended for the storage or disposal of radioactive materials.

"b. Except as may otherwise be provided, the Chairman shall, after making the notification required by subsection a., and upon the request of the Governor of an affected State or an affected Tribal Council, establish a Federal and State Radioactive Materials Management Commission (hereinafter in this section referred to as the 'Commission') for the purpose of achieving, in an expeditious manner, substantial concurrence between the State, the affected Indian tribe, and the Department of Energy for each proposal made by the Department of Energy regarding site selection, evaluation, contracting, or construction of facilities intended for the management and storage of radioactive materials including high-level defense waste, spent fuel reactor assemblies, transuranic materials and other mid- and high-level radioactive materials.

"c. The membership and procedures of the Commission shall be determined by the Secretary of Energy and the affected State provided that representatives of any affected Tribal Council or affected local governments are included in the Commission.

"d. (1) No Federal agency or its representative shall proceed with exploration for, siting, or construction of a facility for the geologic storage or disposal including test disposal, of high level radioactive wastes, non-high level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, until such agency has been notified by the Governor of such State that the affected State has determined that concurrence has been achieved.

"(2) Any affected State may by joint or concurrent resolution, or by law, or in those States with a unicameral legislature, by single resolution, or by any other powers subject to each State's constitution, in accordance with the procedures of consultation and concurrence established in the affected State, determine whether a facility for the storage or disposal of radioactive materials may be sited or constructed within that State.

"e. The provisions of this section shall not apply to any affected State that is pursuing a consultation and concurrence process that has been approved by the Secretary of Energy prior to the date of enactment of this section.".

Mr. McGOVERN. Mr. President, first of all, I wish to say that this is not a substitute amendment. It is simply a modification of an amendment that I had introduced earlier.

The amendment does not change my original printed amendment except that one new clause is added which protects and preserves the existing consultation and concurrence procedures that are being pursued and have been approved by the Secretary of Energy in certain States.

Mr. President, there has been growing concern over State acceptance of locating federally proposed nuclear waste repositories. I think all Senators have become aware of the sensitivity that our constituents feel on this question of having a particular State or particular part of a State being selected by a Federal agency for the depository of highly radioactive nuclear materials without at least having some voice in that selection, and if agreement cannot be reached, then in the final analysis having the right as a State to reject a particular site.

Over half of the States in our Nation have already introduced and have pending or passed legislation placing controls and restrictions on Federal waste facility siting and transportation. Their actions have been a justified response to the Federal Government's refusal to provide them with a full partnership role in these important decisions.

Mr. President, no one can argue that the disposal of high and midlevel nuclear waste presents an immense problem in this country. The history of nuclear waste disposal is indeed a rather sorry picture. Industry and Government have constantly tossed this issue back and forth with no clear resolution in sight.

The 500,000-gallon accident, comprised of more than 20,000 separate leaks at the Hanford reservation, the 700-gallon leak of high-level waste at the Savannah plant, and other problems all point to the truth in a 1966 National Academy of Science report on nuclear waste that said:

Considerations of long-range safety are in some instances subordinate to regard for the economy of operation.

More recently, the President's own task force on nuclear wastes reported that the technical feasibility of radioactive disposal has been overestimated. So our Nation is in desperate need of an affirmative nuclear waste disposal program.

I am greatly encouraged by the renewed efforts of at least three Senate committees that are now coming to grips with this critical problem. Some of my colleagues have asked me to delay Senate consideration of this amendment in light of ongoing Senate committee hearings.

I must say, Mr. President, I respect all of these Senators enormously who have spoken to me in that vein. Yet my proposal in no way duplicates or usurps the admirable efforts that are being made by other Senators. In point of fact, the amendment we are considering today has little to do with the establishment of a comprehensive nuclear waste disposal policy. That is another and larger question we will have to deal with at considerably more length than we will here today.

This amendment simply guarantees the States a voice in the councils of Federal energy decisionmaking. It does nothing more and nothing less than allow those people who are most directly affected by such far-reaching proposals to exert minimal control over decisions affecting their lives.

When I first offered a similar amendment on the Senate floor 2 years ago some of my colleagues effectively argued that sufficient hearings on State participation had not been held. They expressed considerable concern that a process of State participation be established prior to providing States with the power to reject or approve Federal nuclear waste disposal sites, and those arguments were not without merit.

Today, however, scores of hearings in both Houses of Congress have now been held. The final report of an impressive Presidential interagency task force has been published, and we are not anywhere closer to legislatively affirming a strong State role.

The premise, and much of the text, of my amendment can be found in the testimony that has been offered at previous hearings as well as in the interagency task force report.

The administration and the Department of Energy have already begun to implement a policy of consultation and concurrence with States they are considering for nuclear waste depositories. This amendment simply legislatively authorizes and affirms this policy.

Although some of our colleagues believe that any State role must be part of a comprehensive nuclear waste package, I am convinced we cannot afford to wait any longer. The history of State participation in Federal waste depository siting has been a series of broken promises. If we do not take action now to affirm these promises, we may never have the States' cooperation.

In 1975 the Energy Research and Development Administration inherited the responsibility of recommending and carrying out the Nation's waste management policies. In December of 1976 this agency announced that nuclear waste program efforts would include substantial consultation with State and local governments during each phase of the decisionmaking process.

ERDA then carefully outlined State and local inclusion in the procedure for site selection, establishing reasonable levels of coordination with the States during the ERDA information-gathering phases.

But the final statement, directed at the third phase of the procedure, only stated, and I quote:

ERDA will make a decision regarding the location of a repository.

This has been the theme of almost all nuclear waste facility planning in the years since.

Although Federal agencies have given Governors verbal assurance that States will have some say in the final decision, why can we not give them formal recognition of that assurance? Because we have not made this affirmation, an increasing number of States are taking legislative action to restrict Federal nuclear waste and transportation within their borders.

As I mentioned earlier, the President's interagency task force has also supported that assurance. Their report, which was issued in March of this year, stated, and I quote:

The IRG does not believe that a policy of preference for either exclusive Federal supremacy or state veto is appropriate at this time. The IRG does believe, however, and recommends that the consultation and concurrence approach should be adopted. Under this approach the state has the continuing ability to participate in all activities at all points throughout the course of activity and if it deems it appropriate to prevent the continuance of Federal activities.

This amendment is entirely consistent with the policy objectives stressed by the IRG report. The Department of Energy has already gone on record that they are pursuing this policy.

Unfortunately, the U.S. General Accounting Office has issued an opinion that the Department does not have the authority to actually negotiate State agreements without congressional action. Mr. President, I ask unanimous consent that a letter from the GAO to Congressman DINGELL, the distinguished chairman of the Subcommittee on Energy and Power, be printed in the RECORD. This letter specifically states that the Department of Energy does not have the power to negotiate such agreements without new authority.

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

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C. June 19, 1978.

Hon. JOHN D. DINGELL,
Chairman, Subcommittee on Energy and Power, Committee on Interstate and Foreign Commerce, House of Representatives.

DEAR MR. CHAIRMAN: You recently requested our views on statements made by the Department of Energy (DOE) to State officials regarding the establishment of nuclear waste repositories. In your letter, you express the belief that DOE may have exceeded its authority in giving certain States a "veto" over the establishment of nuclear waste repositories, as you are unaware of any statutory provision authorizing DOE to share decision-making responsibilities with the States. Accordingly, you request our opinion concerning the legal basis for these statements, particularly to the State of Louisiana.

A document entitled "Principles of Understanding," dated February 27, 1978, was signed by the Governor of Louisiana and by the Deputy Secretary of DOE. In it—

"* * * the parties * * * agree that to the extent permitted by law, they will use their best efforts to adhere to the following policies and practices * * *:

"8. *Nuclear Storage*—All Federal Government studies relating to nuclear waste disposal in the Vacherie Salt Dome in Webster Parish and the Rayburn's Salt Dome in Bienville Parish will be subject to this stipulation: *the Department of Energy will not construct any nuclear waste repository for long-term disposal in Louisiana if the State objects.* Studies of possible areas in Louisiana as well as in other states would continue with some test drilling which will always be preceded by complete discussions with state officials." (Emphasis added.)

Included with your letter were copies of correspondence with New York and New Mexico State officials. The March 22, 1978 letter from the DOE Deputy Secretary to the Governor of New York had the stated purpose of clarifying DOE's position on State participation in establishing nuclear waste repositories. The letter said:

"Let me reaffirm our conversation of last week that it is Secretary Schlesinger's view that the proposed location of nuclear waste geologic disposal facilities will be subject to State concurrence. We have not yet formulated specific views on the most appropriate procedures for implementation of this assurance. At the appropriate time this question would be approached initially through discussions between DOE and State officials. * * *"

In a letter to the New Mexico Attorney General, and in a separate letter to the Lieutenant Governor of New Mexico, both dated March 15, 1978, the Deputy Secretary gave similar assurances.

The Department of Energy Organization Act of August 4, 1977, 91 Stat. 565, Pub. L. No. 95-91, established DOE in the executive branch by the reorganization of energy functions within the Federal Government. Section 301(a) of the Act included, generally, the transfer to the Secretary of Energy of all functions formerly vested by law in the Administrator of Energy Research and Development, in the Energy Research and Development Administration (ERDA), and in officers and components thereof.

DOE, as successor to ERDA, is responsible for nuclear waste management, including the establishment of facilities for the storage and ultimate disposal of nuclear wastes (other than those limited categories covered by NRC-State agreements under section 274 of the Atomic Energy Act of 1954). In accordance with sections 102 and 103 of the DOE Organization Act, *supra*, it is to provide for public participation and cooperation with State and local governments in the development of national energy policies and programs and to give due consideration to the needs of a State where a proposed action conflicts with the State's energy plan. However, we are not aware of any statutory authority which extends the State's participation in the process of establishing nuclear waste facilities to the exercise of a right of nonconcurrence or "veto" power so as to prevent the selection of a particular site as a nuclear waste repository. Specific statutory authority would appear necessary for this purpose since the vesting of authority in DOE by the 1977 Act does not include the right to redelegate or share the nuclear waste disposal site selection authority with the States.

The lack of such authority, before the enactment of the DOE Organization Act, was recognized in Senate debate on the 1978 ERDA authorization bill. Senator McGovern offered an amendment to the bill which would have amended the Energy Reorganization Act of 1974 to prohibit contracting for or construction of a radioactive waste storage facility in the event a State legislature by resolution or law, or a State-wide referendum, disapproves of the use of particular site in the State. After a colloquy regarding the advisability of adopting the amendment, a majority of the Senate voted to "lay it on the table" (123 Cong. Rec., pp. 22366-22372 (July 12, 1977)) and it was not subsequently acted upon. We find nothing in the DOE Organization Act, enacted thereafter, which would support a conclusion that the States could be given a "veto" power by DOE.

Pursuant to the request contained in your letter of April 21, 1978, to the Secretary of Energy, we were furnished with copies of DOE documents relating to the establishment of permanent nuclear waste repositories. Included was a memorandum prepared in the Department's Office of General Counsel on March 13, 1978, which we are informed represents that Office's current legal opinion. The memorandum concluded that the Secretary of Energy under existing law does not have the legal authority to enter into a binding agreement with a State pursuant to which the State would have the power to veto or forbid the establishment of a proposed nuclear waste repository in the State.

We agree with this view. In the absence of statutory authority permitting such action, we believe that any agreement by the Secretary of Energy, or any of his subordinates, with a State to make DOE's choice of a nuclear waste repository subject to rejection or disapproval by the State, is legally unenforceable.

In our view, however, the Secretary has not attempted to enter into a legally binding agreement with the State of Louisiana. The "Principles of Understanding," signed by DOE and the Governor of Louisiana, are described therein as "policies and practices," which will be followed "to the extent permitted by law." This is the kind of language typically used to set forth a mutual code of behavior which remains in force only so long as the parties agree to adhere to it. In basic contract hornbook law, it would be described as a "statement of intention," as opposed to an offer and acceptance with mutual obligation, or even a unilateral agreement on which the second party had a right to rely. In view of the carefully worded preamble to the DOE-Louisiana document, we do not believe that it could be considered by the parties to be a legally binding agreement. (These comments are, of course, equally applicable to any agreements with other States of similar tenor.)

In reply to your letter of April 21, 1978, the Deputy Secretary of Energy, on May 11, 1978, stated as follows:

"While we are continuing to improve our understanding of the technical issues that will have to be resolved with the Nuclear Regulatory Commission, the identification of potentially-suitable sites is a prime concern. This is a national issue with substantial local impact and we believe we should, as a matter of policy, act in a manner consistent with the desires of the state in which these facilities will be located. This issue was, as you know, discussed on the floor of the Senate last year and we recognize that the question of state participation in the siting process is a subject of pending Congressional proposals.

"In this connection we recognize that

Congress has placed responsibility for final siting decisions upon the Department. Therefore, what we have done is to advise the states that the Department would not make a final decision to proceed with construction of a facility within a state if that state had indicated that it did not concur. In the course of my recent trip to New Mexico, I drew the distinction between the policy of respecting a state's non-concurrence and delegating to the state the final decision making authority in the form of a legally binding state veto over the siting decision, noting that I could not offer the latter."

From the foregoing, it appears that DOE's current policy is that of "respecting a state's non-concurrence." We understand this to mean that if, during DOE's consideration of a particular repository site, a State (through its Governor or otherwise) expresses disapproval of the proposed siting choice, the Department will not as a matter of policy choose the location in question, even though there is no legal requirement to abide by the State's wishes. While such a policy stance is not legally objectionable, the same considerations raised by Senator Church in reference to Senator McGovern's proposed amendment of the Energy Reorganization Act of 1974 to afford the States veto power over repository site selection, appear applicable:

"* * * for years now we have been trying to find a permanent depository for the wastes we have already created. As yet, we have not found a State government that has been willing to accept that depository. I think that it is a suggestion of what lies in store for the country if we adopt this amendment in its present form. The problems we face would become unsolvable." (123 Cong. Rec., p. 22371 (July 12, 1977).)

Apparently, there are only a limited number of sites in a few States which are suitable for a permanent repository. Under the above-stated DOE policy it appears that if each of the States were to object to any site selected in that State, none would be available for establishment of the repository. In such circumstances, if DOE is to exercise its authority to establish waste storage facilities, it would have to abandon its policy and choose a location without regard to the State's objection (as it is legally free to do). Failure by DOE to so act would mean, in effect, that the site selection decision would have to be made by the Congress.

Sincerely yours,

R. F. KELLER,
Acting Comptroller General of the United States

Mr. McGOVERN. My amendment would simply provide the Department with this much needed authority.

In sum, Mr. President, there are several compelling arguments in favor of this amendment. First, the consultation and concurrence process implies that any final State decision will follow—not precede—a full presentation of technical, engineering and environmental information associated with the project. The process guarantees that States will have the benefit of factual data on which to base their decision.

Second, the authority to say "no" allows States to negotiate with the Federal Government from a position of strength. Many States may have site specific characteristics to which Federal officials have been insensitive. For them, a veto power may prove essential in negotiating proper site standards and equity compensation measures.

I am reminded of former governor Mike O'Callaghan of Nevada who endorsed consideration of his State as a waste storage site but went on to say:

The State must have authority to veto the use of storage and transportation facilities or other items that may amount to a poor use of state resources or represent a real threat to the health, welfare and safety of state residents. Without this power I would never agree to voluntary location of a facility within this state.

Mr. President, I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks an article written by the former Governor of Nevada discussing this subject of State participation.

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

(See exhibit 1.)

Mr. McGOVERN. We are now long overdue in defining a States role in the waste facility siting process. It is unconscionable that we have denied them a partnership in decisionmaking that will affect their very lives. I have every confidence in the ability of States to use such power wisely and in the best interest of their citizens of the Nation.

Without this authority, we have not only denied them basic rights—but we will also have dangerously jeopardized any hope for a safe and publicly accepted waste disposal program.

Mr. President, let me say that I have expressed very strongly to the distinguished manager of the bill, my friend and colleague, the Senator from Colorado (Mr. HART), who has done such splendid work in this whole field of energy and environmental matters, that I would hope the vote on this amendment would not have to come today. A number of cosponsors of the amendment, comprising some 18 Members of the Senate on both sides of the aisle, are necessarily absent today, the Senator from Nevada (Mr. LAXALT), who was the first cosponsor of the amendment with me, among them.

So, while I have been more than happy to accommodate the managers of the bill in leaving the SALT hearings to make my presentation today, and perhaps even to complete the debate today, I would hope the vote could go over until tomorrow.

I have discussed this matter also with the distinguished majority leader (Mr. ROBERT C. BYRD), who said he hoped the leadership would be cooperative in this concern.

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

EXHIBIT 1

STATE INPUT INTO THE DECISIONMAKING PROCESS

(By Gov. Mike O'Callaghan)

The course and direction of this Nation's future development is going to be shaped by the energy policy decisions made during the next several months. Right now we have the opportunity to address the situation affirmatively and to make decisions based on the best information available to us—or we can allow statistics to make the decisions for us, and wait so long that there are no policy decisions left.

A review of this Nation's energy situation is frightening. Our energy supplies have been outstripped by demand. The ownership of a majority of our energy resources are in the hands of a few corporate giants. Public reaction against apparent vertical integration in the production and distribution of petroleum products is developing. The oil and natural gas industry has surpassed ownership of coal companies, oil shale, geothermal, and coal leases.

The lack of a defined national energy policy has left the formulation of energy priorities in the hands of private enterprise and of increasingly hostile foreign energy suppliers. The legislative and executive branches of the federal government must address the formulation of a national energy policy in a forthright, open, and expeditious manner. In addition, Congress should consider investigating the hold private enterprise has on the ownership and development of our present and projected energy resources. A Nation with the greatest natural, technological, and human resources in this world need not stand still for domestic or foreign extortion. But that is where we are headed with the present hodge-podge of conflicting, disconnected federal energy programs and proposals.

I believe this Nation possesses the capacity to resolve our energy problems if we address them now. Delaying formulation of an integrated energy policy will eliminate some alternatives, and may greatly alter or destroy both the quality and style of American life in the future.

The development of nuclear energy is a perfect example of the need for direction in our effort to define energy alternatives. The benefits and risks involved in nuclear development are equally high, but a carefully deliberated decision regarding the advisability or necessary of actively expanding nuclear usage for electrical generation has never been made.

The course of nuclear development has been formulated by interested groups, who may or may not have predicated their decision on a realistic analysis of all the costs and benefits of nuclear energy.

In the past, Congress and the Atomic Energy Commission may have felt the available data was insufficient to draw valid conclusions. That is no longer the case. Through the years, probability studies have probed the possibility of nuclear accidents. Today, 15 years of nuclear powerplant operation give a firm base for comparison and study. Hundreds of shipments of nuclear fuels have taken place, millions of gallons of nuclear wastes have been stored, and the actual and possible effects of radiation exposure have been the subject of widespread research. Hard information is now available upon which decisions can be made.

It is time for us, individually and collectively, to demand an outline of our energy alternatives and formulation of a national energy policy. Other countries have made this decision and commitment. We must do the same. The decision is needed to form a vantage point from which we can evaluate where we are and where we are going.

NEVADA'S EXPERIENCE WITH NUCLEAR WASTE

I think this consideration is an appropriate opening to any discussion of energy development. Whatever course the development of nuclear energy takes, the transportation, storage, and disposal of nuclear materials is one of the most serious and challenging issues of our time.

It is essential that we address transportation, storage, and disposal of radioactive wastes as a single issue. Unsafe storage with safe transportation is unacceptable, as is safe storage without an aggressive, well-financed effort to develop or locate suitable disposal sites. This is an area where the guarantees have to be up front and clear, not simply implied through hollow promises.

The State of Nevada recently had an opportunity to venture into this field in review and analysis of the environmental statement regarding management of commercial high-level and transuranium radioactive wastes. I would like to highlight some of the

areas that our experience indicated need immediate clarification or reform.

There must be an immediate reexamination of federal-state interaction regarding regulation and control of nuclear development. With the exception of the licensing and control of a few low-level storage facilities, this field has been preempted by the federal government, for obvious reasons.

The hazards posed by the transportation, storage, and disposal of nuclear materials are such that local residents want and are entitled to the control of such activities, by authorities based more closely to home.

Assurance coming from a federal government which many feel is unresponsive to local feedback is not going to convince the American public that a particular proposal is safe. I believe the AEC now recognizes this problem.

State government must be involved in decisions regarding the development of nuclear programs and proposals. Without the involvement and subsequent support in those cases where it is appropriate, this Nation's nuclear effort will flounder.

Transportation of waste materials must be closely regulated with real cooperation between federal, state, and local government.

There are questions which must be answered at the outset. Questions such as: What types of transportation will be utilized? Who will own and inspect the transportation facilities? How will routes and times of transit be scheduled? What special training will drivers or engineers transporting the products be required to take? And, most importantly, How do we insure the enforcement of those rules and regulations which are adopted?

Transportation of radioactive materials through isolated areas with limited road facilities, and through high-density population areas, presents problems that must be addressed now.

In the event of an accident, who pays? State government cannot afford the monumental costs that could stem from a radioactive cleanup operation. It is essential that the Price-Anderson Act be extended and consideration be given to applying it to all operations involving the use or transportation of radioactive materials.

STATE-FEDERAL COOPERATION NECESSARY

The lack of meaningful cooperation between federal and state government was indicated by the AEC's waste storage proposal. Instead of having participated in the development of that proposal, or even having been supplied with detailed information prior to the release of the draft statement, Nevada was confronted with a 45-day period within which to evaluate a 600-page proposal that could have an overwhelming emotional and economic impact on this State. I had 45 days in which to form a committee to review the proposal, to solicit recommendations from that committee, and to evaluate those recommendations and transmit comments. We were given 45 days to evaluate a document that had taken several years to prepare.

State and local government must be authorized to participate on a co-equal basis in developing, regulating, and monitoring nuclear storage facilities within individual jurisdictions. The day of allowing the federal government to present us with an imposed decision is gone. All federal agencies planning non-military nuclear projects should now be required by law to advise the State or States involved of the proposed project. State feedback in the decision-making process should be sought. This will at least advise both parties of what to prepare for.

In addition, the time period for formal comment on federal proposals involving the complex issues raised by nuclear development should be a minimum of six months. Hearings in these matters must voluntarily be located near or in those areas that are going to be directly affected.

I am pleased the AEC hearing has been continued with a session in Salt Lake City. But how the AEC justified the initial plan of holding a hearing regarding the States of Washington, Idaho, and Nevada only in Germantown, Maryland, is beyond me. The geographic locale of the hearing place itself tended to curb comments that the AEC was seeking. I am certain that AEC representatives in Nevada, New Mexico, California, Washington, and Idaho would have been very willing to host the hearings.

Once a nuclear energy facility proposal is released, the sponsoring agency must hold hearings in the population centers of the areas involved. Public explanation, information and disclosure must be aggressively practiced prior to the deadline for public comment. Holding hearings after the time for public comment has passed, or prior to the site-specific statement, is beside the point.

After a specific location is chosen, state and local government must be involved in preparation and development of the site-specific environmental impact statement. At this point, preparation of such a statement by a federal agency without state and local input is nonsense. Factors such as soil erosion, local flora and fauna, and meteorological, hydrological, and seismological patterns are particularly within the expertise of state and local—not federal—agencies.

Furthermore, all construction should be subject to inspection by an appropriate state agency. There must be a guarantee—and I emphasize guarantee—that construction correspond to the technical specifications. Joint inspection is the best single way to accomplish that objective.

After construction is completed, off-site monitoring should be a joint operation. The experience of Washington and Colorado at Hanford and Rocky Flats, respectively, indicates that there is a need for outside monitoring. State monitoring could coincide with existing or proposed federal monitoring within the jurisdiction, if actual participation in the monitoring process is authorized. Otherwise, a separate state monitoring facility would be a necessity.

A basic question in the area of state involvement is funding. The development, construction, regulation, and monitoring of waste and disposal facilities is one area where the federal government should use the proceeds from such facilities to fund state participation. The State or States that become storage or disposal sites will be providing a service to the entire Nation. They should not be forced to accept a long-term economic burden of assuring the safety of its residents from any danger associated with the facility.

All of these conditions, and the necessary rules and regulations pertaining to them, must be set forth in a formal, written agreement. Informal agreements or understandings are not enough. Possible changes in federal or state government leadership, or changes in policy or attitudes, make informal agreement or understandings impractical.

A chief executive of a State who bows to development of a nuclear storage facility without demanding and insuring that all understandings are written would do a disservice to his State. He has a right to the knowledge that citizens of his State have been afforded opportunity for full and open discussion of the proposal through extensive public hearings throughout his State. In Nevada, such a process would require at least 10 such hearings.

STATE VETO POWER ESSENTIAL

In addition, the chief executive of the State where such facilities are to be located must be given the power to veto specific site locations, or to terminate further consideration of the State as a site for such a facility. I firmly believe that the veto power is essential.

Let me cite some specific instances based on Nevada's review of the proposal to locate a storage facility in this State.

I endorsed the finding that Nevada should continue to be considered as a site for waste storage if air cooling is utilized; rail transportation avoiding population centers is established; state and local authorities are allowed to cooperate in and contribute to a site-specific environmental impact statement; adequate radiation safeguards for storage and transportation can be developed and will be implemented; and, finally, if hearings are held throughout Nevada.

However, if it were decided the Nevada Test Site should be used, but a water-cooled system were proposed, I would withdraw any endorsement. Diverting the quantity of water required to cool the nuclear wastes from other uses in an arid area where every drop of water is valuable and with the increased probability of supply disruptions with its attendant dangers, is a course of action that we would have to fight with every legal and political tool at our disposal.

Or, if the proposed transportation method included a rail-to-truck transfer, or rail transportation that intersected a populated area, I would oppose the plan. Given the limited road system in this State, the increase in accident probability in transferring from rail to truck is too great to allow approval of truck transportation. Likewise, rail transportation through metropolitan Las Vegas would be unacceptable.

Should information come to light indicating that the radiation safeguards were going to be inadequate, that Price-Anderson was not going to be extended, that local participation was to be foregone, that the wastes were to be stored in liquid form, or other measures that eroded the safety measures that are necessary to protect humanity and environment, Nevada must have recourse to an expeditious method of terminating planning involving land within the boundaries of this State.

The State must have authority to veto the use of storage and transportation facilities or other items that may amount to a poor use of state resources or represent a real threat to the health, welfare, and safety of state residents. Without this power, I would never agree to voluntary location of a facility within this State. Without state cooperation, the federal government would have to force-feed the proposal, a method none of us should consider.

What assurance does a State that accommodates a storage facility have that a permanent disposal site will be developed in the time indicated by the AEC in the environmental statement? Before a retrievable surface storage facility is located in any State, an independent group should undertake a technical analysis of the status of permanent disposal systems. If that technical survey failed to support the proposition that a suitable disposal facility can be developed with present technology, I would not endorse location of a control storage unit in this State.

The issue of radioactive waste disposal must be addressed now by all parties if the development of nuclear energy is going to proceed in a manner that affords protection of the public interest. I trust these remarks will help serve as a framework within which the major questions concerning the transportation, storage, and disposal of nuclear wastes can be analyzed.

Mr. HART. Mr. President, I could not agree more with the Senator from South Dakota that the preeminent scandal in the evolution of this country's nuclear

power industry is the failure on the part of that industry, Government agencies, and others to resolve the issue of the disposal of nuclear wastes produced by that program.

But, Mr. President, I must oppose the amendment offered by the Senator from South Dakota, because I think it is premature and inappropriate. Congress is presently considering, and I think even more quickly than the administration, the issue of long-term disposal of nuclear wastes. To take a step such as the step which the Senator from South Dakota proposes today—providing an absolute veto to each State—would in my judgment seriously cripple and hinder those deliberations in a variety of ways.

What is needed, Mr. President, is a comprehensive nuclear waste management program, and we have only begun to develop such a program both in Congress and in the executive branch. A procedural decision of the sort we are being called on to make today would seriously preclude a variety of options open to us. I believe one of the most serious waste problems that our society faces, or any society has ever faced, is what to do with the highly toxic, highly radioactive waste produced by the nuclear energy program. It is of the utmost consequence to ourselves, to our children, to their children, and to every future generation.

We, along with the best technical minds of the country, are exploring the varieties of technologies available to us to dispose of this waste. To offer each State in the Union the option of precluding the disposal of that waste in that State, regardless of the geology, the physical environment, or the opportunities available in any State would, I think, seriously hamper the search for a final solution.

This is a national problem, Mr. President, and it requires a national solution. It cannot be solved by 50 individual States making their own determinations as to whether they are willing or not willing to accept this waste.

Practically everyone in this country, directly or indirectly, benefits from nuclear power—many directly by the electricity they receive from nuclear powerplants in their States, many indirectly because of the energy that those plants free for use elsewhere.

Because of that, Mr. President, I think it would be very unwise public policy to permit a State to take advantage, directly or indirectly, of the benefits of nuclear power, and at the same time turn its back on the consequences and the costs. The costs are serious in terms of public health and safety, and they are serious in terms of straight economic and fiscal impact. I do not think it behooves any State in the Union to take advantage of the benefits of nuclear power, which I have indicated that every State, in one way or another, has, and then decide it does not want to participate in paying the price.

I repeat, this is a national problem, and the solution requires a precise balance of national and State interests. Suppose our society were to decide that a particular site in a particular State was the best place, far superior to any other site in this country, for waste disposal, and yet that site cannot be utilized because the State decided it did not want those wastes deposited in that State, even though the citizens of that State may have received direct benefits from the nuclear reactor. That kind of stand, I believe, is unfair and unjust to all the citizens of this country.

I completely agree with the Senator from South Dakota that the States should participate in the decisions. But these are not decisions that the States should unilaterally make. They will affect the lives of citizens throughout this country. Nor can we take these decisions exclusively unto ourselves. The States should be involved, and there should be mechanisms to guarantee that Governors, State legislators, and citizens of the States alike are equally involved. But to guarantee a flat veto to the States in these circumstances, goes well beyond involving the States in the difficult decisions. It gives them the power of ultimate decision over what should be done with these wastes.

Finally, Mr. President, I think we have to consider the situation where perhaps a site on Federal property, turns out to be the best place to locate the disposal of nuclear wastes. As the Senator from South Dakota well knows, many States, particularly in the West, are public land States, that is to say there are vast areas in those States, in some cases more than a majority of the acreage in the State, owned by the Federal Government. Would the amendment of the Senator from South Dakota deny the Federal Government the right to use those lands for the disposal of these wastes?

Mr. President, these are very serious and important issues. I could not agree more with the purpose and motive of the Senator from South Dakota in trying to facilitate and accelerate the pace at which this decision is made. It must be made. These wastes are accumulating. It is estimated that in the next 10 years or so they will quadruple in volume. They obviously will increase in toxicity and in danger.

Consequently, in my judgment, and I think on the part of many in our committee, we feel this is one of the most important issues that this Congress and future Congresses and the country will have to face. In comparison to other dangers, the consequences could not be more long lasting.

I would hope that the Senator from South Dakota and other Senators would withhold a decision on this matter, a decision that well could tilt the equation in the wrong direction and deny us the very solutions that I think the Senator from South Dakota and many other Senators wish to have.

I reserve the remainder of my time.

Mr. COCHRAN. Will the Senator yield me 5 minutes?

Mr. McGOVERN. I yield.

Mr. COCHRAN. Mr. President, I am pleased to rise in support of the amendment by my distinguished colleague from South Dakota.

Essentially, the issue involved in this amendment is whether the States should be allowed to participate in the determination of whether nuclear wastes are to be deposited and stored within their boundaries, or whether the Federal Government should have sole power to make that determination for them. I believe that the States have a legitimate interest in this question. That ought to be recognized by the law.

I am aware of Energy Secretary Schlesinger's announcement that no waste is to be buried without the approval of the subject State's government. However, he has not satisfied me as to how that approval might be gained, and, consistency at DOE being in as short supply as gas these days, who knows how long that policy might continue to be followed?

A number of States have enacted legislation purporting to give themselves some control over either the storage or transportation of nuclear wastes within their borders. Mr. President, I ask unanimous consent that a list of those States be printed in the RECORD at this point.

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

STATE LAWS AFFECTING STORAGE OR TRANSPORTATION OF NUCLEAR WASTES

Alaska—S-45.—A general amendatory bill relating to radiation control in the Department of Health and Social Services. Adds a new section "Facilities Siting Permit Required" which prohibits construction of a nuclear fuel production facility, utilization facility, reprocessing facility, or nuclear waste disposal facility in the State unless a permit is obtained from the Department of Environmental Conservation. No permit can be issued unless the legislature, local government and governor have approved the permit. (Approved 7-17-78)

California—A-1593.—Revises the State Code to require that the State Department of Health issue regulations and permits governing the transport, handling, processing, storage or disposal of hazardous wastes. (Signed by governor 9-22-77)

Colorado—SM-3.—Memorializes the U.S. Congress, the president and ERDA to exclude Colorado from consideration as a potential site for a high-level radioactive waste repository. (6-3-77)

Delaware—H.R. 124.—This House Resolution requests the Delaware Congressional delegation to support S. 2761 which gives the states veto power over waste repositories. (4-14-78)

Hawaii—SR-68.—Expresses concern over the proposed disposal of radioactive wastes in the Pacific Ocean 600 miles north of Hawaii. Requests the U.S. Environmental Protection Agency to halt any plans for undersea disposal until their safety is "proven beyond any shadow of doubt." (4-5-76)

Louisiana—H-14.—Prohibits the use of salt domes in Louisiana as temporary or permanent disposal sites for radioactive wastes. Requires prior notification of the House and Senate Natural Resources Committees and the Department of Natural Resources for suitability testing of salt domes and subsequent notification of results of the studies so they can "determine the advisability of removing, continuing, or extending the prohibitions and limitations." (7-5-77)

Michigan—S-144.—States that "Radioactive waste may not be deposited or stored in this state." The ban does not apply to: facilities at educational institutions, spent storage pools at nuclear power plants, mill tailings from uranium mining within the state, medical uses of radioactive material, temporary storage of low-level waste for

not more than 6 months or the storage of waste which was being stored before January 1, 1970. (4–14–78)

Minnesota—H–1215.—Prohibits the construction or operation of a "radioactive waste management facility" within Minnesota unless authorized by the legislature. (June 2, 1977)

Montana—H–254.—Prohibits the disposal in Montana of large amounts of radioactive materials produced in other states. (March 21, 1977)

New Mexico—H–106, 360, 500 and 527.—No person can store or dispose of radioactive waste until the state has concurred in the creation of the disposal facility. Creates a radioactive consultation task force to negotiate with the federal government in all areas relating to the siting, licensing and operation of disposal facilities for high, low and transuranic waste. Creates a joint interim legislative committee to make recommendations on the consultation and concurrence process, including procedures, methods and times to the next session of the legislature. The committee is to consider the applicability of Price-Anderson, the transport of the material, compliance with NEPA and other things. (April 6, 1979).

North Dakota—S–2168.—Bans the disposal of radioactive waste which has been brought into the state for that purpose in North Dakota unless prior approval granted by legislature. (March 8, 1979)

Oregon—S–272.—Bans the establishment or operation of radioactive material waste disposal sites within the state. The previous ban would have expired January 1, 1978. (July 27, 1977)

South Dakota—H–822.—Bans the "containment, disposal or deposit of high-level nuclear wastes, radioactive substances or radioactively contaminated materials or the processing of high-level nuclear wastes" within the state unless prior approval is granted by the legislature. Exempts uranium ore and mill tailings from the provisions of the act. (April 16, 1977)

Utah—HJR–15.—Memorializes the president, U.S. Congress and ERDA "to immediately take all necessary actions . . . to totally fund and implement a program to insure (sic) immediate firm action, for the removal of radioactive tailings at the now defunct Vitro Chemical Company plant. . . ." (January 26, 1978)

Vermont—H–261.—Bans the construction or establishment of a high-level radioactive waste repository within Vermont unless the General Assembly approves it, through either a bill or joint resolution. (April 26, 1977)

The following states have enacted laws governing the transportation of radioactive waste materials:

Arkansas—Advance notification; regulatory authority.

California—Permit required.

Connecticut—Permit required.

Florida—Advance notification.

Illinois—Regulatory authority.

Kansas—Regulatory authority.

Louisiana—Spent fuel and high-level waste shipment banned.

Maryland—Bond and permit required.

Massachusetts—No travel permitted on Massachusetts Turnpike.

Minnesota—Advance notification.

Nebraska—Regulatory authority, insurance requirements.

New Jersey—Permit required.

New Mexico—Regulatory authority, route restrictions.

New York—Regulatory authority.

North Carolina—Advance notice of shipments of spent fuel.

Oregon—Advance notification.

Rhode Island—Permit required.

Vermont—Advance notification.

Virginia—Advance notification and monitoring.

The following localities have enacted ordinances governing the transportation of radioactive waste materials:

New London, Connecticut—Spent fuel shipments banned.

Miami, Florida—All radioactive shipments through Port banned.

Chicago, Illinois—High enriched uranium and plutonium banned from O'Hare airport.

Wichita, Kansas—Routing around city recommended.

Plymouth, Massachusetts—All shipments banned.

Wendell, Massachusetts—Certain shipments banned.

Carteret, New Jersey—Waste shipments banned.

New York, New York—Spent fuel shipments banned.

Suffolk County, New York—Prior notice required.

Beachwood, Brooklyn, Euclid, Lakewood, Mayfield Village, Olmstead Falls, Richmond Heights, Shaker Heights and South Euclid, Ohio—Spent fuel shipments banned.

Mr. COCHRAN. Serious questions exist as to whether the Federal statutes and regulations governing nuclear waste management preempt State laws in these areas.[1] GAO has recently expressed its opinion that congressional action is necessary to authorize State participation in this issue area. I believe that we should give the States express authority to participate in the decisionmaking process and thereby help settle the question of preemption.

Mr. President, the Federal Government has been aware of the problem of militarily produced nuclear waste storage for over 30 years, and for over 20 years the Federal Government has been trying to solve the problem of commercially produced wastes. Last year, a DOE report stated that it would probably be anywhere from 1988 to 1993 before permanent solutions to these problems could be found. In my view, this uncertainty and difficulty underscore the reasonableness of the amendment we are considering.

The Federal Government has been searching for stable geologic formations that are suitable for nuclear waste storage in more than 40 States. I have been following closely NRC studies of proposed storage sites in saltdome formations in south Mississippi. A recent Interagency Review Group report on Nuclear Waste Management in March, however, indicates that saltdomes, are far from perfect as waste sites. I believe one statement in the report best summarizes why I support this amendment. In the discussion of potential repository sites, after stating that we do have the technology to identify potential sites "for further investigation," the report goes on to say:

> Reliance on conservative engineering practices and multiple independent barriers can reduce some risks and compensate for some uncertainties. However, even at the time of decommissioning, some uncertainty about repository performance will still exist. Thus, in addition to technical evaluation, a societal judgment that considers the level of risk and the associated uncertainty will be necessary. (p. 42)

To repeat, "a societal judgment * * * will be necessary." That is what this amendment provides.[2]

The people have a right, Mr. President, to have a direct voice in this issue. The question of nuclear waste storage is too sensitive, too fraught with uncertainties and risks, to be left solely up to bureaucrats and scientists. I do not believe they are the sole repositories of wisdom here. The people who live around these selected sites and the generations that follow them are the ones who will have to live with the rightness or wrongness of any decision made. It is only fair that they be given the right to particiapte in making the decision.

I thank the Senator from South Dakota for yielding.

Mr. McGOVERN. I thank the Senator for his remarks.

The PRESIDING OFFICER Mr. HEFLIN). The Senator from Wyoming.

Mr. THURMOND. Will the Senator yield?

Mr. SIMPSON. Yes, I yield.

Mr. THURMOND. Mr. President, I would like to express my opposition to the amendment to S. 562, the Nuclear Regulatory Commission authorization bill, offered by my colleague from South Dakota. His amendment would give each State an absolute veto over the siting of a nuclear waste repository within its boundaries. There is language in this amendment of which I approve, regarding the establishment of a task force of Federal, State, and local officials and regarding the objective of State concurrence; however, the bottom line of the McGovern proposal is that the Federal Government cannot proceed with any project for storage and disposal of nuclear waste materials unless the repository State has detemined that its objections, if any, have been resolved.

Mr. President, I strongly sympathize with the basic objective of the McGovern amendment. I firmly believe that the role of State and local officials in decisions of this type must be formalized by legislation and significantly strengthened. Public acceptance of and confidence in such waste facilities can never be achieved in the absence of an open decisionmaking process involving Federal, State, and local governments. I do not, however, support giving to each State an absolute veto over the siting of nuclear waste facilities because I do not believe that the ultimate choice should rest with the States alone. Nuclear waste storage is clearly a matter of national concern.

The final decision with regard to the location of nuclear waste repositories should rest at the Federal level after extensive, formal participation by State and local officials. My concern is that giving such power to State officials alone could result in an exercise of that power

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[1] Preemption rests upon the Supremacy Clause of the Constitution: art. VI, cl. 2.

[2] FYI—The IRG report specifically recommends against "state veto," characterizing it as counter to a desired "ongoing dialogue and cooperative relationship between the federal government State authorities." The IRG report supports "consultation and concurrence"—"Under this approach the State effectively has a continuing ability to participate in activities at all points throughout the course of the activity and, if it deems appropriate, to prevent the continuance of Federal activities. (p. 95)

in a manner contrary to our best national interests because of the tremendous political pressures involved.

Mr. President, there are very few issues of greater concern to my constituents in South Carolina than the appropriate resolution of this Nation's nuclear waste problems. My State is presently the Nation's principal storage center for nuclear waste. Approximately one-third of all high-level waste and one-half of all low-level waste material are presently being stored within South Carolina's borders.

The people of my State are very concerned about this situation. They resent the lack of input which they have had in decisions to place such waste there and feel that South Carolina has done far more than most States to further our Nation's nuclear energy program. While I share their feelings and concern, I remain firm in my belief that the decision on the siting of nuclear waste repositories should not be committed to the States alone.

Gov. Richard Riley of our State, who has continually expressed his concerns about the role of the States in nuclear power decisionmaking and about the large amount of nuclear waste already stored in our State, does not favor an absolute State veto in this regard and has so stated to the members of the South Carolina legislative delegation.

Finally, I would like to point out that extensive hearings will be held later this month in both the Government Affairs Committee and the Energy and Natural Resources Committee on the very issues which are now being discussed. I would urge my colleagues to vote against the McGovern amendment at this time and to let the legislative process take its course. I believe that we should have the benefit of the testimony presented at these hearings and careful consideration of the issue by these committees, rather than precipitously attaching an amendment of this nature to the Nuclear Regulatory Commission authorization bill.

Mr. SIMPSON. Mr. President, I admire the Senator from South Dakota for his long commitment to this issue. I rise to oppose the amendment. State participation in the permanent storage and disposal of nuclear waste is an issue that will shortly be considered by three Senate committees—the Committee on Environment and Public Works, the Committee on Energy and Natural Resources, and the Governmental Affairs Committee. Each of these committees will be examining comprehensive nuclear waste legislation during the next 3 months. It is certainly one of my most serious personal concerns with regard to the use of nuclear energy. I have stated that publicly and I believe that that is the issue we must address.

One aspect, of course, of the waste question is the role States will play in the process. How the States should participate in this process is, indeed, a most complex question.

It is evident today that there are many differing opinions on the role of the State and how that role should be exercised. We have no less than four different approaches which were presented for our consideration just this day. I believe there are several sources of information which should be considered before a credible approach is decided upon.

First, the NRC's Office of State Programs held workshops and received extensive comments from the States on the role they should play. A final report has been issued but needs to be carefully examined by us.

Second, we have not yet received the administration's comments on State participation. The President is in the process of reviewing the report of the interagency review group on nuclear waste management, and he and we should have those recommendations soon.

Finally, the National Governors Association, which represents the concerns of the States, has not yet had an opportunity to make its recommendations.

I feel the question of State participation should be considered as part of compresensive waste legislation, as does Senator THURMOND, and it should be the subject of thorough hearings before a final decision is reached.

As I stated earlier, Mr. President, the Committee on Environment and Public Works, of which Mr. HART and I are members, will be considering such legislation during this session of Congress. I assure the Senate that I am willing to make a commitment now to my colleagues that I shall do everything in my power to report comprehensive waste legislation, including a provision on State participation, during this session of Congress.

I make that commitment. If that is not possible, I shall work diligently to see that specific legislation is reported on State concurrence this session, because this amendment offered by Senator MCGOVERN raises several real concerns in my mind.

First, the proposal establishes a rather cumbersome process for resolving differences between Federal and State officials. Second, because the structure for State participation in the process is so definitively outlined, it provides absolutely no discretion at all to work out arrangements on a State-by-State basis in order that unique situations can be addressed. Third, there is no flexibility in the means for concurrence. The only option is an absolute State veto, regardless of whether it is really in the best interest of the State or the Federal Government.

For those reasons, I recommend that the amendment be rejected.

I reserve the reminder of my time.

Mr. DOMENICI. Will the Senator from Wyoming yield 5 minutes to the Senator from New Mexico?

Mr. SIMPSON. Mr. President, I do yield such time.

Mr. DOMENICI. Mr. President, while every Senator here has some kind of experience within his State with some kind of nuclear energy and some activity on the part of the national Government with reference to nuclear energy, the Senator from New Mexico has what I understand to be the most significant evaluation by the Federal Government, ongoing and in depth, of a potential geological depository, salt. At this point, it is contemplated that if everything is feasible, they would deposit low-level transuranic military waste. For my discussion here, so everyone will understand, those on committees know of that project as WIPP—waste isolation pilot project.

Five years ago or so, the military authorizing committees of both the House and the Senate started this proposal to do this evaluating.

Mr. President, I want to say, first, that Senator MCGOVERN's approach, in this Senator's opinion, is an excellent approach. It has some things in it that I believe justify our putting it over, but I do not believe it ought to be considered to be this universal State veto that people are talking about because, as a matter of fact, I believe if we went through his process and failed, Congress always has the inherent authority to come along and say, "Well, in the national interest, we must do it." In that context, it is a good consultative process.

However, I do believe that with three committees hearing various bills, including one in the Energy Committee, Senate bill 685 which will also consider Senator MCGOVERN's bill and the Domenici bill which I am going to explain in a moment to be just slightly different from his, but enough different to establish an excellent working arrangement with our States. I think that, in light of that, we ought to put his amendment over, recognizing that he has come closer than anyone in his approach to providing true opportunity for consultation with the States without denying the National Government its national interest.

Now, so that everyone will know that mine is a real situation, I want everyone in this Chamber, Senators who are concerned and Senators who understand commitments of the National Government to States and to delegations—Senators and Representatives—to know that we have in New Mexico a situation where, since February 1978, the Secretary of Energy openly and publicly said to the delegation, to Senators and the Representatives, and then to the people of the State, "You will have the right to say yes or no on whether we continue this depository in your State." That was said once. Then the Assistant Secretaries testified before two committees here and again repeated publicly, "We are analyzing what our Governors and what the task force think is an appropriate consultation approach"—concurrence and consultation, say they, not veto but, nonetheless, a real opportunity to say yes, yes, yes, and, I assume, at some point to say no. When yeses stop being yeses, consultation turns into no. I assume they meant that. They said that.

In order to make sure that they live up to it, the military authorization bill out of this Senate, the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980—already approved here—recognizes that, in the State of New Mexico, the legislature has passed a format for consultation, the creation of a professional committee and a legislative policy group.

They are now sitting down negotiat-

ing—not on the site. I will distinguish it right here with my good friend (Mr. McGOVERN) in his approach. They are negotiating the process by which they will determine how they agree and disagree. We need to make sure, as this military authorization bill did, that that authority is kept intact, that commitment is lived up to. If, at some point, they can agree or disagree, they will be agreeing in advance or disagreeing, but in advance, how they will agree and how they will disagree. That is a very important distinction.

Then the Congress will know that and the President will know that, in advance, they are going to agree in the following manner and, in that, provide for disagreement, if any.

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

Mr. SIMPSON. I yield an additional 3 minutes.

Mr. DOMENICI. I think that is exactly the process that the Governors of the United States are going to end up saying they want. We do not have to talk about whether the national interest is paramount or not. We talk about that process being paramount. Let them agree to agree and to disagree and set up the mechanism. If we find that no States can do that, we have ample opportunity to bring the issue back here.

Now, having said that, as I indicated, Senator McGOVERN's approach comes close, except that in his he dictates that through the chairman of the Nuclear Regulatory Commission they will force the State to agree on the composition of the Commission, which will be the consultor and the concurrer.

I do not believe we ought to be that restrictive on our States. My State, for instance, I believe has been the most progressive. They are not willing to say "yes" right now. They are not willing to say "no" right now.

They have set up by legislation a consultive process which will end up agreeing or disagreeing on the modus operandi for the Government to concur or not concur. A very good approach, as I understand it, in terms of what the Governors would like, and of not having to do the following, which I really believe is a mistake.

I do not think we can say to the States, "We want you to concur, to agree, we want to be grown-up partners," and at the same time say, "However, when you stop doing that, we'll have the authority to overrule you and override you." The so-called national interest override.

I think that is a mistake, unless we want to hold it as an inherent power, which we have anyway.

Why say, "States concur, States agree, but do not forget we have an amendment here we are passing that says"—and I am not saying this is Senator McGOVERN's, but it is kind of pending in the wings here—"When you fail to agree, we have a national interest that will overrule and override you."

I think that does away with concurrence, and I do not believe that is what we ought to do to resolve the bill.

Mr. McGOVERN. Will the Senator yield on that point?

Mr. DOMENICI. Yes, on the Senator's time.

Mr. McGOVERN. That is fine.

I hope the Senator will underscore the fact that there is no such override in my legislation. It may be that some Senator would offer such an amendment.

However, I am sure the Senator from New Mexico would also agree that after a couple of years of operation under the language of the amendment now pending, if it should pass, obviously the Congress can always change the policy, if it sees fit. Anything we do can always be changed.

I was tempted to say when Senator HART was making his remarks here a while ago that if we have an absolute turndown all across the board, on all 50 States, and we were confronted with a national emergency situation, the Congress might wish to deal with that. But there is nothing in this bill that provides for a congressional override.

We simply do have a constitutional system under which that is always possible on any bill.

I thank the Senator for yielding to me and also for his generous remarks about the contents of my amendment.

Mr. DOMENICI. Mr. President, having said that, I agree that the Senator has properly stated his bill, and I had already said his does not have that gun to the head of the Senator that we asked to consult. It is not in his bill.

But I still say this concurrence process, to be distinguished from veto, this concurrence process is, in my opinion, the keystone to a successful national State policy on nuclear disposal and nuclear waste. The keystone is the concurrence and is the kind of authority, do we give the States or validate——

The ACTING PRESIDENT pro tempore. The time has expired that was further yielded.

Mr. SIMPSON. What is the time situation, Mr. President?

The ACTING PRESIDENT pro tempore. The opponents of the amendment have 7 minutes remaining.

Mr. DOMENICI. Mr. President, I ask unanimous consent I have 2 additional minutes and it be charged to neither side.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I think the Members of the Senate know I am deeply involved in this. I have talked on it for a couple of years. I would like to make the balance of my points, and if anyone has any questions I will be pleased to answer them.

I was saying, this is, indeed, the keystone, the cornerstone, to a real concurrence policy, a policy of the type that is, in this Senator's opinion, required or we are not going to get any Senator to accept it.

When we talk about this as a national program, we seem to forget there are roads in a State, that there are railroads in a State, that there are safety precautions required, and they will not get one of these major problems in a State that does not want to confirm we have national override, but we will have an unadulterated political mess in a State where we try to do this.

So I think concurrence is what we ought to do, and we ought to do it and legitimize it both for the State negotiating and the Federal agent negotiating with them, make it legitimate and valid for them to do that.

That is the approach I have in my amendment that is also pending, that I will not call up in the event Senator McGOVERN's amendment is tabled. I will not call mine up. I will leave it to one of the three committees. I have assurance that the Energy Committee will complete hearings on Senate bill 685, the McGovern amendment, the Domenici amendment, and report out a bill, a generic waste bill.

Other committees are also at various stages, and I think they will expedite it. I think that is what we need to do.

But in closing, since I am going to support a tabling of this, I want it understood by my fellow Senators that I believe we are going to have to face up to concurrence and do it in an understandable, organized manner. We cannot give it and take it away in the same breath. We either give it or we do not. If we do not want to, we ought to leave it up to the National Government, take our chances, and, in my opinion, we will not get an "anything" bill.

I thank the Senators. I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. McGOVERN. Mr. President, I yield myself 2 minutes.

Mr. President, I want to make three quick points.

Two arguments have been made against this legislation. One principal argument is that more hearings are needed.

Mr. President, that is precisely the argument we heard 2 years ago, back in July 1977, against this proposal when I brought it up to a vote then.

It was a different Senator floor managing the bill, but it was the same argument, that we need hearings.

Meanwhile, 2 years have passed, 4,000 pages of public hearings have been spread on the record on this issue in both the House and the Senate.

I say very respectfully to my colleagues, I think the time has come now to stand up and answer "yes" or "no" on this question.

The second argument that was raised 2 years ago is that it was a straight out, absolute veto proposal without adequate procedures for securing concurrence.

We have taken care of that. Even some of the critics have said here today, and my friend from New Mexico (Mr. DOMENICI), that I have come closer than anyone else in working out procedures that are fair both to the States and the national interest.

There is a procedure for achieving concurrence, if that is reasonable, but it does involve some voice on the part of the States.

So I would hope, these arguments having been addressed very carefully in this legislation, that we would not have to go through the same concerns again that were expressed 2 years ago.

I do not see where this at all disturbs the hearings that are planned by the other three committees on the whole question of the nuclear problem. But I think the time has come for the Senate to act on this matter that is so important to our States.

Mr. ROBERT C. BYRD addressed the Chair.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to proceed for 3 minutes without the time being charged.

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

Mr. ROBERT C. BYRD. Mr. President, I take the floor to ascertain what the prospects are, looking ahead, as we have some other amendments to be taken up and voted on, as well as final passage.

I have said to my colleagues on numerous occasions this year that we would try to avoid keeping the Senate beyond 6 or 6:30 on Monday nights, barring emergencies. We have about reached the point where we need to make some decisions.

I understand that Mr. McGOVERN wants a vote on his amendment tomorrow.

Mr. McGOVERN. Yes.

If the distinguished majority leader will yield, I do not know what time we are coming in tomorrow. Has that been decided as yet?

Mr. ROBERT C. BYRD. It has not.

Mr. McGOVERN. Will we be in in the morning?

Mr. ROBERT C. BYRD. Yes, we will be in in the morning.

Mr. McGOVERN. It would be my hope that the vote would come the first thing tomorrow morning, after whatever other business needs to be transacted. We have almost completed the allotted 1 hour of debate on this amendment.

I have also discussed this matter with Senator DOMENICI, who has a special interest in it, and he raised the possibility of a 9:30 vote tomorrow. I do not know whether that meets with the leadership's schedule. If it does, I would make a request that we vote at that time.

Mr. ROBERT C. BYRD. I hope the Senator will not make the request. Let me explore this.

I had hoped—and my hope may not be achievable because all Senators have to be concerned. This viewpoint of mine might not accommodate Senators. I had hoped that we might be able to utilize debate on the various amendments and then, say, about 3 o'clock tomorrow afternoon vote on those amendments, back-to-back, and on final passage.

The only reason I make this suggestion is that some Senators will be out in the morning and will not be back until about 3 p.m. This may discommode other Senators, but this was about to be my suggestion—not my request, but my suggestion—just to see what we could get.

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

Mr. ROBERT C. BYRD. I yield.

Mr. DOMENICI. So that in the Senator's consideration of some agreement proposal he might understand the problem I have, I have planned for a long time to leave tomorrow at 2 o'clock in the afternoon. I had planned to miss 1 day. I knew what I would be missing, and I planned to miss 1 day.

As the Senator knows, this particular amendment and any amendments dealing with concurrence or veto are vital to me. In my State, the most serious investigating of a depository is taking place right now.

I had hoped we would dispose of Senator McGOVERN's amendment. If it was tabled, we would be finished. If not, I have a substitute or an amendment, and I understand that Senator PERCY has an amendment or some amendments in that vein. Is that correct?

Mr. PERCY. Mr. President, if the distinguished majority leader will yield, it is my intention to move to table the McGovern amendment whenever debate has been completed, and I have so notified Senator McGOVERN.

The Senator from Illinois is prepared to vote tonight, tomorrow, at any time. I will not offer the Percy-Glenn amendment to the present bill if the McGovern amendment is tabled.

Mr. ROBERT C. BYRD. Mr. President, how much time remains on the amendment by Mr. McGovern?

The ACTING PRESIDENT pro tempore. The Senator from South Dakota has 8 minutes remaining. The manager of the bill has 7 minutes.

Mr. ROBERT C. BYRD. So within 15 minutes the time will have expired, and the Senator can make his motion, and there is no debate on that motion, which means——

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

Mr. ROBERT C. BYRD. I yield.

Mr. McGOVERN. That, of course, frustrates the purpose of my request to the majority leader yesterday that we not vote on my amendment today.

Seven or eight Senators who are cosponsors of this amendment are gone. So I had hoped there would be neither a tabling motion nor an up and down vote on my amendment until tomorrow. I am willing to vote any time tomorrow, from dawn until dusk.

Mr. ROBERT C. BYRD. What I am saying is for the RECORD, so that those Senators who are not in the Chamber may understand that if things take their normal course, under the rules, within 15 minutes, Mr. PERCY could make his motion to table. There would be no debate on that motion, and the Senate would then have to vote up or down on the tabling motion or go out and have that vote in the morning. What I am saying is for the RECORD so that Senators who are not here this evening will know there is no way that the leadership can postpone this vote on the prospective motion to table by Mr. PERCY, except by unanimous consent.

Mr. McGOVERN. I appeal to the Senator from Illinois, just on humanitarian grounds, not to press this parliamentary situation.

Mr. PERCY. It is a persuasive appeal from a humanist to a hopeful humanist.

Mr. McGOVERN. I have no objection to the tabling motion tomorrow.

Mr. PERCY. I am glad to accommodate my colleagues who are cosponsors of the pending amendment and who are not here tonight. It is just a matter of working it out. I have it in the able hands of the distinguished majority leader.

Mr. ROBERT C. BYRD. Before I yield to the distinguished Senator from Colorado, who is the manager of the bill, to get his observations, if I correctly understand the distinguished Senator from New Mexico (Mr. DOMENICI), he cannot be here on tomorrow after——

Mr. DOMENICI. I cannot be here after 1:30. There is no way I can do that.

Mr. ROBERT C. BYRD. This is a friendly question, and the answer will be a friendly one. I will understand that.

If I were to propose that the votes be put off until, say, 3 o'clock tomorrow, what am I to assume with respect to the Senator from New Mexico?

Mr. DOMENICI. The Senator is to assume that, in a humanitarian spirit, I must object.

Mr. ROBERT C. BYRD. And friendliness.

Mr. DOMENICI. And friendliness.

Mr. ROBERT C. BYRD. That takes care of that matter. [Laughter.]

I ask the distinguished Senator from Colorado what additional amendments he knows about.

Mr. HART. I thank the majority leader.

For the purpose of scheduling in this very intricate matter, I inform the majority leader that there is a time agreement for a 1-hour amendment offered by Senator KENNEDY and myself; 30 minutes each on amendments which may be offered by Senator SCHWEIKER, by Senator CHURCH, by Senator MATSUNAGA, and by Senator DOLE.

It is our understanding that each of those amendments can probably be resolved in much shorter time and probably without votes.

The only other amendments that might require votes are those in the nature of a substitute to the McGovern amendment, by Senator DOMENICI or Senator PERCY and Senator GLENN.

Mr. ROBERT C. BYRD. So I am to understand that there would be objection to delaying any vote until after 1:30 p.m. tomorrow?

Mr. DOMENICI. Delaying votes on this amendment and any matters related to it. The bill does not have to be finished, and all the rest of those do not have to be considered. Just so this issue is disposed of by 1:30 or tonight.

Mr. ROBERT C. BYRD. It would be my suggestion to Senators, then, that the Senate might complete its action today and stand in recess.

Mr. President, are there any orders for the recognition of Senators?

The ACTING PRESIDENT pro tempore. There are none.

Mr. ROBERT C. BYRD. I thank the Chair.

The Senate would come in at, say, 9:30 or 9:45. Then, at 10 o'clock we would resume consideration of the bill. Then the Senator's motion to table could be voted on at that time, if we could reach that agreement. So the vote on the motion to table would occur around 10 o'clock.

Mr. DOMENICI. I hardly ever find myself in this position. I did not tell the Senator the whole truth.

I have to be out from 10 to 10:30 in the morning with respect to a synthetic fuel bill. Senator RANDOLPH and I have agreed to testify before Senator RIBICOFF's committee at 10 o'clock in the morning.

Mr. ROBERT C. BYRD. The Senate will go out this evening and convene in the morning at 10 and resume action on the pending bill at 10:30.

If Senators want to reserve their 15 minutes until that time——

Mr. HART. Or 10:15?

Mr. ROBERT C. BYRD. Why do we not discuss the amendment for another 15 minutes and then have the tabling motion go over until the morning? The Senator can make the motion tonight, if he wishes, with the understanding that the vote will occur tomorrow.

Mr. McGOVERN. We have only 15 minutes remaining.

Mr. ROBERT C. BYRD. The time I have been taking is not taken out.

Mr. McGOVERN. How much time do I have?

The ACTING PRESIDENT pro tempore. Eight minutes.

Mr. McGOVERN. I would prefer to hold that until the morning. The time for the vote is fine.

Mr. DOMENICI. Before I agree to forbear on the tabling motion tonight and 15 minutes from now, let me make this point:

It does me no good to have a vote at 10:30 on tabling Senator McGOVERN's amendment if we are still debating concurrence or veto amendments after 1:30 tomorrow afternoon. That is the reason that I am here. I want to make sure we have also agreed that by 1:30 p.m. we will have completed the Domenici amendment and the Percy amendment in the event Senator McGOVERN's amendment is tabled. I think we would because the time is an hour maximum. And how much on Senator PERCY's amendment?

Mr. PERCY. One hour is adequate.

Mr. DOMENICI. So we could agree they would follow right after that if it is not tabled, and then we would be through.

Mr. ROBERT C. BYRD. All right.

Is that agreeable with the manager of the bill?

Mr. HART. Yes.

I was just checking on the time agreement as to what the order provides for Domenici or the Percy-Glenn amendment.

Mr. DOMENICI. It does not. It comes in under the 30-minute rule, and I had an hour reserved this morning.

Mr. HART. That is correct.

Mr. DOMENICI. The Senator and I had agreed to that with the leader's approval.

Mr. HART. I would hope those would not take an hour.

Mr. ROBERT C. BYRD. So the Senator wants those to follow the tabling motion?

Mr. HART. Yes.

Mr. DOMENICI. That is fine with me.

Mr. HART. If the motion fails.

Mr. ROBERT C. BYRD. If the motion fails.

Mr. PERCY. If the motion fails, would it be understood then the Percy-Glenn amendment would be the next pending order of business and would have an hour, each hour equally divided, and would be followed by the Domenici amendment?

Mr. DOMENICI. No. I think we had agreed to reserve.

Mr. PERCY. Who agreed?

Mr. DOMENICI. We were discussing the reservation while the Senator from Illinois was over there talking. We agreed, but the Senator did not agree.

Mr. ROBERT C. BYRD. What is the situation?

Mr. DOMENICI. Because of the nature of the amendments I thought that mine would follow Senator McGOVERN's. I have an hour. I understand Senator PERCY has an hour—or is it 30 minutes?

Mr. HART. Thirty minutes, I believe.

The ACTING PRESIDENT pro tempore. The Senator's amendment would be a regular amendment of 30 minutes, equally divided.

Mr. DOMENICI. I will cut mine to 30 minutes. I do not need that.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—let us see if this is agreeable now to everyone—I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 o'clock a.m. tomorrow and that at 10:30 a.m. the Senate resume consideration of the pending business, at which time there be 15 minutes to be equally divided between Mr. McGOVERN and Mr. HART on the amendment by Mr. McGOVERN, it being understood that at the expiration of that time or upon its being yielded back Mr. PERCY will move to table that amendment. If the amendment is not tabled, then I ask unanimous consent that an amendment by Mr. DOMENICI be in order on which there be a 30-minute time limitation, equally divided in accordance with the usual form; upon the disposition of that amendment, the amendment by Mr. PERCY be called up and I believe there is already a 30-minute time limitation on that amendment.

Mr. PERCY. Mr. President, reserving the right to object, is there any particular reason why the McGovern amendment cannot be completed tonight and the motion to table voted on tonight? Both of us probably should be in the SALT hearings tomorrow morning; otherwise, we would be forced to leave those hearings to come to the floor.

Mr. McGOVERN. The only point I make to the Senator from Illinois is we are only talking about 7½ minutes on each side and a number of the cosponsors who were not here today have asked me if they could be heard. I was protecting them rather than myself. I have nothing more to say on it, frankly. I did feel we should preserve 7 or 8 minutes to the others because they did not get a chance to speak today.

Mr. PERCY. I have a second parliamentary inquiry with regards to the Percy-Glenn amendment. If the Domenici amendment passes, will there be an opportunity to present the Percy-Glenn amendment and have a vote occur on that amendment?

Mr. DOMENICI. I say to Senator PERCY he knows I have no intention of doing anything here tonight that will deny him that. But in the event my amendment passes I cannot assure the Senator that I would not object to his amendment. A part of it obviously belongs here because he is inconsistent in that he wants an override and mine does not provide for one. I cannot deny him a vote on that. But as far as his whole amendment being a substitute for mine I cannot agree parliamentarily that I make it so. I do not know whether it will or will not. It probably will be relevant and not subject to a point of order, but I do not want to agree to that in advance.

Mr. ROBERT C. BYRD. Mr. President, I know nothing about the content of the amendment so, therefore, I better ask the Chair if there is any problem in the way the request was worded which by virtue of its verbiage will allow Mr. PERCY to come in after the disposition of the amendment by Mr. DOMENICI? Is there anything inconsistent in it?

The ACTING PRESIDENT pro tempore. If the amendment by the Senator from Illinois is a substitute to the amendment of the Senator from New Mexico it would be an amendment in the third degree and would not be in order.

Mr. ROBERT C. BYRD. Then I withdraw that part of my request. Let me just renew the request in this way:

I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 10 a.m. tomorrow morning and at 10:30 a.m. the Senate resume consideration of the pending business, that there be 15 minutes equally divided on the amendment of Mr. McGOVERN between Mr. McGOVERN and Mr. HART and if that amendment is tabled—well, whether or not it is tabled, I assume——

Mr. PERCY. If it is tabled.

Mr. DOMENICI. No.

Mr. ROBERT C. BYRD. If it is tabled, then Mr. DOMENICI be recognized to call up his amendment.

Mr. DOMENICI. I will not call it up if it is tabled. I will not.

Mr. ROBERT C. BYRD. If it is not tabled?

Mr. DOMENICI. Correct; if it is not tabled, I will.

Mr. ROBERT C. BYRD. He will call up his amendment and there be a 30-minute time limitation on that amendment.

Mr. PERCY. Mr. President, reserving the right to object, on the Percy amendment, that is why I made the inquiry on behalf of Senator GLENN and myself and those who support the concept that there should be an override by Congress——

Mr. DOMENICI. I understand.

Mr. PERCY (continuing). On the State's objection to having nuclear waste; otherwise it is going to be a political football, and we would not be able to put this waste any place.

It is our intention to try to resolve that issue by proposing that there be an ultimate override by Congress.

Mr. DOMENICI. Let me say that the substance of our argument is that "We retain the inherent power to override," and to say to the States, "You can concur but at the same time we hold a gun to your head; if you do not we override you" is absolutely foolhardy. We would not get concurrence. So we disagree.

I believe if my amendment were to pass with a substitute, and I am not telling the Senator what to do parliamentarily, but I think he can amend it with an overrider provision. One cannot substitute for it. But I mean I will agree to that if that is what he wants to vote on, to amend mine to include his override. I have no objection to that.

Mr. ROBERT C. BYRD. Mr. President, let me withdraw that request.

The ACTING PRESIDENT pro tempore. I wish to clarify. We have stated that the amendment of the Senator from Illinois would be given 30 minutes equally divided. I am advised that is incorrect. It would be given 20 minutes.

Mr. ROBERT C. BYRD. Mr. President, I withdraw the request.

I ask unanimous consent that when the Senate completes its business today it stand in recess until 10 a.m. tomorrow morning and at 10:30 a.m. tomorrow the Senate resume consideration of the amendment by Mr. McGOVERN on which there be a 15-minute time limitation to be equally divided between Mr. McGOVERN and Mr. HART and that, of course, Senator PERCY does not waive his right to move to table at that time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DOMENICI. Mr. President, reserving the right to object, I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. ROBERT C. BYRD. Just dispose of this amendment. Otherwise we have to dispose of it tonight.

Mr. DOMENICI. I must object because I cannot agree this go over tonight unless we have agreed here tonight that no further amendment on veto or concurrence will occur beyond 1:30 tomorrow afternoon. We have not agreed to that. So I object.

Mr. PERCY. Mr. President, Senator DOMENICI, in an effort to be accommodating, has made a suggestion which we should refer to the Chair to see whether there could be the possibility that the Domenici amendment could be amended to provide for congressional override.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time not run against the McGovern amendment.

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

Mr. ROBERT C. BYRD. The purpose is to see if we cannot work out some resolution.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to set aside temporarily the amendment by Mr. McGOVERN so as to allow Mr. KENNEDY to bring up another amendment at this time.

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

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I would be glad to yield to the distinguished floor manager of the bill who will present the amendment.

UP AMENDMENT NO. 359

(Subsequently printed amendment numbered 335)

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

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Colorado (Mr. HART), for himself and Mr. KENNEDY, proposes an unprinted amendment numbered 359.

Mr. HART. Mr. President, I ask unanconsent that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 9, insert after line 19 the following:

SEC. 107. (a) No amount authorized to be appropriated under this Act may be expanded by the Nuclear Regulatory Commission for the issuance of a construction permit for any commercial nuclear powerplant during the first 6 months of fiscal year 1980. The preceding sentence shall not apply to any commercial nuclear powerplant for which a construction permit, or operating license, has been issued before the commencement of fiscal year 1980.

(b) Within the time period provided by subsection (a) of this section, the Commission shall by rule, after notice and opportunity for hearing in accordance with section 553 of Title 5 of the United States Code, promulgate demographic requirements for the siting of utilization facilities in connection with construction permit review under section 185 of the Act. Such requirements shall provide for review of construction permit applications pursuant to section 185 of the Act, and shall specify to the maximum extent practicable the following:

(A) the extent and maximum population density of the low population zone immediately surrounding the site, including consideration of permissible radiation exposure;

(B) acceptable means of assuring such maximum population density is not exceeded during the useful life of the facility;

(C) the minimum distance from the site to the nearest boundary of any densely populated area; and

(D) the minimum fission-product release into the containment structure assumed for dose calculation.

In the promulgation required hereunder, the Commission shall specifically consider the possibility of multiple-unit siting and the feasibility of evacuation in case of an extraordinary nuclear occurrence, or an event or sequence of events which significantly increase the likelihood thereof.

(c) Any person may bring a proceeding on the United States District Court for the District of Columbia to require the Commission to promulgate the rule required in subsection (b) of this section if the Commission has not promulgated such rule within the time period provided by subsection (a) of this section.

Mr. HART. Mr. President, I offer, on behalf of myself and Senators KENNEDY, CRANSTON, LEVIN, McGOVERN, RIEGLE, TSONGAS, HATFIELD, PERCY, and METZENBAUM, an amendment that would defer the issuance of any new construction permits for new nuclear powerplants during the first 6 months of fiscal 1980. The amendment requires the Commission during the 6-month period to promulgate new regulations that specify population density and distribution requirements for the siting of new nuclear powerplants.

This amendment supersedes an earlier amendment that would have provided only for a 6-month moratorium on new construction permits to await generally the implementation of safety improvements arising from the several investigations of the Three Mile Island accident. The provisions of this revised amendment are intended to deal promptly with one of the principal issues arising from the Three Mile Island accident—how close nuclear power reactors should be located to population centers—while also awaiting other safety improvements that may be recommended.

In the aftermath of Three Mile Island, much attention has been given to emergency planning, including the possible need for evacuation. This is rightfully so, and in the bill we are considering today—and, of course, after many votes earlier today—I think we have it resolved. At the same time, we should be aware of the fact that early in the first morning of the Three Mile Island accident, about 6 a.m., March 28 of this year, the Three Mile Island plant was out of control. Substantial damage was occurring in the core with releases of large quantities of radioactive materials into the containment. And there was great uncertainty as to what was happening and how to regain control of the plant. These conditions persisted for 14 more hours.

According to Nuclear Regulatory Commission transcripts of meetings on the accident, 2 days passed before NRC and the designer of the Three Mile Island reactor agreed that unprecedented damage to the nuclear core had occurred on Wednesday. While discussions of evacuation were appropriate on Friday, March 30, and the days following, such discussions should have taken place on Wednesday morning, March 28. Yet, there apparently were none because the severity of core damage was not known at the time.

The time for possible evacuation came and went before those in authority were fully aware of the unfolding events at the stricken reactor. This is not unusual in complex nuclear emergencies like Three Mile Island. While emergency response plans are clearly essential, I believe comparable attention should be

given to more direct mitigative measures (somewhat akin to preventive medicine versus emergency medicine), particularly to more stringent siting standards with respect to population distribution and density. This amendment seeks to accomplish that objective.

The Nuclear Regulatory Commission rules now contain reactor-siting criteria that generally address demographic features. However, the principal rules were published as "an interim guide" in April, 1962—at a time long before accidents such as at Three Mile Island were seriously contemplated and at a time when nuclear reactors were much smaller in size and much less complex than the plants now being built. The time has come to take a comprehensive look at siting policy with respect to population density before additional sites are committed.

Mr. President, I am not suggesting that the regulators of nuclear power have sat still since 1962 on siting policy. The Atomic Energy Commission issued some "guidelines" in 1973 addressing population densities, but these guides are not mandatory. The Nuclear Regulatory Commission has since its inception in 1975 considered from time to time various aspects of siting of nuclear reactors, but the Commission has yet to articulate a comprehensive policy regarding siting of nuclear reactors in the vicinity of population centers.

Why is there a need to defer new construction permits pending a comprehensive siting review? While new engineered safety features can be added to an existing plant on an as needed basis to improve safety, once construction has begun, the site as a practical matter is irrevocably committed.

Thus, new sites should not be committed until completion of a long-overdue review of siting policy. Furthermore, for those sites with reactors already operating or under construction, new reactors should not be committed to those sites until the site has been rereviewed in light of the new siting regulations called for in this amendment.

Mr. President, the Nuclear Regulatory Commission is well along the way to a comprehensive siting review. It established a siting policy task force almost a year ago and my subcommittee staff informs me that this group is about to submit its recommendations to the Commission. It is noteworthy that the task force has emphasized the need for stricter population density and distribution criteria in view of the fact that current regulations, which were issued in 1962, do not account for the larger size of new nuclear powerplants and the potentially larger offsite consequences of a nuclear accident.

Given the importance of this matter and in order to insure expeditious action on siting policy, this amendment requires the Commission to promulgate new siting regulations addressing population densities within the first 6 months of fiscal 1980.

To help insure that the rulemaking does not drag beyond the 6-month time provision, the amendment incorporates a mandamus provision whereby any person may petition the Nuclear Regulatory Commission to meet its mandated time provision.

The amendment is not intended to unduly delay issuance of construction permits. In reviewing the estimated population statistics for the year 2000 in the vicinity of proposed sites for pending construction permits, I note several of what I call relatively superior sites from a demographic viewpoint, including the proposed Pebble Springs site in Oregon which has a year 2000 projected population of about 1,400 people within 20 miles of the proposed reactors. This is in contrast to comparable projections for some reactor sites of over 900,000 persons in the vicinity of the reactor. Thus, based on demographic considerations only, I would see no reason to defer for demographic reasons the Pebble Springs construction permit once new siting regulations are issued after the 6-month review period. Under the amendment, the Commission could, after 6 months, issue at least interim regulations permitting issuance of a construction permit upon a finding that a site is clearly superior from a demographic viewpoint.

Mr. President, it is true that a 6-month deferral of new construction permits would entail some additional costs for constructing new plants. However, these costs would be small relative to the total cost of the plant. These costs would be viewed as a form of insurance that nuclear reactors are not being located too near to population centers.

Mr. President, I wish to emphasize that this amendment would not call for the shutdown or any other adverse action with respect to the 70 reactors that already have a license to operate, nor the 92 reactors that already have a construction permit.

Rather, Mr. President, it is contemplated that this amendment would affect the issuance of permits for the construction of new plants that have not already issued, and that those permits would be based upon a very important consideration—a consideration that has not been given due notice in the past 20 years of this industry—the location of the facility with respect to substantial population proximity.

Once again, Mr. President, we have to learn from our mistakes. If the Three Mile Island accident represents a mistake, I believe we should learn from it. One of the things we should learn is not to locate very large reactors near large population centers.

I urge the adoption of the amendment, and I yield to the Senator from Massachusetts.

Mr. KENNEDY. I thank the Senator from Colorado, and I welcome the opportunity to join with the Senator from Colorado on an issue which is really not a strange issue to this body, and an issue which has been raised in the House of Representatives by a colleague of mine from Massachusetts, Representative MARKEY.

I welcome the opportunity to join with the Senator from Colorado in the presentation of this amendment to the Senate. I am extremely hopeful that the Senate will accept it.

Mr. President, I join with the chairman of the subcommittee in offering this amendment which provides that no construction permits be issued for new nuclear powerplants during the first 6 months of fiscal year 1980.

This amendment does not call for the shutdown of any of the 70 reactors that already have a license to operate, nor the 92 reactors that already have a construction permit. But it does clearly reject a "business-as-usual" approach to the Nuclear Regulatory Commission. We cannot pretend that the Three Mile accident did not happen. It did and we must learn from it.

I am pleased that the chairman of the Nuclear Regulation Subcommittee and I have been able to join forces on this amendment.

At his suggestion I have included in my amendment language requiring that the NRC adopt binding regulations establishing firm guidelines for population density around reactors. This action is long overdue.

It would be our hope that were this amendment to be accepted, the safety guidelines established and the population controls implemented, that then there would be a review, site by site, reactor by reactor, to review the appropriate safety factors to be implemented for each of the existing reactors that currently operate, or those that already have construction permits.

I think it is important for our colleagues to understand what we are trying to do and what this amendment will not do.

This amendment defers for a short time reactors that are in the planning stage—6 to 10 years away from commercial use—so that we may all reap the benefits of an unprecedented number of major investigations now underway.

In the words of a spokesman for the Bank of America in announcing a suspension of new nuclear loans in light of Three Mile Island, "It would be imprudent to go forward with such lending at a time when the industry itself is reviewing such lessons as may be learned from the accident." In addition to the financial community and the industry, the President's Kemeny Commission, the NRC, the Senate Nuclear Regulation Subcommittee, and the House Interior Committee are all reappraising our current system of nuclear regulation.

I know there are those who will say, "Why don't we move ahead? We can move ahead with the construction permits, and then make the changes and alterations in construction as time goes along."

We have seen, over the history of the past, that as these reactors approached completion, a number of safety recommendations were considered to be too extraordinary or too expensive to be implemented. This has a way of being a self-fulfilling prophesy; once the construction begins, if there are recommendations and suggestions from a safety point of view, it becomes too late or too expensive to move ahead. Then we hear the argument, "Well, if we delay

now we will be costing the consumers in the various areas which are considering the construction of plants perhaps millions of dollars or tens of millions of dollars over a period of restraint."

But we will find out that once plants are in the process of construction and delay occurs, because of the amount of interest on the funds invested in these plants under construction, it usually means that the consumers spend even more, and it is more costly to the consumers, than if delay occurred before the plant was built. If the plants are actually completed and we go through a period of shutdown, it will cost the consumers generally more than it would have cost to delay the plant before construction began.

So, in a very real sense, this is a wise policy for protecting the consumers of this country. All we really have to do is look at the immediate past record of the closing down of various plants and the pauses that have taken place in the construction of various plants, and that is borne out time and time again.

So from an economic point of view, Mr. President, this is a wise action. But quite clearly the most important consideration has to be from a safety point of view. There are numerous studies of the Three Mile Island accident taking place.

Most of the results and recommendations of these numerous reappraisals will become available for congressional and public analysis during the first 6 months of fiscal year 1980. This is the time to pause, when the cost of delay is at its lowest for the affected plants and the opportunity for meaningful reform is at its height. By next March Congress will have the benefit of the recommendations of the Commission itself, and the population recommendations which the Senator from Colorado has proposed.

The accident at Three Mile Island has sent a clear message to Congress—if the Government considers licensing additional nuclear powerplants, it must do the job right, or not do it at all. A vote for this amendment is a vote for the only responsible choice—to do the job right, by taking full advantage of the findings and recommendations that will be forthcoming in the near future.

For too long, the NRC has refused to face safety issues before reactors are built. This head-in-the-sand attitude has been costly to the consumers and to the nuclear industry.

Consumers have paid hundreds of millions of dollars for replacement power because 14 reactors had to be shut down in the last 4 months. If the nuclear safety licensing process had been working, these safety defects would have been discovered before the reactors were built.

The failure to solve safety problems before reactors are built has been costly to the nuclear industry.

One safety system, now required on reactors, was not required on the Three Mile Island reactor because it was already under construction. The NRC routinely grandfathers such reactors. It would have been costly to delay and backfit that safety system. But failure to retrofit that system may have significantly contributed to the utilities failure to control that accident. And now general public utilities is on the verge of bankruptcy.

So let us tell the NRC to learn the lessons of Three Mile Island and incorporate changes before reactors are built.

Let us leave ourselves 3 months of the next session so that our oversight committees can insure that the NRC is doing its job right.

So that my colleagues will know whether their States are affected by this action, let me name the 10 reactors that are affected by this amendment—Palo Verde IV and V (Arizona), Pebble Springs I and II (Oregon), Pilgrim II (Massachusetts), Perkins 1 and 3 (South Carolina), Black Fox 1 and 2 (Oklahoma), and Allens Creek (Texas).

Given delays, probably only five of these reactors will be affected.

I think it is important to understand that both of the Senators from Massachusetts and the senior Senator from Oregon in which the two Pebble Springs reactors are located, are cosponsors of this amendment.

In sum, Mr. President, through this amendment we are letting the American people know that the U.S. Senate puts safety first—that "a business-as-usual" licensing should not continue—and that we should learn and implement the lesson of Three Mile Island before more reactors are built.

I might ask my colleague from Colorado, with regard to the population site regulations, we have seen a situation in my own State of Massachusetts, for example, where we do have a nuclear plant that is operating. It has been accepted within the community and it is functioning. There have been different times when it has had to pause for safety reasons.

Now what has happened is because of the impact on the tax base, it has become an enormously desirable place for people to move to. Besides Plymouth is one of the loveliest communities in our Commonwealth of Massachusetts. It has a wide range of different assets in terms of quality of life, it also has one of the lower tax rates.

It is also contemplated that there will be a second nuclear plant built within that community.

We now find ourselves in a situation where the growth in the size of the population is increasing rather dramatically in one rather small geographical area, primarily because of lower taxes.

On this issue of population guidelines, as I understand it, there have been guidelines which have been established at the staff level, but there are no population regulations which are insisted upon and which are followed as a matter of obligation. I am wondering if the Senator would make what comment he would on this point.

Mr. HART. It is the understanding of the Senator from Colorado that what the Senator from Massachusetts has just said is accurate. In the past, according to the staff's review of siting proposals and applications for construction permits, population density has been taken into consideration, but without any requirement in law or regulation that it be a definitive guideline.

As the Senator well knows, in the case of the reactor which he referred to in his own State, projected population within a 20-mile radius of that reactor by the year 2000 will be about 300,000 people. Of course, that is a very large number of people to be that close to a reactor.

We saw the situation recently of Three Mile Island, where it was contemplated that an evacuation might take place in a 5-mile radius and even for perhaps 20 miles as a matter of safety. If that were to occur in a population of 20 miles, to which the Senator was referring, he would be talking about 300,000 people at the very least.

Mr. KENNEDY. In terms of the current population guidelines, can the Senator establish for the record what is insisted upon by the Regulatory Commission now in terms of population requirements? As I understand, there are staff recommendations but there are no fixed guidelines. I am just wondering if the chairman of the committee would make whatever comment he would on that subject.

Mr. HART. Well, the population density figures are incorporated in the Nuclear Regulatory Commission standards which they use in issuing construction permits. There is general language about the population in the area, but it is vague and very amorphous and does not have specific density or demographic figures attached to it.

Mr. KENNEDY. Would it also be the hope of the chairman of the subcommittee that this pause would give us an opportunity to consider other health and safety considerations that would result from the President's Commission on making such recommendations and to give the opportunity both to the Commission itself as well as to the Congress to consider what additional health and safety recommendations we should be willing to accept, or at least how we might be able to dispose of them, keeping an open mind as to how we will consider them? At least it would give us an opportunity to evaluate those recommendations, and then this amendment will at least permit that opportunity for the future.

Mr. HART. The principal purpose of the Senator from Colorado supporting this amendment and helping to propose it with the Senator from Massachusetts is to incorporate this siting criteria. But as that protection is guaranteed, it would additionally give us time before new construction permits were issued to take into consideration some of the other lessons that we are learning in our investigations, including the one being conducted by our subcommittee. So there would be that added benefit. That is correct.

I think the principal point here which needs to be made so that people understand is that when reactors were starting to be built in the fifties and sixties, they were relatively small in output, but over a period of time the wattage went up, the productivity of those plants went up, and now they are very, very large compared to the original reactors.

The same siting criteria were used during that period on many reactors, without much projection as to population growth, so that we now have large reactors located in very dense urban areas. It is not a very happy situation based on what we have learned could happen at Three Mile Island.

Mr. KENNEDY. I thank the Senator.

Mr. SIMPSON. If the Senator will yield, let me briefly comment on the remarks of the Senator from Massachusetts and the Senator from Colorado for one moment.

Mr. ROBERT C. BYRD. Will the Senator yield for a moment?

Mr. SIMPSON. Indeed I do.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to order the yeas and nays at any time on the motion that Mr. PERCY will make to table the amendment by Mr. MCGOVERN.

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

Mr. ROBERT C. BYRD. I assume Mr. PERCY wants the yeas and nays ordered. If he does, this would be a good time to order them.

Mr. BAKER. Mr. President, I am prepared to represent on behalf of Senator PERCY that he does, and I am happy, if the majority leader wishes, to make that request at this time.

Mr. ROBERT C. BYRD. Very well.

Mr. BAKER. I make that request, 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. ROBERT C. BYRD. I understand there is a request by Mr. HART that the Kennedy amendment go over until tomorrow.

Mr. KENNEDY. I wonder if it would be possible to set a time. This is an important amendment and we want to accommodate the leadership if at all possible. Would the leader be willing to give us a time or to make a recommendation in that regard so we could let our associates know?

Mr. ROBERT C. BYRD. May I say to the distinguished Senator from Massachusetts that it appears to be agreeable that a vote occur on the amendment by the Senator from Massachusetts following the disposition of the amendment by Mr. DOMENICI, if he offers his amendment.

Mr. DOMENICI. And the Percy amendment thereto.

Mr. ROBERT C. BYRD. And the Percy amendment thereto.

Mr. DOMENICI. If we can agree that it is in order.

Mr. ROBERT C. BYRD. If we can agree on the Percy amendment thereto.

Mr. DOMENICI. I will say to the leader, since we are now agreed to go from the concurrence and veto consideration to a different subject matter, I would hope that before we leave this evening we could agree that with the disposition of the Percy amendment, if in order, there would be no other veto-concurrence amendment. That is what we are supposed to be doing.

Mr. ROBERT C. BYRD. Does any Senator know of any such amendment?

If no Senator knows of any such amendment, will the Senator from Colorado, who is managing the bill, think it might be possible to agree that no such amendment be in order, then?

Mr. BAKER. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. I understand what the distinguished Senator from New Mexico is proposing and I agree that it would be desirable. As the majority leader knows, I have not agreed to such requests in the past without first making a thorough check of the Members on this side. If, in fact, the majority leader wishes to pursue that course, I shall need a little time to check this side.

Mr. ROBERT C. BYRD. Of course.

Mr. DOMENICI. Let me say to Senator BAKER that the majority leader is doing this because I am agreeing not to vote tonight on tabling on the condition that, after 2 o'clock tomorrow, we shall not have veto-concurrence amendments on the floor. Else I shall insist that we vote tonight at the conclusion of the 15 minutes remaining.

Mr. BAKER. If the Senator will yield to me, I understand that. I have no desire to interfere with the Senator's plans, but I have a special obligation to Members on this side to check before I agree to unanimous-consent requests to cut off their rights to offer amendments on that portion of the bill. I understand and I am sympathetic, but I cannot agree with that without checking first.

Mr. ROBERT C. BYRD. Mr. President, I withdraw that request.

Could we agree that a vote on Mr. KENNEDY's amendment would occur 15 minutes after the disposition of the amendment by Mr. DOMENICI and the amendment by Mr. PERCY if, indeed, that amendment is in order?

Mr. DOMENICI. I have no objection.

Mr. KENNEDY. And that the time be evenly divided?

Mr. ROBERT C. BYRD. Yes; and that we have that 15 minutes evenly divided between Mr. KENNEDY and Mr. SIMPSON?

Mr. KENNEDY. It would be between Senator HART and Senator SIMPSON.

Mr. ROBERT C. BYRD. All right, evenly divided between Mr. HART and Mr. SIMPSON.

I make that request, Mr. President.

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

Mr. ROBERT C. BYRD. And there will be no more rollcall votes tonight.

Perhaps the Senator from Massachusetts would like to get that order for the rollcall.

Mr. KENNEDY. Yes, Mr. President, I ask for the yeas and nays on the Hart-Kennedy amendment.

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 suggest that Senators might be advised that there may yet be a rollcall vote tonight, contrary to what I said a moment ago. I am further educated than I was 3 or 4 minutes ago.

Was an order entered putting over the vote on the tabling of the amendment by Mr. MCGOVERN until tomorrow?

The PRESIDING OFFICER. No; it has not been.

Mr. ROBERT C. BYRD. I am advised by Mr. DOMENICI that he would have to object for reasons of his own to putting that vote over until tomorrow.

Is Mr. MCGOVERN still here?

Mr. MCGOVERN. Yes, I am here.

Mr. DOMENICI. I might say, since we participated openly here for 15 minutes trying to arrive at the agreement, I can agree to put it over and agree that my amendment will follow it. However, there will be objection to that by Senator PERCY, because he cannot get Senator GLENN, the cosponsor, to agree to the sequence that will follow that.

That being the case, Mr. President, I think we ought to vote on the tabling tonight. Then we shall know where we are.

Mr. MCGOVERN. Mr. President, I can only say that this does violence to everything we have been trying to accomplish here for the last hour, which is to accommodate a group of Senators who are necessarily absent today, who are vitally interested in this amendment.

I know the Senator from New Mexico is interested in it, but he is not the only Senator who is interested in the matter of nuclear siting. That is an issue of vital interest to everyone in the Senate. At least seven or eight different Senators have spoken to me personally about not having a vote on this matter today. I discussed it with the majority leader on yesterday, and the manager of the bill. While there was not any unanimous-consent request propounded, I hope that the Senator, just as a courtesy to other Senators, would be as deferential to them as we have tried to be to him today.

Mr. DOMENICI. May I say to the Senator, Mr. President, that I have been most deferential. It is not my custom in this body not to be considerate, but we are supposed to vote, under the previous order, on tabling tonight. I am willing to put it over, but I would like to know what is going to happen to my amendment if we put it over.

Mr. MCGOVERN. I might say I was heavily involved in the SALT hearings today. I got a call from the leadership asking if I would come to the floor and offer my amendment today. I did that as a matter of accommodating the managers of the bill and the leader so there would be some action here, on the floor. It was not done to accommodate me. I was trying to be accommodating to the leadership and to Senator HART and others who are handling this bill. I could have stayed over in the SALT hearings and refused to come to the floor.

Mr. HART. Mr. President, I hope that the Senator from New Mexico, in the interest of moving along a very important piece of legislation, will accommodate the request, which I think is a reasonable one, of the Senator from South Dakota and work out whatever difficulties he has with other colleagues similarly interested.

Mr. ROBERT C. BYRD. Mr. President, I want to express that same hope, be-

cause Mr. McGOVERN certainly is entitled to have his vote go over until tomorrow. It would not make any difference, as I see it, insofar as the position of the Senator from New Mexico is concerned. It would not be prejudicial to his position to have the vote on Mr. McGOVERN's amendment go over until the first thing in the morning, any more than it would be to have it be the last thing tonight.

Mr. DOMENICI. Let me say this, Mr. President, so that the Senator from Colorado and Senator McGOVERN will understand how important this issue is and what has happened to me. I would not have agreed to a time limitation on this bill at all; it is that important. Through inadvertence, a mistake, and a few things, I had to come to the floor this morning and proceed as best I could to get an amendment of mine included. Now, tonight, I am agreeing that a tabling motion, that was going to happen under the order of the Senate, be put over when I know and the leadership knows that I cannot be here after 2 o'clock tomorrow.

I do not intend to hold everyone up. If we could agree, if nothing more, that by 2 o'clock, we will finish concurrence and veto votes, I shall agree right now.

Mr. McGOVERN. The Senator from New Mexico is asking for something I am agreeing to. I am willing to accommodate him.

Mr. DOMENICI. I agree. How about that? Can we put it over, Mr. President? I shall agree right now that we can do just what we want if the leader will propound a request putting it over in the sequence he talked about, but that concurrence and/or veto amendments will have been voted on by 2 o'clock tomorrow on this bill.

Mr. ROBERT C. BYRD. That is all right with me, but I think the minority leader has some difficulty with that.

Mr. BAKER. That is a slightly different request than what I heard before, Mr. President. I think we agreed on the amendments dealing with veto matters. I am not averse to putting a deadline of 2 o'clock tomorrow on, provided that it is clearly understood and we have a good-faith agreement on both sides that if there are other amendments, we will not be blocked in.

Mr. DOMENICI. So long as we are ready to vote and voting by 2 o'clock.

Mr. ROBERT C. BYRD. The agreement is all right with me, Mr. President. I doubt that it will occur, but there might be more amendments on that subject than can be accommodated in that period of time.

Mr. BAKER. That is true, Mr. President, and if the majority leader will yield to me, I am willing to take that risk. Just as a matter of principle, I was not ready to agree to a unanimous-consent request that there will be no further amendments on this subject. By this colloquy and otherwise, people should be on notice that if there are other amendments—by the way, we do not know if there are. If there are, somebody ought to let us know so we can try to schedule them as soon as possible.

If I have the assurance of the majority leader that he will cooperate in trying to make room for such matters and schedule them tomorrow, I am ready to agree to a time certain on this subject.

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

Mr. SIMPSON. I yield to the Senator.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 o'clock tomorrow morning, that at 9:30 the Senate resume consideration of the amendment by Mr. KENNEDY, that a vote occur on that amendment at 10 o'clock, and that upon the disposition of that amendment the Senate then resume consideration of the amendment by Mr. McGOVERN, at which time there be 15 minutes remaining for debate to be equally divided between Mr. McGOVERN and Mr. HART.

It would make it possible then for the vote on the tabling motion to occur at 10:30.

Mr. DOMENICI. I am not going to disagree, to put it all over. I hate to be obstreperous, but could the Senator move it all 15 minutes up? That is all. I will take my chances. And then vote 15 minutes later than the Senator provided.

Mr. ROBERT C. BYRD. Instead of 10:30, 10:45?

Mr. DOMENICI. Yes. I am the one taking the chance of getting my amendment in on time.

Mr. ROBERT C. BYRD. It could mean then that the vote on the amendment by Mr. KENNEDY would occur at 10:15.

Mr. KENNEDY. That is fine.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9:15 tomorrow morning, that at the hour of 9:45 the Senate resume consideration of the amendment by Mr. KENNEDY, with a vote to occur thereon at 10:15, and that upon the disposition of that amendment there be 15 minutes on the amendment by Mr. McGOVERN, equally divided, in accordance with the earlier statement.

Mr. BAKER. Reserving the right to object, Mr. President, just for a moment, within the framework of this request there is no limitation on amendments that might be offered at any time with respect to veto.

Mr. DOMENICI. I thought the leader was not going to dispose of any additional amendments, but was going to add that we will have considered all amendments on the subject of concurrence or veto by 2 o'clock p.m. tomorrow afternoon?

Mr. ROBERT C. BYRD. I think I would take it that is the quid pro quo we are operating on, so I include that in my request.

Mr. DOMENICI. It is not the——

Mr. ROBERT C. BYRD. Sine qua non.

Mr. DOMENICI. It is the best I can get.

Mr. BAKER. Reserving the right to object, another caveat is the proposition I put to the majority leader a moment ago, that is, that he will assure me we will try to make room for other amendments if, in fact, they occur.

Mr. ROBERT C. BYRD. Yes.

Mr. DOMENICI. Reserving the right to object, I want to say to Senator McGOVERN that I appreciate his hospitality and the way he treated me. He tried to work this out as best he could. I hope it works out to his satisfaction. I thank him for his kindness.

Mr. McGOVERN. The Senator is welcome.

The PRESIDING OFFICER. Would the Senator from West Virginia indicate whether he wants the time evenly divided on the Kennedy-Hart amendment?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Without objection, the previous request is agreed to.

Mr. ROBERT C. BYRD. I believe under the order I was just about to enter, the Senator has not yet agreed to it, there would be 30 minutes to be equally divided on the amendment by Mr. KENNEDY tomorrow morning.

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

LIMITATION ON LEADERSHIP TIME TOMORROW

Mr. ROBERT C. BYRD. Mr. President, if the distinguished minority leader is agreeable, I ask unanimous consent that the time of the two leaders on tomorrow be limited to 1 minute each.

Mr. BAKER. Mr. President, I have no objection.

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

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

ORDER OF PROCEDURE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the debate on the amendment by Mr. KENNEDY resume at 9:35 a.m. tomorrow, with 10 minutes under the control of Mr. HART, 30 minutes under the control of Mr. SIMPSON, and that the vote on the amendment by Mr. KENNEDY occur then at 10:15.

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

Mr. ROBERT C. BYRD. So that allows 40 minutes for debate on the amendment.

Mr. BAKER. Will the majority leader yield?

Mr. ROBERT C. BYRD. Yes.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, can the majority leader advise as to whether or not he expects any more rollcall votes this afternoon?

Mr. ROBERT C. BYRD. No, I do not.

Mr. BAKER. I thank the majority leader.

Mr. HART. Mr. President, I wish to thank the majority leader for his fine cooperation, as usual, in arranging this difficult schedule.

Mr. ROBERT C. BYRD. The Senator is most generous. I thank him for his fine cooperation and courtesy, which are always characteristic of him.

Mr. SIMPSON. Mr. President, I want to say I very much appreciate the courtesies to me. The Senator has been very kind to me in my first months here. It is most appreciated. He has taken care of the issues I suggested and the time limitations that were to be observed, in fairness.

Mr. ROBERT C. BYRD. The Senator is most generous, and I am most appreciative.

ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, for not to exceed 30 minutes, and that Senators may speak therein up to 5 minutes each.

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

ENERGY

Mr. BELLMON. Mr. President, the Carter administration's long-awaited energy program has some elements which can prove helpful in solving the Nation's energy problem, but in my judgment it was deficient in the one area where maximum emphasis needs to be placed.

The truth is that there is no excuse for a nation so richly endowed with energy resources to be in the current state of apprehension about a secure energy supply. The President was quite right in pointing out that the United States has far more energy resources than all the Middle East countries put together, but he failed to show the country what needs to be done to bring these resources into production.

Basically four things are needed to produce any commodity. First is the raw material. Second is the technology. Third is the capital, and fourth is the incentive or will to produce.

So far as energy is concerned there is no question as to our resource base. The United States has enough coal, oil shale, uranium, oil and gas in the ground to last the country over 500 years at current rates of consumption. While technology can and undoubtedly will be improved, there is no question that the ability to produce synthetic oil from coal and shale is well proven. The missing elements in the Nation's energy matrix are access to capital and the incentive to produce. Here Government is the villain.

During the last decade, the Federal Government has taken one action after another which has reduced access of the private sector to the capital needed to expand American energy output. The repeal of the depletion allowance on oil and gas, our scarcest commodities, while leaving the depletion allowance on some 90 other minerals was a shortsighted, punitive action against the petroleum industry that cut the country's energy supply. So far as I know, no oil company executive's salary was cut. What was cut was the capital industry needs to invest in expanded production.

The imposition of price controls on crude oil can best be described as another effort to punish the industry but again it was the country which suffered.

Wasteful use of crude oil products continued, funds for expanding production were cut and the country's energy dependence grew worse.

The imposition of Federal price controls on all natural gas was another action which damaged the Nation's fuel supply. True, a bubble of gas which had been backed up in the uncontrolled intrastate market is now available for interstate sale, but at the same time some 250 to 300 rigs which were hard at work drilling for oil and gas are shut down largely due to the red tape and uncertainty which were exacerbated by passage of the Natural Gas Act of 1978.

The threat of an "excess profits tax" which in reailty is an excess income tax has further withered the incentives and threatens to reduce the capital needed for expanding U.S. energy production. President Carter's announced plan to siphon off billions of dollars from the private sector and turn these funds over to the equivalent of a "post office of oil and gas" will only delay an expansion of U.S. energy production.

If evidence of this fact is needed, it can be easily found currently in the 15 dry holes drilled by government bureaucrats in Petroleum Reserve No. 4. The cost of this project so far has been $200 million. Not one drop of oil will be forthcoming from these taxpayer supported dry holes. The holes are dry yet the bureaucrats are working for more money to drill more and more. So long as taxpayers foot the bill, the bureaucrats feel no pain. It will be the same in any governmentally supported energy corporation.

Mr. President, there is a role for Government in the energy area. That role is to: No. 1, attempt to assure fairness and equity in American citizens' access to available energy supplies, No. 2, to ameliorate the impact of high energy costs upon those least able to adjust, No. 3, to provide basic research funds in areas where the private sector cannot logically venture, and No. 4, to provide the climate for the private sector to produce without undue deleterious effect to the environment.

Mr. President, to sum up, Government should govern and the private sector should produce. This country has become great by following those precepts. The launching of an Energy Security Corporation is a threat to this historic arrangement. Fundamentally, following such a path means taking needed capital away from the private sector and turning it over to the bureaucracy to invest in whatever schemes the bureaucrats conjure up. If past experience is any guide, such a program is doomed to fail.

Mr. President, President Carter's plan for creating an Energy Mobilization Board makes considerable sense provided that the members of such a board are granted sufficient authority to cut through the red tape and remove the roadblocks which recent legislation has placed in the way of energy production. Most of the rest of what President Carter has recommended will follow naturally if the market system is allowed to operate.

Looking for a whipping boy is futile. The members of OPEC will not be deterred from setting whatever price they feel the market will bear until alternate sources of fuel are brought into production. The job of Congress and the administration is to remove disincentives which have hampered production and to lessen economic injury of higher energy prices on those least able to adjust.

REVERSING THE NUCLEAR ARMS RACE

Mr. McGOVERN. Mr. President, over the weekend, I have reflected on the testimony presented to the Senate Foreign Relations Committee last week. I am more inclined now than a week ago to the view that the SALT II Treaty combined with the ratification process may be a formula for escalating rather than reversing the arms race.

Perhaps General Jones, chairman of the Joint Chiefs of Staff, a man whom I value as a personal friend, summarized most clearly where we are heading when he said that the SALT II Treaty is "a modest but useful step" provided we embark on substantial new nuclear spending to modernize our present strategic force.

It is the proviso that worries me. I have heard the same statement around the committee table. The message seems to be: we will take the treaty as long as we also get another costly round of nuclear weapons. I notice that even some Senators who originally appeared to oppose the treaty are now hinting that they might support it if firm commitments to new weapon systems are attached. Senator MUSKIE spoke last week of his "gut instinct." My gut instinct is that this treaty will be ratified when enough Senators are convinced that it does not impede any weapons system that "the best and the brightest" at the Pentagon are planning for us in the 1980's. SALT II will help us eliminate the second-rate killers so that we can concentrate on the high quality that comes from refined devices like the MX. SALT II is so much finer than SALT I that one can scarcely wait for SALT III. And who can even imagine what lovely devices will emerge in SALT IV or V? The probability, based on the record, is that the weapons which the Kremlin and the Pentagon regard as the most destructive will be preserved while lesser systems are weeded out in the name of arms limitation.

Thus, one alternative that is emerging is treaty ratification conditioned on a new generation of nuclear weapons more deadly, costly and destabilizing than the status quo. Such a conclusion, ironically, undermines the very goals of the treaty—to reduce the arms burden and the danger of nuclear conflagration. Perhaps the same process is going on in the Kremlin.

Paradoxically, a second alternative is emerging, embracing a broad spectrum of Americans, which holds that the treaty is seriously flawed because it fails to produce substantial arms reductions. I cannot recall a major witness, including treaty proponents and opponents, military and civilian, hawk and dove,

who did not express regret that this treaty does not provide deeper arms reduction. Some have argued that the treaty should be modified or rejected to require such arms reductions by both sides.

The paradox of these hearings so far is that everyone favors arms reductions; yet, we move relentlessly toward more arms.

If this paradox is not overcome, we will be doomed to a new arms race whether SALT II is ratified or rejected. This means not only great physical danger to the world. But as Prof. Seymour Melman has long warned us, it also means that we will continue to suffer from inflation and the loss of civilian industrial productivity while we pour our dollars, science and technology into surplus weapons. It means also that we will postpone a major national energy policy while we plot new devices for human destruction. With all due respect to the President's earnest speech last night, we are not rich enough to finance both a continuing arms race and the transition to renewable sources of energy without unacceptable inflation.

Our challenge is to secure a treaty or a process that reduces nuclear armaments rather than increasing them. Present approaches to arms control cannot break free from the trap of negotiation followed by escalation.

Allowing upward expansion to ceilings above the arsenals of either side; allowing new types of weapons; development of "bargaining chips"; shifting the arms race from quantitative to qualitative competition—all of these will lead only to a deadlier rivalry at higher and more dangerous levels.

The fact is that the very modest steps which this treaty represents are no longer viable—militarily, economically or politically. Arms controllers can no longer afford timid, long-drawn-out struggles while new weapons technology is boldly sprinting ahead.

Clearly, we need a new strategy. It is no longer enough to be for reductions in the abstract. The real issue is how are we going to achieve genuine reductions.

To meet the need for a new approach, I am today announcing my intention to propose "arms reduction" legislation to the Resolution of Ratification which would mandate our negotiators to undertake immediately upon the acceptance or rejection of SALT II to freeze and then reduce nuclear weapons arsenals on both sides.

The legislation I will introduce will call for immediate negotiations for SALT III to:

First, establish an immediate freeze or moratorium for 1 year on development or deployment of additional strategic nuclear delivery vehicles and warheads;

Second, to mandate annual reductions of at least 10 percent in the arsenals of both sides for each of the following 3 years;

Third, a summit meeting after 3 years to reconsider whether the percentage reductions should continue and if so, at what level.

Such a resolution would permit our negotiators to devise a freeze and reduction proposal which is verifiable and equitable. In the Senate, we should focus on the major policy issues of national security and world peace. We need to send a message of common sense that will cut through the madness of the global arms rivalry.

I realize that many of the same problems of defining equitable reductions which have plagued the SALT talks may crop up again. But at least we would shift the terms of the debate from defining equitable increases in new missiles and warheads to defining equitable reductions. That is what the SALT process should be about according to a wide range of Senators from the most conservative to the most liberal.

Arms reduction legislation is necessary whether or not SALT II is approved. It is generally agreed that Soviet and U.S. nuclear arsenals are roughly equal now. If that is the case, let us freeze the present level and try to reduce rather than exercising our options under SALT II to achieve parity at ever higher levels of nuclear weapons. SALT II gives each nation the right to build up in certain categories. If instead we can freeze the arms race, then the arguments about which side gains the most from SALT II would largely disappear. A freeze followed by mutual arms reduction would enable both sides to avoid the risks of amendment or rejection of SALT II while realizing the benefits of the genuine arms reductions which supporters and critics of the treaty all seem to favor.

The danger of moving to SALT III without a freeze is that SALT II allows an expansion in launchers, warheads and destructiveness. Therefore, even if SALT III reduced the levels in SALT II, the end result could still be bigger arsenals of nuclear overkill than either side possesses today. These would be bogus reductions.

During these hearings and in other forums, I have heard my name invoked by people who generally do not agree with me at all. Some of the most hardline opponents of SALT II now often say: "We agree with Senator McGOVERN that this treaty does not go far enough to reduce armaments." I have listened to these comments without challenging the sincerity of the speakers.

So today I call on those who agree with me in theory about reversing the arms race to join in practice to devise a new strategy of genuine arms reduction. Otherwise, I must object to my name being worn as sheep's clothing by cold war wolves whose real purpose is to invoke the dreams of arms reduction to sustain the nightmare of nuclear overkill.

President Carter, Secretary Vance, Secretary Brown, the Joint Chiefs of Staff, Senators JACKSON, GARN, and HELMS, critics Paul Nitze and General Rowny, as well as our arms negotiators Mr. Smith, Mr. Johnson, Mr. Warnke, and General Seignious have said they are disappointed that the SALT II Treaty has not provided for deeper nuclear reductions. I invite all of these spokesmen and all others who seek to reduce the arms race to join in supporting negotiations to first freeze and then systematically scale down the nuclear race that now threatens to destroy our civilization.

Let me conclude by summarizing the two alternatives I see emerging before the Senate Foreign Relations Committee. First, we can create the illusion of arms control but the fact of arms escalation by ratifying this treaty and then proceeding to build the MX and other nuclear monstrosities; or second, we can accompany the treaty with a resolution calling on the United States and the Soviet Union to freeze and then reduce the nuclear accumulation. I cannot support SALT II as presently constituted without some such accompanying resolution based on what I believe is the emerging consensus of both "hard-liners" and longtime advocates of arms limitation. I choose the alternative of arms reduction and I urge the numerous advocates of this position to join with me. Let us have the courage and the will to force both ourselves and the Soviet Union to accept the realities of the nuclear age. We may or may not succeed in confronting that reality—either of our own addiction to the arms race or because of Soviet addiction. But better the pursuit of reality than surrender to an illusion.

THE IMPORTANCE OF THE CONNALLY RESERVATION TO THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the Genocide Convention to date remains unratified. This subject has been given a great deal of careful consideration by the Senate. It deserves to be ratified and it is difficult to understand why such action has not yet been taken.

Opponents of the Genocide Convention are very concerned with the jurisdiction of the International Court of World Justice involving cases of "genocide."

Opponents have raised the objection that the United States would be at the mercy of the International Court of World Justice if the Court decided that it had jurisdiction concerning U.S. compliance to the Genocide Convention.

This is just not the case.

If the Senate ratified the Genocide Convention today, the United States would not suffer any limitation of its sovereignty.

The United States is clearly protected by the Connally reservation on the matter of sovereignty.

This reservation clarifies and settles the question of jurisdiction. It specifically provides that the jurisdiction of the International Court of World Justice "shall not apply to disputes with regard to matters which are essentially within the jurisdiction of the United States as determined by the United States of America." The intent as well as the meaning of the Connally reservation cannot be misconstrued. U.S. sovereignty is without a doubt protected.

It is also important to point out that the Connally reservation is similar to reservations made to numerous other

treaties including the Convention on the Privileges and Immunities of the United Nations of 1946 and the Statute of the International Atomic Energy Agency of 1956.

It is obvious then that the United States is not likely to be at the mercy of the International Court of World Justice concerning charges of "genocide" against the United States.

The U.S. Senate is long overdue to take positive action on the Genocide Convention. I strongly urge my distinguished colleagues to give their immediate and unreserved support to the Genocide Convention.

OMAHA WORLD-HERALD SPEAKS OUT ON ALASKA LANDS

Mr. STEVENS. Mr. President, the final disposition of Alaska's lands will have a tremendous impact on the entire United States, not just Alaskans. It has always been my position that a bill can be passed which allows for the reasonable development of Alaska's resources while providing for the preservation of Alaska's scenic and wildlife values and I continue to hope that this is possible.

However, many Alaskans doubt that the Federal Government can be reasonable about this legislation. This feeling is understandable in view of past actions in Alaska. As a recent editorial in the Omaha World-Herald points out, there is some question as to whether those in Washington are treating Alaska as a sovereign State or, if, even after two decades, Alaska is being treated as a possession.

Although the State of Alaska was entitled to choose 104 million acres under the Statehood Act, there are some serious misconceptions regarding those selections. Proponents of H.R. 39 continually assert that Alaska's 104 million acres permitted it to choose the finest resource lands in Alaska and, therefore, the Federal Government can afford to withdraw millions of acres without adverse effects. In reality our State has never been able to freely select its land, it has been hampered by administrative edicts and laws to block land selections and the State has neither selected the full entitlement nor received title to the lands it has selected.

Mr. President, I think the editorial reflects the frustration felt by many Alaskans and I ask unanimous consent that it be included in the RECORD.

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

ARE WE TREATING ALASKA AS STATE OR POSSESSION?

Alaska, a state bountifully blessed with natural resources, undeveloped land and beauty, now feels it is the subject of unkept promises and federal domination.

Remember the Alaska Statehood Act of 1958. Wayne Aspinall of Colorado, then chairman of the House Interior and Insular Affairs Committee, which was most influential in passing that act, said recently:

"It was our intention to give Alaska as much land as it needed to support statehood." He also said: "The statehood resolution will enable Alaska to achieve full equality with existing states, not only in the technical judicial sense, but in practical economic terms as well. It does this by making the state master in fact of most of the natural resources within its boundaries."

The act granted Alaska the right to select, over a 25-year period, 104.5 million of the 367 million acres that make up the land mass of the state.

So what has happened? Twenty years later, Alaska still has received less than a fifth of the promise. Meanwhile, the federal government has been setting aside land in blocks larger than many states, thereby reducing the pool of acres from which the state can draw.

Alaska is a vast state, more than double the size of Texas and 7½ times larger than Nebraska. Its population is about that of Omaha's and it has to support state, county, school and local taxes over a broad territory. Prior to statehood, more than 99 percent of the land was federally-controlled.

Because so little was known about so much of the land and resources and because it had a long grace period, Alaska didn't rush to grab up land. It based selections on these needs: future settlement, encouragement of commercial and economic stability, recreation, wildlife protection, lifestyle preservation and sensible management relations with federal land controls.

Alaska selected the last of its 104.5 million acres in 1968. But Congress, which has to grant approval, has held back time after time in the face of increasing environmental and federal agency pressures. Less than 21 million acres have been approved in 20 years.

Last fall after two years of debate, an ad hoc House-Senate committee apparently had worked out a compromise that also was approved by the Carter administration. But it was killed in the waning moments of the last session of Congress. Then in December came another blow. President Carter, acting under the 1906 Antiquities Act, proclaimed 55 million acres be set aside for new and improved national monuments.

A new House bill along the same lines as last year's compromise was approved March 1 by the House Interior and Insular Affairs Committee. It would grant the rest of the 104.5 million acres promised Alaska and also would set aside 99.6 million acres in conservation units.

But now comes another threat to the efforts of Alaska's legislators and Gov. Jay S. Hammond. It is a new bill introduced by Committee Chairman Mo Udall, D-Ariz., and backed by vocal conservation groups and the administration, which said it no longer approves of the compromise.

The Udall bill would set aside 140 million acres (about the size of California) as wilderness areas, including: 20.5 million acres (larger than Maine) for national parks, 44.9 million acres (larger than Missouri) for refuges, 21.6 million acres (about the size of Indiana) for park preserves and 4.8 million acres (about the size of New Jersey) for recreation.

Some of this land involves territory for which the state already had made requests.

Former Rep. Leo W. O'Brien said recently that because the statehood bill bears his name he felt compelled to note that "there are some in Washington who seek to treat Alaska, even after two decades, as a possession rather than a sovereign state." He added: "The statehood bill was a solemn pledge by Congress to the new state."

In a letter to former Alaska Gov. H. A. Boucher, Aspinall said: "The new state has a great future. I hope Congress doesn't ruin it."

It is past time to honor the promise to Alaska by entrusting it with the rest of its 104.5 million acres. Alaska is no longer a child.

On other land issues, it also seems as if there could be reasonable compromise—somewhere between those who say Alaska "represents our last chance to preserve vast areas of wildness" and those who fear "a lock-up of the national resources storehouse while we depend on foreign sources for energy and minerals." Congress ought to get on with the job of settling things to the benefit of a majority of Americans and Alaskans.

ELIZABETH JANEWAY

Mr. PRESSLER. Mr. President, every now and then, we are blessed with an insight into a personality we can eagerly like. I believe the New York Times hit the nail on the head when on July 7, 1979, it ran a feature story on Elizabeth Janeway.

Elizabeth Janeway, your philosophy inspires, because it is so sound. Let me congratulate you, Mrs. Janeway, in this 25th anniversary year for the Elizabeth Janeway Prize for Prose Writing at your alma mater, Barnard College.

For these and other reasons, I ask unanimous consent to have the New York Times story printed in the RECORD.

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

ELIZABETH JANEWAY: WRITING FOR HER LIFE

(By Nan Robertson)

"I get tired of people who say, 'I've always been a feminist,'" says Elizabeth Janeway. But that is what she has always been, and now, at the age of 65, crowned with a full and satisfying life as a novelist, nonfiction writer, critic, encourager of young writers, wife and mother, she has become an unruffled elder stateswoman of the movement.

As a reviewer of one of her books put it, she pursues her arguments with a placid logic and inexorable good will; she lacks resentment, "and that sets her work aside from the mass of the women's movement writing where harnessed rage lends both the frisson of threat and the rhetoric of muddle and instability."

Mrs. Janeway is articulate on the printed page, but her least favorite subject seems to be herself. Nonetheless she was encouraged to speak up about it the other day. It is the 25th year of the Elizabeth Janeway Prize for Prose Writing, a coveted award for students at Barnard College, of which Mrs. Janeway is a trustee and just-named Distinguished Alumna.

The first winner of the writing award, in 1955, was Arlene Croce, now dance critic for The New Yorker magazine; the latest is Margaret Thompson. The three judges were Mary Gordon ("Final Payments"), Janet Burroway ("Raw Silk") and Jane DeLynn ("Some Do"), all previous Barnard literary winners. Earlier judges have ranged from Donald Barthelme and John Cheever to Francine du Plessix Gray, Shirley Hazzard, Erica Jong, Bernard Malamud, John Hersey, Toni Morrison, Joyce Carol Oates and Alfred Kazin.

The woman behind the prize is small and neat and controlled, with a calm, pale face and deep hazel eyes, her white hair pulled straight to the back with combs.

She works in a huge room on the third floor of a stone town house on the Upper East Side that she shares with her husband, Eliot Janeway, the economist, and a staff of 14 who help him put out his books and newsletters. Mr. Janeway works on the fourth floor.

Mrs. Janeway's study has been turned into a fantastic landscape by 75-year-old wallpaper that covers every inch of the walls, a riot of deep red, flowering trees, peacocks

and urns against a background that has acquired a deep golden patina.

Mrs. Janeway was born Elizabeth Hall in 1913 in Brooklyn into a family for whom writing was part of life. Her father's father, a powerful preacher of the Victorian era, published volumes of sermons and books on the Gospels. Her father, a naval architect, wrote on seamanship and was editor of Yachting magazine for many years. Her aunt and sister, older than she by 10 years, also wrote.

WROTE ADVERTISING COPY

Elizabeth Hall began her writing career by turning out advertising copy for Abraham & Straus's basement, dropping out of Barnard for a year in 1933 when the family fell victim to the Depression.

Mrs. Janeway remembers this as "one of the luckiest of the many pieces of luck that have blessed me."

"I learned more working," she said, "than I would have in an equivalent year of college, met a greater variety of people and discovered I could stand on my own feet at a reasonably early age.

"There was a tradition in my family. They expected you to pick up a pen and write in time of need. My family also had a continuing expectancy that a woman would manage by herself. They got my sister and me through college, and they expected we'd earn our living. Also, when I was at Barnard, there were plenty of people there who didn't have the faintest expectation of getting married. We were treated as serious people."

Back at college after her A & S stint, Elizabeth Hall got her first true acclaim as a writer when, as a senior, she won the Story Magazine Intercollegiate Prize. "It meant a great deal to me," she said. "If professionals thought I could write, I wasn't kidding myself too badly."

Soon after being graduated from Barnard in 1935, she met Eliot Janeway at a party, something went "click," and "we fell to living together rather quickly but didn't get on to marrying until 1938." He was writing for The Nation, Life, and Fortune. "In 1938 he went to Time as business editor," Mrs. Janeway said, "and I was scrabbling along at the Book-of-the-Month. That seemed to suggest we could count on having enough income to have children. So, we got ourselves properly hitched."

Meantime she wrote, rewrote and twice scrapped her first novel, which was finally published in 1943 when she was 30. "I wasn't just writing and being nagged by Eliot to go on with it," she said. "I had my babies, Michael in 1940 and Bill in 1943, just after 'The Walsh Girls came out."

She went on: "I should say once and for all that my husband has been the greatest force in my life, encouraging me to write, to respect and take seriously whatever talent I have and to live up to my potential for action and for thought. I've been told and I've read that some women with careers have husbands who are made uneasy and jealous by a wife's success. My husband would regard any failure to do my best at all times as unworthy."

The minute they could afford household help to free them, they had it by joint decision. They now have a staff of three: cook, housekeeper and handyman.

Mrs. Janeway has written, in all, six novels, four children's books and two books on social change, as revealed and explained by the women's movement: "Man's World, Woman's Place," published in 1971 in the early stages of resurgent consciousness (about which the word most frequently used was "wise") and "Between Myth and Morning: Women Awakening," in 1974.

She has just finished a third book, "Powers of the Weak," which Knopf will bring out next year. In this she explores, among other things, "the largest, the oldest, the most central group in the category of the weak—women."

DEVOTED TO BARNARD

She believes in women's colleges and is devoted to Barnard. "When we have 50 women U.S. Senators, I won't care anymore whether there's an option about going to a woman's college," she said. "I think it's important that places like Barnard exist—good places where women can have an education that isn't male-oriented. They exist because of the difference between the accomplishments of women who graduate from single-sex colleges and those who went to coed schools. In the last two generations, women's colleges have turned out, percentage-wise, twice as many women with doctorates, to take something you can measure easily. It's made a difference in aspiration and the ability to get there."

She is an exemplar. The forces that have molded Elizabeth Janeway include her family, her school and her husband, all of whom freed her to become her own woman. "Most women don't have that luck, and I know it," she said.

INFLATION DESTROYS THE MARKETPLACE

Mr. HELMS. Mr. President, the spring issue of the Intercollegiate Review contains one of the most impressive articles on inflation that I have seen in some time. It was authored by Prof. Robert Higgs.

At this time, when too many individuals still hold the naive belief that wage and price controls can work, it is important to note the kind of commonsense that Dr. Higgs provides.

What is particularly striking is that the phenomenon of inflation not only distorts the marketplace and cripples the production of goods and services—it also destroys the vital institutions of a free society.

Mr. President, I ask unanimous consent that Professor Higgs' article and the accompanying footnotes be printed in the RECORD.

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

INFLATION AND THE DESTRUCTION OF THE FREE MARKET ECONOMY

(By Robert Higgs)

Since 1933 the overall price level in the United States has increased with virtually uninterrupted regularity. In some years it has risen faster than in others, of course, but almost always it has risen. The level of prices now stands at more than five times the level of 1933 or—should 1933 be considered an inappropriate base year—about four times the level of 1929. In other words, the purchasing power of money is only about one-fourth what it was 50 years ago. During the past decade alone, the value of the dollar has fallen by about one-half. As we all know, it is currently continuing to fall rapidly as inflation proceeds at a rate near ten percent per year.

Some people, including some well-known and highly-regarded economists, do not consider inflation a very serious problem. It is, they think, merely an ongoing devaluation of the economy's unit of account that entails few if any significant real effects. This view is mistaken. In fact, inflation produces a variety of significant harmful effects. Most important for those who value liberty, inflation is, in at least four distinct ways, destroying the free market economy.

INVISIBLE CONFISCATION OF PRIVATE WEALTH

Imagine, if you can, a scheme in which agents of the Internal Revenue Service, surreptitiously and arbitrarily, steal billions of dollars worth of privately owned wealth from American citizens. What enormous social and political repercussions would certainly ensue. It strains the imagination very little to suppose that the government responsible for such pillage would be abruptly and perhaps violently overthrown. Wanton confiscation of private wealth flies in the face of a Constitution that promises: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Yet inflation has in effect confiscated far more private wealth with scarcely a murmur against the responsible government. Inflation, as economists conceive of it, is equivalent to a tax on all monetary claims. Taking away one of every ten dollars of constant purchasing power—an explicit tax or confiscation—is equivalent to an inflation of ten percent. In either case the citizen loses one-tenth of his original purchasing power, his command over goods and services. Inflation taxes not just money balances; it taxes equally all claims denominated in units of money. The real value of bonds, mortgages, insurance policies, pensions, and similar financial claims depreciates equally with the real value of currency and bank account balances.

The magnitude of the current inflationary tax boggles the mind. In 1976, there was $2,343 billion of life insurance in force in the United States. Public and private debt totaled $3,355 billion. The money stock (currency plus checking and savings accounts) reached $1,237 billion.[1] The total of these monetary claims was $6,935 billion. During the two years, 1976–1978, the price level rose approximately 15 percent. Therefore, these claims depreciated by about $1,040 billion in 1976 purchasing power. The incredible sum of over a trillion dollars was taken by the inflationary tax in just two years. This sum, which equals well over half the U.S. gross national product in 1976, is probably the largest tax levy in human history. It amounts to almost $5,000 for every man, woman, and child in the United States! Astonishingly, this vast confiscation of private property occurred without explicit governmental deliberation or approval, without compensation, without due process of law. In view of these legal and moral defects, it seems somewhat inappropriate to call it a tax. Theft is more accurate and more appropriate. To make matters worse, inflation does not simply exact its tribute once and for all. Rather, it continues erratically, day after day after day, with no end in sight.

But keep calm, certain economists exhort us. Although monetary creditors suffer from unanticipated inflation, monetary debtors benefit. We experience, as it were, windfall losses from our right pocket and equivalent windfall gains in our left one. It all balances: only the unit of account changes, as everyone pays more for goods and service purchased but receives more for goods and services sold. Unfortunately, however, the pockets experiencing windfall gains and those sustaining equivalent windfall losses seldom belong to the same pants. In fact, during an adjustment period that lasts for decades and may never be fully completed, net monetary creditors lose and net monetary debtors gain, and almost no one maintains a neutral position. (Eventually, as we shall see, almost everyone will probably lose.)

If everyone had equal ability to forecast correctly the future course of inflation, equal understanding of how to rearrange economic commitments to forestall its ravages, and equal capacity to carry out these rearrangements, then inflation would affect everyone in the same way. In reality, individuals differ enormously in these respects. Many have little understanding of what is happening

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to them; all they know is that "things cost more than they used to." Others, some of whom appreciate the situation and understand how they could attempt to insulate their economic affairs from inflation, have little or no capacity to carry out these rearrangements. This is so especially for private pensioners, who receive fixed money annuities and cannot renegotiate with their pension plans after retirement. Savings account depositors would like to receive higher interest to protect the real value of their deposits, and savings banks might be willing to offer higher interest rates in order to attract deposits, but legal restrictions hold down the allowable interest rates. Many ordinary citizens know little or nothing about alternative outlets for personal savings and therefore retain their savings account balances at banks. In recent years these depositors have earned in interest less than they have lost by inflation. Not only have they failed to earn any real interest, but they have lost real principal. (In November 1978 the Associated Press published a photograph of an elderly woman demonstrating against low interest rates outside a bank in San Francisco. In grim humor, her placard read: "savings deposits may be dangerous to your wealth.") Nor is such financial decay confined to widows and orphans. About half the major corporations are net monetary creditors, and evidence on their stock values during inflationary epochs shows that they have failed to evade the inflationary tax.[2] "The American public," as Arthur Okun has observed, "cannot readily speculate hedge, or arbitrage on inflation."[3] Without doubt, perfectly anticipated inflation exists only in the frenzied dreams of certain macroeconomic theorists; "evidence has never been presented that any inflation was accurately anticipated—even on balance."[4] In the real world, gainers and losers are legion.

The social wounds inflicted by inflationary redistributions cut deeper than accountants can measure. Recalling the German inflation of the early 1920s, Thomas Mann declared that—

"There is neither system nor justice in the expropriation and redistribution of property resulting from inflation. A cynical "each man for himself" becomes the rule of life. But only the most powerful, the most resourceful and unscrupulous, the hyenas of economic life, can come through unscathed. The great mass of those who put their trust in the traditional order, the innocent and unworldly, all those who do productive and useful work, but don't know how to manipulate money, the elderly who hoped to live on what they earned in the past—all these are doomed to suffer. An experience of this kind poisons the morale of a nation . . . Inflation is a tragedy that makes a whole people cynical, hard-hearted, and indifferent."[5]

Although the United States has not yet experienced a hyperinflation comparable to the German catastrophe of 1923, the same moral effects are now becoming visible. As Paul McCracken has said, "it is the capriciousness of these [recent inflationary] gains and losses that makes them so destructive of that broad consensus so essential for our free institutions to flourish."[6]

Through the welter of redistribution, however, one persistent gainer marches stoutly onward: the federal government. It is, as everyone knows, a gargantuan net monetary debtor; the national debt now stands in the neighborhood of $800 billion. As inflation proceeds, the real value of this debt steadily declines. When its bonds mature, the government repays, in command over goods and services, much less than in borrowed, much less than it implicitly promised to pay those who initially purchased the bonds and thereby transferred their command over goods and services to the government.

One naturally imagines that the spectacle of this gigantic public dishonesty would strike a deadly blow at the legitimacy of the federal government, inasmuch as the responsibility for the inflation itself rests squarely on the shoulders of the government. After all, excessive creation of money, for which only the government can be held accountable, is a necessary condition for inflation. Yet so successfully have politicians and governmental authorities shifted the blame for inflation onto the private sector—big corporations and labor unions, it is alleged, effectively conspire to raise prices and wages excessively—that the public stands largely mute while the holders of U.S. government "securities" are progressively defrauded.

Again, some assert that it all balances: what the bondholders lose, the taxpayers gain. But the two groups do not have equivalent membership, and hence real economic effects result from the actual redistribution of wealth. Moreover, the argument will not wash in a moral sense. Robin Hood was no less a thief because he gave some of the loot to the poor. And in the case of the government's systematic defrauding of its bondholders, it is by no means clear that the poor are the chief beneficiaries. In any event, the identity of the beneficiaries is irrelevant; the fundamental dishonesty, the profound corruption of public morality, remains. A former chairman of the President's Council of Economic Advisers, who ought to know, has recently confessed that "one of the worst evils of inflation is the accompanying deterioration of the level of public discourse."[7] In plain language, inflation encourages the leaders of government to lie about what they are doing and why they are doing it. Such behavior does not augur well for the future of our republican form of government.

There is, in short, a clear process whereby the federal government systematically shifts control over the economy's real resources from private hands to the government. It borrows to cover its budget deficits, thereby acquiring control over currently available real resources through voluntary contracts with its bond purchasers, who expect to be fully compensated by fixed interest payments and an eventual return of their principal sums. At the same time, however, the government, through the actions of its monetary authorities, "facilitates" the sale of its bonds by flooding the economy with more money than the public desires to hold under existing economic conditions. The public adjusts to this excess supply of money by exchanging some of the new money for bonds and some for currently produced goods and services until the prices of bonds and the rate of money income rise to levels at which the public is willing to hold the additional money. When the economy is already operating near full capacity, one result of this portfolio adjustment process is inflation. And with inflation, the government's promise to its bond purchasers is broken and resources permanently shifted from private hands to government control.

Some will object that this government capture of real resources through inflation cannot continue indefinitely. Surely people will catch on. History provides the conclusive refutation of this objection. The confidence game of inflationary finance has continued for decades in the United States; and during the 1970s, with the sharp acceleration of inflation, more unsuspecting victims have been fleeced than ever before in peacetime. This is not merely because "there's a sucker born every minute," some of whom are foolish enough to believe the government can be trusted. It is also because the difficulties of forecasting correctly the rate of inflation are great—people are almost always surprised by an acceleration in the rate of inflation—and the financial markets are so hamstrung by governmental controls (*e.g.*, interest ceilings on savings accounts) that the adjustment process is highly imperfect, cumbersome, and painfully slow. Meanwhile, as private citizens struggle to protect their property from the invisible tax, the government's command over real resources grows steadily larger.

TAXATION OF PHANTOM GAINS

The invisible inflationary tax on monetary claims would shift control over resources away from the private sector even if the government levied no explicit taxes. In reality, of course, the government levies many explicit taxes, including those on personal incomes, gifts, estates, corporate profits, and capital gains. Moreover, each of these taxes has a progressive rate structure linked to a taxable base denominated in units of money. If the tax rate schedules remain fixed, then even without inflation the progressivity of the rates insures that more and more real income, both absolutely and relatively, will be transferred to the government as economic growth takes place. If there is inflation without real economic growth, "stagflation" as the current unlovely expression has it, then the private sector will find itself with not only less real income relative to the government but less real income absolutely. No matter what the rate of real economic growth, the modern tax system operates to diminish the private economy. During inflationary epochs it also penalizes the maintenance of the real stock of productive capital, discourages real investment, and therefore retards real economic growth. Overall, the effect is systematically to shift resources to less productive (sometimes anti-productive) uses. When all this is well under way, self-appointed sages arise to tell us that the free market economy doesn't work any more.

Most of us fully appreciate the relation of inflation to our personal income tax liabilities. It has been calculated that a typical family of four paid just over nine percent of its $15,000 income in federal income taxes in 1977. If this family's income should continue to increase by seven percent annually, and if inflation should proceed at the same rate, in ten years the family would have the same real gross income, but it would have to pay almost 18 percent of its income in federal income taxes; its real tax liability would approximately double.[8] A similar calculation for a typical California family, taking into account all income and social security taxes and projecting 6.5 percent annual inflation with no gains in real income, deduced that in about eight years the family would be subject to a tax rate of 50 percent on any additional income.[9]

Even more drastic are the effects of inflation on the real returns to investment. Martin Feldstein has recently testified before the Joint Economic Committee of Congress that—

"During the past decade, effective tax rates have increased dramatically on capital gains, on interest income and on direct returns to investment in plant and equipment. Investors in stocks and bonds now pay tax rates of nearly 100 percent—and in many cases more than 100 percent—on their real returns.

". . . Our tax system was designed for an economy with little or no inflation. But if current rates of inflation persist, the existing tax laws will continue to impose effective tax rates of more than 100 percent on investment incomes. To make matters even worse, the current tax laws imply that future tax rates will depend haphazardly on future rates of inflation and therefore cannot be predicted at the time that investment decisions are being made.

". . . [I]n 1973 individuals paid capital gains tax on $4.6 billion of nominal capital

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gains on corporate stock. When the costs of these shares are adjusted for the increase in the consumer price level since they were purchased, this gain becomes a loss of nearly $1 billion.

". . . Inflation not only raises the effective tax rate, but also makes the taxation of capital gains arbitrary and capricious. Individuals who face the same statutory rates have their real capital gains taxed at very different rates because of differences in holding periods." [10]

Naturally, all this has had a chilling effect on businessmen's willingness to invest. Those who are puzzled by the ten-year slump of the stock markets or by the recent failure of real investment in plant and equipment to expand and push up labor productivity at historic rates need look no further for an answer.[11]

Unfortunately, however, there is more. Inflation has further penalized investment through its effect on depreciation allowances computed for tax purposes. The tax laws provide that part of a firm's gross income may be set aside for the maintenance of its plant and equipment as they wear out or become obsolete; that is, part of the gross income may be treated as what it is, a cost of doing business rather than a net return. However, the tax laws require that the depreciation allowances be based on the original dollar cost of the capital being replaced. As inflation proceeds, such allowances become more and more insufficient to cover the increased dollar costs of replacements. Feldstein concludes:

"This reduction in the real value of depreciation that is caused by the historic cost method of depreciation is equivalent to a substantial increase in the rate of tax on corporate and other investment income.

"In 1977, the historic cost method of tax depreciation caused corporate depreciation to be understated by more than $30 billion. This understatement increased corporate tax liabilities by $15 billion, a 25 percent increase in corporate taxes. This extra inflation tax reduced net profits by 28 percent of the total 1977 net profits of $53 billion. This is the single most important adverse effect of inflation on capital formation." [12]

The most devoted enemy of America's free market economy could scarcely devise a more devastating instrument for its destruction than the combination of our tax laws and inflation. Together they have so vastly reduced the real returns on investment in plant and equipment that there remains little incentive to invest. Along with the historically subnormal rates of investment during the past decade, we have, not surprisingly, also experienced historically subnormal rates of real productivity growth. At the same time, however, the public sector has grown apace, its expansion fed by the invisible taxation of money via inflationary financing of its budget deficits and by explicit taxation of phantom gains in the private sector.

HEIGHTENED ECONOMIC UNCERTAINTY

Economists can, and usually do, easily overlook the distributional effects of inflation. In the standard textbook macroeconomic models the variables are so few and so highly aggregated that such effects cannot be represented. In these models there are no pensioners to be impoverished. Indeed, except for "the" real wage, there are not even any relative prices. With a single output and a single price of output, these models in effect reduce the analysis of inflation to a matter of numeraire, of mere notation. If all prices change by the same proportion (the single price assumption is defended on the grounds that it is analytically equivalent to the assumption that all implicit relative prices remain constant), then no real effects are supposed to ensue; the dollar serves only as a unit of account and its real "value" has no particular significance. Economists actually consider this abstraction from relative prices a virtue. After all, the greatest sin for a professional economist is to confuse nominal (absolute) and real (relative) prices; and what better way to forestall confusion than explicitly to assume the structure of relative prices fixed while analyzing the overall absolute price level.

Of course, every economist knows that relative prices do change during the course of inflation, that there are gainers and losers, and that the consequent shifts in the personal and group distributions of wealth may set in motion social conflicts. But so what? The economists correctly note that relative price changes and consequent distributional effects would occur even if the overall price level were constant. Therefore, they insist, to attribute the distributional effects that occur during an inflationary epoch to the inflation itself is simply to confuse once again absolute and relative prices. There is some virtue in this position, but not much. It completely overlooks the transfer of command over real resources to the public sector, as explained above. Moreover, the economist goes too far when he insists that the rate of inflation and the relative price structure are independent.

Because such independence does not exist, inflation cannot be understood fully as a "zero-sum game" played between net monetary creditors and net monetary debtors, where one group's gains exactly offset the other's losses. This approach takes too narrow a view. Not only does it abstract from the role of the tax system and from the effects of inflation on the structure of relative prices, but it also ignores the effects of inflation on the perceived legitimacy of the free market economy and hence on the institutional stability of the socioeconomic system. It is unlikely that people (especially politicians) will forever stand quietly aside and respect the rules of the alleged zero-sum game of inflation.

Empirical evidence indicates that as inflation becomes more rapid it also becomes more variable.[13] Not only is more rapid inflation itself an evil; it is an even greater evil because it is more difficult to forecast just *how* rapid it will be next month or next year. This uncertainty creates problems in the credit markets, because it makes consensus more difficult to reach between borrowers and lenders with respect to the expected rate of inflation. But the difficulties extend much more widely. As Milton Friedman has observed, "The more volatile the rate of general inflation, the harder it becomes to extract the signal about relative prices from the absolute prices." [14]

Two recent statistical studies have established that inflation and the structure of relative prices are not independent; rather, their variances are positively related. Examining annual data for the United States, 1947–1974, Daniel Vining and Thomas Elwertowski have shown that "as the general price level becomes more unstable or less predictable relative to its trend value . . . the dispersion in relative prices increases." They comment on their findings.

"If general price change instability is highly correlated with and accompanied by price inflation, and if dispersion in individual price changes widens in such periods. . . . then a general atmosphere of higher risk and insecurity is the result. . . . Indeed, one would hardly expect general price level instability to be the public policy problem that it manifestly is if it didn't have some systematic and predictable effect on the prices that are important to the individual, i.e., the prices of goods that he sells relative to those of the goods that he buys." [15]

In a similar but somewhat more sophisticated study, Richard W. Parks, using annual data for the United States, 1929–1975, has shown that "unanticipated changes in the rate of inflation have a significant effect on the amount of relative price change in the economy and result in nonneutral real effects." [16]

Heightened economic uncertainty is never good for a free market economy. Inflation creates greater uncertainty because it enlarges the random element in all markets. As inflation becomes more rapid, this effect is magnified more than proportionately. Coping with greater uncertainty requires higher real costs and therefore reduces the efficiency of the free market economy. As Ackley has noted, "because long-term contracts of all kinds involve more risk in inflationary periods and places, people refuse to enter upon them, sacrificing the many real production efficiencies and economies which are made possible by such contracts, as well as wasting resources in more frequent negotiation." [17]

Most serious of all, enlarged randomness in the market process threatens the institutional legitimacy of the free market system. When the links between effort and reward grow more tenuous, when the "poker-game aspects of capitalism come to the fore," [18] when the winners in the race for wealth are increasingly viewed as the recipients of windfall gains, lucky rather than able or hard-working, then people perceive less fairness in the market distributions of income and wealth. In the long run, nothing can undermine the free market economy more surely than a widespread deterioration of belief in its basic equity. As Kenneth Boulding has said, "the dynamics of legitimacy . . . really determine the future of the world." [19] With a stable price level, "the old-fashioned virtues of hard work, thrift, honesty, and so on come into their own." [20] Needless to say, these are precisely the sorts of virtues that have helped to make America's free market economy so productive and progressive historically. If they disappear, the future will be grim. It may be grim anyhow, because the diminishing legitimacy of the free market economy, which inflation is doing so much to accelerate, is creating not only a readier acceptance of governmental controls but a positive demand for them.

PRICE CONTROLS

During both world wars and the Korean conflict and again under Nixon, the federal government has undertaken to supplant extensively the market determination of prices and to hold many prices below market-clearing levels while simultaneously stimulating aggregate demand to a high degree. The recurrence of these episodes suggests strongly that people do not learn from history. Although almost everyone recognizes that price controls "did not work" the last time, many support their reimposition. And indeed, in the brief afterglow of their reintroduction, they enjoy high popularity. This dissipates as the inevitable distortions, inequities, and absurdities induced by the controls become more evident. Eventually, almost everyone begs for termination of the program. Like epidemic diseases, price controls tend to rise and fall in accordance with their own internal logic.[21] Unfortunately, a full-fledged episode of price controls usually deposits a permanent residue of less comprehensive but more permanent controls, such as the energy price controls that persisted after Nixon's infamous Phases had passed away.

Joseph Schumpeter placed great emphasis on the role of price controls in facilitating the "march into socialism." They could, he warned, *result in a surrender of private enterprise to public authority.*

". . . Perennial inflationary pressure can play an important part in the eventual conquest of the private-enterprise system by the bureaucracy—the resultant frictions and deadlocks being attributed to private enterprise and used as arguments for further restrictions and regulations."

He noted in passing that "they will cer-

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tainly not call it Socialism or Communism." [22]

For the politician, especially for the President, price controls serve a vital purpose: with great fanfare, they decisively shift the blame for inflation onto the private sector. Perhaps this is the sense in which one can say that "they work." No matter how many times excessive expansion of the money stock is shown to be the necessary condition for inflation,[23] the public stands perpetually prepared to swallow cost-push, administered-price, and other superficial theories of inflation. Politicians know this. They know, too, that well-known economists can be enlisted to support at public forums each of these competing theories. The ensuing Tower-of-Babel exhibitions (*e.g.*, President Ford's inflation "summit meeting") in effect communicate to the public the message that "no one really understands our present inflation." Amid the confusion, the politicians wriggle off the hook. After all, how can the ordinary citizens really be sure that excessive creation of money to facilitate the financing of huge budget deficits is the true cause of inflation? Why, even the economists can't agree.

At the end of 1978 we had again come full circle. With inflation accelerating toward double-digit rates and the previous episode of price controls almost five years behind us, the President announced a brave new program to cage the beast of inflation and, over many years, to tame it. His program of "voluntary" wage and price constraints displayed all the absurdities of its predecessors. As the program lacked Congressional authorization, firms were merely invited to comply voluntarily with the guidelines; but if they declined the invitation, the government would use its procurement powers to punish them. It would also provoke the consuming public to ferret out offending firms and withdraw patronage from them. Profits as well as prices would be subject to allowable ceilings. Senseless distinctions were made between different fringe-benefit costs to employers. Ridiculous exemptions were granted to agricultural, fishery, and mineral products because their "prices are determined purely by supply and demand factors" [24]—as if other prices were determined by gnomes and gremlins. But what could one expect from a Council on Wage and Price Stability whose chairman, Alfred Kahn, was reported to have said that an "excessive" increase in the salaries of Chicago aldermen would "seriously undermine our efforts to bring inflation under control." [25] Economic balderdash of this caliber would have been slightly humorous if it had emanated from a less threatening source.

Many merely scoffed at the President's program, secure in the conviction that the "voluntary" controls would prove impotent. But such extreme confidence was unwarranted. In fact, many large enterprises would comply, at least for a while. As the Wall Street Journal's editors quickly noted, "The great corporations have fallen pusillanimously in line." [26] George Meany, on the other hand, blasted the program as "unfair and inequitable" and warned that it would lead to "public scapegoating." So far, so good. Meany, however, reasoning as if a vast extension of a limited evil would somehow make it virtuous, called for a more comprehensive and mandatory control program.[27]

Here, indeed, lies the gravest danger of the guidelines program. As Herbert Stein has observed:

"Such weak interference is frequently the prelude to stronger interference. It feeds the belief which still exists in some quarters that such intervention is the way to control inflation, and creates a demand and temptation for the President to do more of it when the weaker measures are seen not to have worked." [28]

Somewhere in the Valhalla of great economists, Schumpeter must be smiling sadly.

CONCLUSIONS

For decades inflation has been contributing significantly to the ill-being of America's free market economy, and during the most recent decade its virulence has increased. The effects are multiple and interactive. Financing of the government's huge budget deficits by the invisible tax on monetary claims—the modern counterpart of taxation without representation—shifts real wealth from the private sector to the control of government, defrauding public bondholders in the process. The combination of our tax laws and inflation creates disincentives for investment. The consequent slowdown of productivity increase is then widely attributed to inadequacies in the free market economy. Inflation heightens the uncertainty surrounding all economic transactions: higher inflation tends to be more variable; and more variable inflation goes hand in hand with more variable relative prices. Enlarged randomness in the price mechanism attenuates the links between effort and reward; windfalls proliferate. The increased role of luck and the decreased role of thrift and hard work diminish the legitimacy of market-determined rewards; hence, there arises an increased acceptance of and a positive demand for controls of the market mechanism. Wage and price guidelines respond to these demands. The weak and vacillating guidelines themselves do relatively little harm, but they can easily evolve into comprehensive and mandatory controls of wages, prices, and profits. If they do, the free market economy will be gone. It has been lost before, and at least partially recovered. No one knows how many times we can play this dangerous game before all our economic freedoms are lost irretrievably and hence our other freedoms placed in greater jeopardy.

Ironically, the most accurate and complete brief statement I have found of the relations between inflation and the destruction of the free market economy appears in an early work by the economist who would subsequently do more than anyone else to provide a theoretical justification for the universal adoption of inflationary fiscal-monetary policies in the western nations. In his Economic Consequences of the Peace, written in 1919, however, John Maynard Keynes saw clearly what the effects of inflation already had been in postwar Europe, and he feared for the future. He wrote:

"Lenin is said to have declared that the best way to destroy the Capitalist System was to debauch the currency. By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens. By this method they not only confiscate, but they confiscate arbitrarily; and, while the process impoverishes many, it actually enriches some. The sight of this arbitrary rearrangement of riches strikes not only at security, but at confidence in the equity of the existing distribution of wealth. Those to whom the system brings windfalls, beyond their deserts and even beyond their expectations or desires, become "profiteers," who are the object of the hatred of the bourgeoisie, whom the inflation has impoverished, not less than of the proletariat. As the inflation proceeds and the real value of the currency fluctuates wildly from month to month all permanent relations between debtors and creditors, which form the ultimate foundation of capitalism, become so utterly disordered as to be almost meaningless; and the process of wealth-getting degenerates into a gamble and a lottery.

"Lenin was certainly right. There is no subtler, no surer means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose.[29]

After sixty years, the validity of this analysis remains unimpaired.

FOOTNOTES

[1] U.S. Bureau of the Census, Statistical Abstract 98th ed. (1977), pp. 532, 533, 542.

[2] Armen Alchian and Reuben Kessel, "Redistribution of Wealth through Inflation," Science 130 (Sept. 4, 1959): 538; Jerome B. Baesel and Steven Globerman, "Unanticipated Inflation and Wealth Redistribution Among Business Firms: Additional Evidence," Journal of Economics and Business 30 (Winter 1978): 87.

[3] Arthur M. Okun, "Efficient Disinflationary Policies," American Economic Review 68 (May 1978): 349.

[4] Gardner Ackley, "The Costs of Inflation," ibid., p. 149, emphasis in original. See also Henry C. Wallich, "Stabilization Goals: Balancing Inflation and Unemployment," ibid., p. 161.

[5] Thomas Mann, "The Witches' Sabbath," in Michael Jefferson and others, Inflation (London: John Calder, 1977), p. 166.

[6] Paul W. McCracken, "Towards Full Employment and Price Stability," Nebraska Journal of Economics and Business 17 (Autumn 1978): 7.

[7] Ackley, "Costs of Inflation," p. 153.

[8] John Pierson, "Is It Time to Index Taxes?" Wall Street Journal (Aug. 9, 1978).

[9] "Squeezing the Average Family," Fortune 97 (Feb. 13, 1978): 66.

[10] Martin Feldstein, "Inflation and Capital Formation," Wall Street Journal (July 27, 1978). See also Richard W. Kopcke, "The Decline in Corporate Profitability," New England Economic Review (May-June 1978): 36–60.

[11] Charles R. Nelson, "Inflation and Rates of Return on Common Stocks," Journal of Finance 31 (May 1976): 471; Peter K. Clark, "Capital Formation and the Recent Productivity Slowdown," ibid. 33 (June 1978): 956–975.

[12] Feldstein, "Inflation and Capital Formation."

[13] Dennis E. Logue and Thomas D. Willett, "A Note on the Relation Between the Rate and Variability of Inflation," Economica 43 (May 1976): 151–158.

[14] Milton Friedman, "Nobel Lecture: Inflation and Unemployment," Journal of Political Economy 85 (June 1977): 467.

[15] Daniel R. Vining, Jr., and Thomas C. Elwertowski, "The Relationship between Relative Prices and the General Price Level," American Economic Review 66 (Sept. 1976): 701,705,706.

[16] Richard W. Parks, "Inflation and Relative Price Variability," Journal of Political Economy 86 (Feb. 1978): 81.

[17] Ackley, "Costs of Inflation," p. 153, emphasis added. See also Okun, "Efficient Disinflationary Policies," p. 349; and Wallich, "Stabilization Goals," p. 161.

[18] Kenneth E. Boulding, Beyond Economics: Essays on Society, Religion, and Ethics (Ann Arbor: University of Michigan Press, 1968), p. 206.

[19] Ibid., p. 52.

[20] Ibid., p. 208. See also Wallich, "Stabilization Goals," p. 163.

[21] George P. Schultz and Kenneth W. Dam, "The Life Cycle of Wage and Price Controls," in Economic Policy Beyond the Headlines (New York: W. W. Norton, 1977), pp. 65–85.

[22] Joseph A. Schumpeter, "The March into Socialism," in Capitalism, Socialism, and Democracy, 3rd ed. (New York: Harper and Row, 1950), p. 424.

[23] Milton Friedman and Anna Jacobson Schwartz, A Monetary History of the United States, 1867–1960 (Princeton: Princeton

University Press, 1963); and Peter I. Berman, Inflation and the Money Supply in the United States, 1956–1977 (Lexington: Heath, Lexington Books, 1978).

[24] "Some Wage and Price Standards are Altered, But Thrust of Inflation Plan is Unchanged," Wall Street Journal (Dec. 14, 1978).

[25] "Chicago Aldermen Bow to Carter, Cut Pay Raise," Wall Street Journal (Dec. 14, 1978).

[26] "The Imperial Presidency" [editorial], Wall Street Journal (Dec. 11, 1978).

[27] "Mandatory Wage, Price Controls Urged by AFL–CIO; Voluntary Plan Assailed," Wall Street Journal (Nov. 1, 1978).

[28] Herbert Stein, "Is Government Our Partner?" Wall Street Journal (Jan. 30, 1978).

[29] John Maynard Keynes, "The Economic Consequences of the Peace (New York: Harcourt, Brace, and Howe, 1920), pp. 235–236. See also Ackley, "Costs of Inflation," p. 151 and the remarks by Mann cited above.

GOLD CLAUSE IN UNION CONTRACTS?

Mr. HELMS. Mr. President, back in June, The Washington Post published an interesting article concerning contract negotiations being conducted between the Professional Employees Federation and New York State.

In 1976 I introduced a bill which would legalize for the first time in 40 some years contracts between individuals denominated in gold.

I suggested at that time that if the United States continued to corrupt the dollar, and make it less and less practical as a medium of exchange, citizens should have the freedom to use alternative media such as gold.

The Professional Employees Federation has made precisely that proposal to New York State, stating in effect that the U.S. dollar cannot be trusted. They are unfortunately correct in that judgment.

Mr. President, I ask unanimous consent that the article entitled, "N.Y. Union Proposes to Dump Dollar," be printed in the RECORD.

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

NEW YORK UNION PROPOSES TO DUMP DOLLAR

(By Lee Lescaze)

NEW YORK, June 22.—The dollar has taken some hard knocks recently and now a New York union has proposed that its members be paid in something of more durable value.

"Recognizing the possibility of uncontrollable inflation and the serious loss of credibility and purchasing power of [the dollar], the employer upon union's demand, will probably remunerate employes in mediums of exchange other than the presently used U.S. Federal Reserve dollar," the Professional Employes Federation has proposed in its negotiations with New York state.

"Such alternate mediums of exchange include, but are not limited to, gold, silver, platinum, bullion and coin, and/or one or more foreign currencies," the union contract proposal states.

If the union's idea catches on, the trend could affect television programming. Americans could be watching "Bowling for Yen" and goldbugs could compete on "The 228.57 Ounce Question."

Christine Grosse, public relations director of the union, said the proposal is serious. "Every proposal we put on the table is serious or we wouldn't put it on the table," she said. The union has a number of economists among the 48,300 state workers for whom it bargains and they helped formulate the unique bargaining approach, Grosse added.

"We're not suggesting that the governor pan gold in Colorado and pay us in gold dust," she said. "We want to be paid in the value of gold or silver or another index of value."

She was asked what the state's reaction had been.

"They laughed at it. We said, 'Hey, this is serious. Is this an indicator of how you're going to treat our association?' "

As far as the Professional Employes Federation (which represents doctors, nurses, engineers and accountants among 2,700 job titles) knows, its proposal is the first of its kind in the nation.

It wants to demonstrate to Gov. Hugh Carey and the state Department of Employe Relations that the 7 percent annual wage guideline Carey insist on following is too low in light of continuing inflation and other labor settlements in the nation.

So far, negotiations are not going well, both sides agree. They are close to calling for a mediator and there is more than the medium of payment dividing them.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Marks, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

PETITIONS

The PRESIDING OFFICER laid before the Senate the following petitions and memorials, which were referred as indicated:

POM–369. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Banking, Housing, and Urban Affairs:

"RESOLUTION

"Whereas, American shoe manufacturers, who recently began to rebound from the flood of cheap imported footwear, now find themselves shod with a potentially more crippling problem, the steadily increasing prices for a shrinking supply of domestic cattlehides; and

"Whereas, the price of American cattlehides has more than tripled in the past 17 months, and hide prices have risen by more than 68 percent since January, from 59.3 cents per pound to one dollar per pound as of last month; and

"Whereas, the impact of such increases on consumers will probably be felt next year, and at least two of New England's major shoe firms fear continued higher prices could lead to layoffs and possibly shutdowns in leather-related industries; and

"Whereas, primarily because of Taiwanese and Korean imports, the footwear industry currently employs 14,000 workers in Massachusetts as opposed to an employment figure of more than 20,000 eight years ago, but the hide market situation may prove a more serious aggravation, hitting the industry from the inside; and

"Whereas, as the United States provides 75 percent of the world's commerce in hides yet accounts for only 15 percent of the supply, the main reason for the bleak outlook is that most of the domestic hides are being exported to nations which capitalize on the devalued dollar, where they fetch a higher price than if they were sold to American tanneries and leather processors; and

"Whereas, the high amount of exports combined with a steadily declining slaughter rate have resulted in scarce supplies at inflated prices of raw materials needed by producers of shoes, handbags, belts and other leather goods, so that increased hide prices could cost consumers from 1 to 2 billion dollars; therefore be it

"Resolved, that the Massachusetts House of Representatives hereby urges the President and the Congress of the United States to pass legislation whereby a limit shall be placed on the number of hides which may be exported from the United States; and be it further

"Resolved, that the President's special trade advisor, Robert Strauss, be exhorted to convince Brazil and Argentina to cease and desist from restricting the export of their own hide supplies, which would relieve some of the demand in foreign quarters on the purchase of material from the United States; and be it further

"Resolved, that copies of these resolutions be forwarded by the clerk of the House of Representatives to the President of the United States, Special Trade Advisor Robert Strauss, the presiding officer of each branch of Congress and to the members thereof from this Commonwealth."

POM–370. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Energy and Natural Resources:

"RESOLUTION

"Whereas, the citizens of the Commonwealth are being subjected to an inflationary price spiral for both gasoline and heating fuel; and

"Whereas, these excessive prices have reached the point of bringing about the destruction of the American quality of life and a slow down of our economic growth; and

"Whereas, those items basic to life, itself, food and adequate heat, will be beyond the financial reach of our citizens; and

"Whereas, the current crisis is aggravated by the individual United States companies bidding against each other for the right to bring oil to our American market; and

"Whereas, the critical conditions existing in our country today resulting from these spiraling cost of oil can best be slowed if the United States government acted as the sole bargaining agent for the purchase of oil imported into our country; and

"Whereas, there is pending in the Congress of the United States, a House Bill, numbered 2156, which provides that the Federal government shall act as the sole bargaining agent for the purchase of oil imported into our country; therefore be it

"Resolved, that the Massachusetts House of Representatives hereby respectfully urges the Congress of the United States to pass said House Bill 2156; and be it further

"Resolved, that copies of these resolutions be forwarded by the clerk of the House of Representatives to the President of the United States, the presiding officers of each branch of the Congress, and to the members thereof from this Commonwealth."

POM–371. A resolution adopted by the Legislature of the State of Massachusetts; to the Committee on Energy and Natural Resources:

"RESOLUTION

"Whereas, persistent shortages of diesel fuel are hindering the continued operation of trucks delivering foodstuffs and other products essential to the safety and well-being of the people of the Commonwealth; and

"Whereas, skyrocketing costs for these same fuels are imposing severe hardships on the operators of said trucks making it extremely difficult for them to continue their operations; and

"Whereas, tangled Federal regulation of the trucking industry has created a climate which obstructs the industry from carrying out their function in a manner most consistent with the needs of the consumers of the Commonwealth; and

"Whereas, continued transport by truck is vital to the health and economic prosperity of our state; therefore be it

"Resolved, that the Massachusetts House of Representatives recognizing the difficulty faced by the trucking industry and the importance of the trucking industry to the Commonwealth, respectfully urges the President and the Congress of the United States to take necessary action to alleviate the shortage and reduce the cost of diesel fuel to the trucking industry; and be it further

"Resolved, that copies of these resolutions be forwarded by the clerk of the House of Representatives to the President of the United States, to the presiding officer of each branch of the Congress and to the members thereof from this Commonwealth."

POM-372. A joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations:

"ASSEMBLY JOINT RESOLUTION No. 7

"Whereas, It is a reprehensible policy that would assume that the moral obligation for the mass murder of over 11,000,000 innocent victims of the "Holocaust" can be eliminated by the passage of time; and

"Whereas, The statute of limitations of the German Federal Republic relating to Nazi war criminals is scheduled to expire on December 31, 1979; and

"Whereas, If such statute of limitations does expire, no investigation of murder, including genocide, committed by Nazi war criminals can be initiated after that date; and

"Whereas, If such statute of limitations does expire, thousands of Nazi war criminals who were actively involved in the calculated and brutal mass murder of millions of innocent victims will be rewarded for having evaded justice; and

"Whereas, Crimes of lessor horror than mass murder and genocide are subject to no statute of limitations either in California or in numerous other jurisdictions; and

"Whereas, It is in the interest of all free people that new generations not be allowed to forget the dangers and consequences of the crime of genocide; and

"Whereas, An international campaign to convince the German Federal Republic to eliminate or extend the current statute of limitations has been initiated by a broad base of concerned organizations and individuals; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Government of the United States urge the German Federal Republic and the legislators of that nation to abolish or extend the statute of limitations relating to Nazi war crimes; and be it further

"Resolved, That the Legislature requests that the President and Secretary of State of the United States communicate the contents of this resolution on behalf of the people of California to the following officials of the German Federal Republic: the President, the Chancellor, the Ambassador to the United States, Chief Justice of the Supreme Court, and the national legislators; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the United States, to the Secretary of State, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to the Chairman, Senate Foreign Relations Committee, to the National Security Council members, and to each Senator and Representative from California in the Congress of the United States."

POM-373. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Environment and Public Works:

"SENATE CONCURRENT RESOLUTION No. 35

"Whereas, the United States Congress has shown by its enactment of Section 125 of the Clean Air Act Amendments of 1977 that it recognizes regional energy distinctions in its continuing effort to maintain and to improve the environment; and

"Whereas, the peoples of the United States and the state of Louisiana have spent vast sums of money to provide for improvements in the environment of the state of Louisiana; and

"Whereas, Section 125 of the Clean Air Act Amendments of 1977 now provides that the president acting alone, or the president in mutual agreement with the governor of a state, may by rule or order prohibit any existing or new major fuel burning stationary source which is not in compliance with the air quality implementation plan or which is prohibited from burning oil or natural gas from using fuels other than locally or regionally available coal or coal derivatives if it is determined that economic disruption or unemployment would otherwise result; and

"Whereas, the governor or the administrator of the Environmental Protection Agency shall require by rule or order each such source to enter into long-term contracts for supplies of regionally available coal as well as contracts to acquire necessary additional means of pollution abatement and to follow compliance schedules to meet air quality standards; and

"Whereas, the decision to require use of coal regionally or locally available shall take into account final costs to the consumers thus adding to inflation woes; and

"Whereas, natural gas accounts for ninety percent of the total energy consumption in the industrial and electrical generation sectors in Louisiana; and

"Whereas, even the use of fuel oil by utilities, excluding conversion costs, would more than double electricity bills to consumers; and

"Whereas, conversion from natural gas to coal would require the construction of new boilers for electrical generation at a cost exceeding current total plant investment, the estimated total conversion cost to be $6 billion for the twelve operating plants in Louisiana; and

"Whereas, conversion costs for boilers for industrial use would average $8.4 billion, a large portion of which sum includes capital expenditures required to install pollution control devices to meet air quality implementation plans; and

"Whereas, the aggregate conversion investment for both utilities and industry in Louisiana has been calculated to average $14.4 billion, not including the investment associated with rail, pipeline, or barge transportation of coal; and

"Whereas, the transportation of coal by rail and by barge will result in pollution of the environment as coal dust is released into the atmosphere; and

"Whereas, environmental protection officials have stated that many cities are on the borderline between meeting and not meeting air quality standards and that a large-scale shift to coal could cause environmental deterioration or significant deterioration of air quality of Louisiana; and

"Whereas, industry in Louisiana has indicated that conversion from natural gas to coal will impose on them a great burden and that abandonment of plants might be an alternative to conversion; and

"Whereas, unemployment of Louisiana citizens would be a sad result of plant closures.

"Therefore be it resolved, that the Senate of the Legislature of the State of Louisiana, the House of Representatives thereof concurring, hereby memorializes the Congress of the United States to amend Section 125 of the Clean Air Act Amendments of 1977 to provide that states shall use fuels indigenous to their region if use of alternative fuels would cause environmental deterioration or significant deterioration, economic disruption, or unemployment.

"Be it further resolved that a copy of this Resolution shall be transmitted without delay to the vice president of the United States, as the presiding officer of the United States Senate, to the speaker of the United States House of Representatives, and to each member of the Louisiana delegation in the Congress."

POM-374. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Energy and Natural Resources:

"SENATE CONCURRENT RESOLUTION No. 36

"Whereas, the Natural Gas Policy Act purports to eliminate the disparity between regulated interstate sales of natural gas and unregulated intrastate supplies of natural gas by establishing prices applicable to both systems; and

"Whereas, even many of the authors of the Natural Gas Policy Act acknowledge that the unregulated intrastate system has resulted in surpluses of natural gas in the intrastate market; and

"Whereas, the regulated interstate system has had declining supplies of natural gas resulting in subsequent increased oil imports; and

"Whereas, the Natural Gas Policy Act will subject intrastate sales to regulation such as has caused declining supplies of natural gas in the interstate market in the past; and

"Whereas, pricing provisions which curb free market prices will only serve as a disincentive to many producers, thus depriving the public of gas supplies that would accrue to and be available for consumption under free market prices which exceed federal price ceilings, thereby contributing to the premature demise of a valuable natural energy resource; and

"Whereas, an immense capital investment is required in the development, exploration, and production of oil and natural gas; and

"Whereas, a decline in exploration and production will not only deprive Americans of a desperately needed fuel source but will also severely impact the economy of Louisiana which derives millions of dollars in revenues from severance taxes and royalty interests, revenues which are used to provide vital services to Louisiana citizens; and

"Whereas, the pricing provisions of the Natural Gas Policy Act will also have the effect of diverting Louisiana natural gas from the intrastate to the interstate market since both markets will be subjected to regulated, maximum ceiling prices, the effect being that intrastate producers will no longer benefit by free market prices which in Louisiana have been higher than interstate regulated prices, which situation had been an incentive to producers to engage in exploration and development and to market their gas in Louisiana so that Louisiana citizens would be provided a supply of vital natural gas; and

"Whereas, diversion to the interstate market is further exacerbated by the fact that under interstate rollover contracts a producer may receive higher prices than he would under an intrastate rollover contract, the consequence being enticement of Louisiana natural gas out of the state so that numerous Louisiana customers will be without a source of supply of natural gas following the expiration of current contracts; and

"Whereas, other provisions to the benefit of interstate consumers are made so that a customer of interstate gas committed or dedicated prior to November 9, 1978, shall be given the right of first refusal to any subsequent sale of gas following the expiration of the current contract, thereby giving interstate customers opportunities to negotiate for that gas, although this right is not provided to intrastate customers; and

"Whereas, diversion to the interstate market is additionally suggested by emergency provisions of the Natural Gas Policy Act which provide that the president under emergency situations may authorize interstate pipeline and distributors to make emergency purchases of natural gas from intrastate lines in order to provide natural gas for high-priority users such as residences, small commercial establishments, schools, hospitals, and similar institutions to the possible detriment of Louisiana consumers; and

"Whereas, the president has the further authority to allocate for emergency needs that natural gas being used as boiler fuel; and

"Whereas, in Louisiana twenty-seven percent of the total intrastate natural gas supply was used in 1977 by electrical generating plants as boiler fuel to provide electricity to Louisiana high-priority users—residences, commercial establishments, schools, hospitals, and similar institutions; and

"Whereas, this high-priority use of natural gas as boiler fuel would be subject to allocation to interstate homes, businesses, and institutions which utilize natural gas, while depriving Louisiana citizens of crucial electrical supplies to heat, cool, and light their dwellings and institutions; and

"Whereas, curtailment provisions ensure the availability of natural gas for high-priority users as defined above, including residences, but would eliminate the use of boiler fuel to produce electricity in Louisiana because boiler fuel use of natural gas is a low-priority and is in fact prohibited from use in existing electrical generating plants by 1990 and in any newly constructed utility generation facility; and

"Whereas, this prohibition on the use of natural gas by utilities will force a conversion to alternate fuel, principally coal; and

"Whereas, in the utility sector alone conversion from natural gas to coal would require the construction of new boilers for electrical generation at a cost in excess of total current plan investment which has been estimated at $6 billion, the expense to be borne by Louisiana electrical customers; and

"Whereas, in addition to boiler fuel use of natural gas in electrical generating plants, twenty-eight percent of total intrastate natural gas is used as a boiler fuel in Louisiana industry and would suffer under the same mandatory emergency purchase and allocation provisions as well as prohibitions against utilization of natural gas as have been described previously relative to utilities; and

"Whereas, conversion costs for boilers for industrial use average $8.4 billion, including capital expenditures necessary to install pollution abatement devices; and

"Whereas, in many cases, conversion is technologically unfeasible and replacement of facilities would require tremendous capital investment; and

"Whereas, the conversion and/or replacement of facilities might prompt some Louisiana industries to relocate closer to sources of coal fuel, thereby creating an unemployment situation in our state, or otherwise make Louisiana industries non-competitive with similar industries located in closer proximity to coal supplies.

"Therefore, be it resolved by the Senate of the Legislature of Louisiana, the House of Representatives thereof concurring, that the Congress of the United States and the Louisiana Congressional delegation are hereby memorialized to recognize the inequities of the Natural Gas Policy Act to Louisiana.

"Be it further resolved that a copy of this Resolution shall be transmitted without delay to the president of the United States, the vice president of the United States, as the presiding officer of the United States Senate, to the speaker of the United States House of Representatives, and to each member of the Louisiana delegation to the Congress."

POM–375. A resolution adopted by the Ventura Avenue Sanitary District, Ventura, California, regarding construction grant funding for water reclamation projects; to the Committee on Environment and Public Works.

POM–376. A resolution adopted by the Board of Chosen Freeholders, Morris County, New Jersey, reminding the Congress of the United States of its responsibilities to enact all legislation necessary to make whole all citizens threatened with economic hardships caused by nuclear accidents; to the Committee on Energy and Natural Resources.

POM–377. A resolution adopted by the City Council of Mountain Iron, Minnesota, opposing the transfer of the St. Paul Office of the Corps of Engineers authority concerning the Western Lake Superior Drainage Basin to the Detroit, Michigan Office; to the Committee on Environment and Public Works.

POM–378. A petition from a private citizen, calling for a national policy referendum to advise the government regarding ratification of the SALT II Treaty and other matters of critical national importance; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JACKSON, from the Committee on Energy and Natural Resources, without amendment:

S. 585. A bill to authorize the Secretary of the Interior to engage in a feasibility study of the Yakima River Basin Water Enhancement Project (Rept. No. 96–248).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. CRANSTON (by request):

S. 1518. A bill to amend title 38 of the United States Code to permit disclosure of names and addresses and other information maintained by the Veterans' Administration to a consumer reporting agency for certain debt collection purposes; to the Committee on Veterans' Affairs.

By Mr. BUMPERS:

S. 1519. A bill to authorize and direct the Secretary of Energy to deter repayment of certain reimbursable costs incurred by the Southwestern Power Administration, to waive certain costs, and to amend section 5 of the Flood Control Act of 1944; to the Committee on Energy and Natural Resources.

By Mr. BAYH:

S. 1520. A bill to amend the Internal Revenue Code of 1954 to make certain technical corrections with respect to the treatment of gasoline mixed with alcohol; to the Committee on Finance.

By Mr. RANDOLPH:

S. 1521. A bill to expand the licensing and related regulatory authority of the Nuclear Regulatory Commission over storage and disposal facilities for nuclear waste, to provide for meaningful State participation in the licensing of such facilities, and to establish a schedule for implementation of waste management planning; to the Committee on Environment and Public Works.

By Mr. HARRY F. BYRD, JR. (for himself and Mr. WARNER):

S. 1522. A bill to amend title 18 of the United States Code to prohibit the injury or destruction of a nuclear facility; to the Committee on the Judiciary.

By Mr. THURMOND:

S. 1523. A bill to amend title 38, United States Code, to establish demonstration centers of geriatric research, education, and clinical operations within the Veterans' Administration; to the Committee on Veterans' Affairs.

STATEMENTS OF INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRANSTON (by request):

S. 1518. A bill to amend title 38 of the United States Code to permit disclosure of names and addresses and other information maintained by the Veterans' Administration to a consumer reporting agency for certain debt collection purposes; to the Committee on Veterans' Affairs.

● Mr. CRANSTON. Mr. President, I am introducing today, at the request of the administration, S. 1518, a bill to amend title 38 of the United States Code to permit disclosure of names and addresses and other information maintained by the Veterans' Administration to a consumer reporting agency for certain debt collection purposes. I will very shortly schedule a Veterans' Affairs Committee hearing on this bill.

I ask unanimous consent that the letter of transmittal and the text of the bill, together with an illustration prepared by committee staff showing the changes in existing law, be printed in the RECORD.

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

S. 1518

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3301 of title 38, United States Code, is amended:

(a) by striking "or" at the end of paragraph (1) of subsection (f), changing the period after the word "law" in paragraph (2) to a comma, and inserting the following after the comma: "or (3) to a consumer reporting agency, as that term is defined by Public Law No. 91–508, title VI, section 603(f) (15 U.S.C. section 1681a(f)), when any such person is administratively determined to be indebted to the Veterans' Administration by virtue of participation in any Veterans' Administration benefits program, for the purposes of locating any such person. When the Administrator of Veterans' Affairs determines that such person has failed to respond to administrative efforts to collect such moneys, the Administrator

may disclose such information to a consumer reporting agency. However, such disclosure shall be made only for the purpose of obtaining consumer reports in order to assess such person's ability to repay the debt and to give notice of the outstanding obligation. Disclosure which gives notice of the outstanding obligation shall be made only after 30 calendar days have elapsed after completion of reasonable efforts to notify the person of the Administrator's intention to disclose debt information. When the person disputes the accuracy of the information held by the Administrator or alleges a valid defense to paying the debt, release of information shall not be made by the Administrator until the accuracy of the information can be determined or until the Administrator has reviewed the defense raised by that person. Records disclosed to the consumer reporting agency pursuant to paragraph (3) of this subsection shall not be subject to 5 U.S.C. section 552a. Such records shall not be used for any purpose other than those provided in this subsection. The Administrator of Veterans' Affairs may also disclose such names and addresses for use in connection with civil proceedings for collection of such indebtedness.";

(b) by striking the phrase "the preceding sentence" in the last sentence of subsection (f) and inserting in lieu thereof "this subsection"; and

(c) by striking the phrase "such sentence" in the last sentence of subsection (f) and inserting in lieu thereof "this subsection".

VETERANS ADMINISTRATION,
Washington, D.C., July 10, 1979.

Hon. WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: We are transmitting with this letter a draft bill "To amend title 38 of the United States Code to permit disclosure of names and addresses and other information maintained by the Veterans' Administration to a consumer reporting agency for certain debt collection purposes." This amendment is necessary in order for the Veterans Administration to pursue additional methods of locating veterans' benefits debtors, and in appropriate cases, to affect their credit standing if they fail to cooperate with agency debt collection, compromise or waiver procedures.

As you are aware, there is a great interest concerning the willingness and ability of the Federal Government to collect the sizeable debts owed to it. This has been reflected by the President and is in evidence in the Congress, and amongst the public generally. The Veterans Administration is very concerned with this problem, as it pertains to VA programs, and is very interested in obtaining authority to pursue collection or other resolution of these debts in as effective a manner as is reasonably possible. We have examined and implemented new methods to reduce the amount of indebtedness created and to achieve increased collection effectiveness on debts which may continue to arise. We are also working on other initiatives which will permit greater utilization of existing Federal resources to locate debtors and administratively recover monies owed to this agency. Currently, we are referring administratively uncollectable debts in excess of $600 to the Department of Justice for further collection efforts, including civil proceedings. We are working closely with Justice in an effort to assist U.S. Attorneys pursuing these debtors, and we believe that this method of debt collection should increase our collections in this area. However, the number of debtors and the costly, time-consuming process of bringing a civil proceeding is a burdensome method of collecting debts. Moreover, many debts cannot be referred in this manner because the amount owed is less than $600 or because of other factors which decrease the likelihood of successfully obtaining a civil judgment. Debts of less than $600 are not referred to the Department of Justice because regulations issued jointly by GAO and the Department of Justice limit referrals to those cases in excess of $600 due to cost effectiveness considerations. 4 C.F.R. Section 105.6.

We have been studying additional avenues of affecting increased debt collection. The legislation which we are now proposing will permit this agency to test two new approaches to dealing with specific problems in our debt collection efforts. They are now routinely used in private sector debt collection. This letter will address each of these separately. We would like to emphasize at the outset, however, that the Veterans Administration, as a matter of cost effectiveness and personal privacy policy, will utilize Federal resources, as opposed to private sector resources, whenever possible in attempting to collect monies owed to this agency. Moreover, it should be clear that individuals who avail themselves of existing agency debt resolution procedures, including waiver and compromise procedures, would not be subject to any possible use by the Veterans Administration of private sector debt collection resources.

Effective debt collection is dependent on correct information as to a debtor's location. Frequently, addresses given by beneficiaries of programs administered by this agency become outdated. The Veterans Administration has established the practice of obtaining the last known address maintained by the Internal Revenue Service (IRS). However, this information proves to be inadequate to locate a debtor in many cases, either because the debtor has moved, or because the current IRS law prevents the VA from using the address in the manner necessary for debt collection purposes. In these situations, we believe that a consumer reporting agency locator service may be able to provide us with the necessary current address information. As it is normally necessary to furnish individually identifying information, including name and last known address, in order to obtain address information from these sources, our proposed amendment would authorize disclosure for the purpose of locating any person who "is administratively determined to be indebted to the Veterans' Administration by virtue of participation in any Veterans' Administration benefits program."

Despite the concerted administrative efforts by the Veterans Administration to promptly and repeatedly notify each located debtor of his or her debt obligation and of agency debt resolution procedures, in a significant number of classes, primarily regarding education benefits overpayments and education loan defaults, we have been unable to elicit any response whatsoever. We are very concerned by this pattern of refusal to acknowledge even the apparent existence of a debt, and to work with the agency to resolve it. Where this pattern is present, we believe that a recovery option, effective even for debts under $600, and not involving the delays and extra Federal costs of debt collection litigation, should be authorized for study and possible use by the Veterans Administration. This option, to be used after all administrative efforts have been ignored, and the debtor has been placed on notice, would be that the Veterans Administration could refer information to a consumer reporting agency. We believe that it is quite possible that the potential adverse effect on the debtor's ability to obtain credit would encourage the debtor to utilize agency debt resolution procedures.

In addition to these disclosures which are designed to improve the effectiveness of our collection efforts, the draft bill would also permit disclosures in two other circumstances. The first situation arises where the Veterans Administration must determine that the debtor is able to repay the debt before referring collection of the debt to the Department of Justice or the General Accounting Office. At the present time, we employ a contractor to obtain asset and income information in order to comply with regulations issued jointly by GAO and the Department of Justice which require submission of such information. These regulations are intended to ensure that the Government does not pursue collection of a debt where the individual has no means of repaying it. The use of a consumer report prepared by a commercial consumer reporting agency to assess the debtor's ability to repay will accomplish the same purpose which is presently being accomplished by the agency's contractor. The second situation may arise where the Veterans Administration or the Department of Justice brings a civil action to collect debts owed to this agency. Disclosure may be necessary other than directly to attorneys from this agency or the Department of Justice. Accordingly, where a civil proceeding is contemplated, our proposed amendment would authorize disclosure of names and addresses for use in connection with the civil proceeding.

In order to carry out these initiatives, an amendment of existing VA law is necessary. Records of the Veterans Administration pertaining to a claim for benefits are confidential, and except for limited disclosures in court proceedings and to other Federal agencies, disclosure to third parties of a VA claimant's name and address is restricted by 38 U.S.C. section 3301(f). That provision allows disclosure only to nonprofit organizations in certain circumstances or to law enforcement authorities charged with the protection of the public health or safety. As a result of this restriction, the Veterans Administration may not, under existing authority, disclose individually identifying information about debtors for the purpose of locating delinquent debtors or affecting their credit standing, even on a test basis. Therefore, the legislative proposal is a prerequisite to any further action by this agency in this area. Even if a contractor consumer reporting agency was employed to furnish current address information, it would be unable to redisclose the VA name and address to third parties in order to obtain more current information, since the contractor's authority to disclose information is also governed by 38 U.S.C. section 3301(f). Similarly, with regard to affecting credit standing, disclosure of individual identifying information is a prerequisite.

We recognize that disclosure of names and addresses for the purposes mentioned above requires safeguards against potential misuse of such information. Subsection (f) of 38 U.S.C. section 3301, which is presently applicable to non-profit or law enforcement organizations which obtain VA names and addresses under certain circumstances, would also be applicable to redisclosures by the consumer reporting agency. This subsection prohibits the use of VA names and addresses for any purpose other than the purposes specified in section 3301(f). The effect of that provision under this amendment would be to permit VA contractors to use VA name and address lists only for the purposes indicated in the bill. For any other use, the subsection provides for a fine of up to $5,000 for the first offense and up to $20,000 for each subsequent offense. Appropriate sanctions, such as termination of the contract or referral to the Department of Justice for criminal prosecution, will be applied if violations occur.

We also plan to require certification by the consumer reporting agency of its compliance with the Fair Credit Reporting Act. With regard to the accuracy of information disclosed by the VA, we plan to institute new procedures to verify that the VA's debt records are accurate and complete. The debtor will be given ample opportunity to challenge

the accuracy of the information, and where disputes arise, the bill requires the VA to resolve the dispute prior to referral of information to a consumer reporting agency. Other safeguards will be implemented through contractual provisions, and as indicated, regulations when necessary to avoid unfair or questionable practices.

The draft bill specifically excludes application of the Privacy Act, 5 U.S.C. section 552a, to information disclosed to consumer reporting agencies pursuant to the provisions of paragraph (3) of the proposed subsection. Subsection (m), where applicable, requires that records maintained by a contractor for an agency be maintained in accordance with the Act's provisions. If the Act were to be applied, it would establish rights, such as the right of direct access to an individual's own file, opportunity to amend and to bring a civil action for violation of any of the Act's provisions, and duties, such as limiting the disclosure of information, accounting for each disclosure, and the duty to maintain records in accordance with the Act's standards, which are not presently applicable to consumer reporting agencies. However, consumer reporting agencies presently must comply with the Fair Credit Reporting Act, which does provide other substantial rights to the individual who is the subject of information conveyed by the VA to a consumer reporting agency, including the right to challenge the accuracy of a consumer report and to require deletion of outdated or unverifiable information. If requirements such as those of the Privacy Act are to be imposed on consumer reporting agencies, we believe it would be preferable to do so on an industry-wide basis rather than only on those agencies which cooperate with and accept information from the Veterans Administration. As a practical matter, we are unsure whether a contractor consumer reporting agency would cooperate with the VA if it was required to conform its operation to provisions more stringent than the Fair Credit Reporting Act.

For the foregoing reasons, we urge the Congress to take immediate action on this proposal.

There will not be any significant additional cost if this proposal is enacted. Advice has been received from the Office of Management and Budget that there is no objection to the submission of the draft legislation and its enactment would be consistent with the Administration's objectives.

Sincerely,

MAX CLELAND,
Administrator.

CHANGES IN EXISTING LAW MADE BY S. 1518 AS REPORTED

In accordance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38—UNITED STATES CODE

* * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * *

Chapter 57—RECORDS AND INVESTIGATIONS

SUBCHAPTER I—RECORDS

Sec.
3301. Confidential nature of claims.
3302. Furnishing of records.
3303. Certification of records of District of Columbia.
3304. Transcript of trial records.

SUBCHAPTER II—INVESTIGATIONS

3311. Authority to issue subpenas.
3312. Validity of affidavits.
3313. Disobedience to supena.

Subchapter I—Records

§ 3301. Confidential nature of claims

(a)

* * * * *

(f) The Administrator may, pursuant to regulations the Administrator shall prescribe, release the names or addresses, or both, of any present or former members of the Armed Forces, and/or their dependents, (1) to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under this title, [or] (2) to any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such agency or instrumentality has made a written request that such names or addresses be provided for a purpose authorized by law[.], or (3) *to a consumer reporting agency, as that term is defined by Pub. L. No. 91-508, Title VI, § 633(f) (15 U.S.C. § 1681a(f)), when any such person is administratively determined to be indebted to the Veterans' Administration by virtue of participation in any Veterans' Administration benefits program, for the purpose of locating such person. When the Administrator of Veterans' Affairs determines that such person has failed to respond to administrative efforts to collect such monies, the Administrator may disclose such information to a consumer reporting agency. However, such disclosure shall be made only for the purpose of obtaining consumer reports in order to assess such person's ability to repay the debt and to give notice of the outstanding obligation. Disclosure which gives notice of the outstanding obligation shall be made only after 30 calendar days have elapsed after completion of reasonable efforts to notify the person of the Administrator's intention to disclose debt information. When the person disputes the accuracy of the information held by the Administrator or alleges a valid defense to paying the debt, release of information shall not be made by the Administrator until the accuracy of the information can be determined or until the Administrator has reviewed the defense raised by that person. Records disclosed to the consumer reporting agency pursuant to paragraph (3) of this subsection shall not be subject to 5 U.S.C. § 552a. Such records shall not be used for any purpose other than those provided in this subsection. The Administrator of Veterans' Affairs may also disclose such names and addresses for use in connection with civil proceedings for collection of such indebtedness.*

Any organization or member thereof or other person who, knowing that the use of any name or address released by the Administrator pursuant to [the preceding sentence] *this subsection* is limited to the purpose specified in [such sentence] *this subsection*, willfully uses such name or address for a purpose other than those so specified, shall be guilty of a misdemeanor and be fined not more than $5,000 in the case of a first offense and not more than $20,000 in the case of any subsequent offense.

* * * * *

By Mr. BUMPERS:

S. 1519. A bill to authorize and direct the Secretary of Energy to defer repayment of certain reimbursable costs incurred by the Southwestern Power Administration, to waive certain costs, and to amend section 5 of the Flood Control Act of 1944; to the Committee on Energy and Natural Resources.

● Mr. BUMPERS. Mr. President, I am introducing a bill which authorizes the Secretary of Energy to redress the capital repayment problems of the Southwestern Power Administration without unduly burdening current ratepayers.

Section 5 of the Flood Control Act of 1944 requires the Secretary of the Army to deliver surplus power from Government dams to the Secretary of the Interior who, in turn, is obliged to dispose of the power "in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles." The rate schedules must recover the capital costs associated with producing the power "including the amortization of the capital investment allocated to power over a reasonable period of years." The rate schedules must be approved by the Secretary of Energy through the Federal Energy Regulatory Commission.

For nearly two decades following its inception, the SPA failed to recover those capital costs. In fact, during that period, it lost $18,300,000, especially in its early years when it purchased expensive power in order to meet its supply obligations and when it supported the Korean war effort by selling low-cost power under contract No. Ispa-514 destined for an aluminum processor.

In recent years, SPA has acted to rectify this situation, filing rate changes with the FERC and its predecessor the Federal Power Commission. The new rates were designed to recover capital costs within a 50-year period calculated to have begun when SPA's dams began operating. Since nearly that period had elapsed before the new rates were proposed, the time for recovery had been severely compressed. Consequently, the rate increases necessary to recover the costs in that compressed time were exceedingly high. In some cases, the rates were nearly doubled.

I certainly do not object to the principle recognized by section 5 of the Flood Control Act that costs associated with producing power be paid by those who receive the power. The difficulty here is that SPA has failed for so long to recover its costs that the ratepayers who will be required to pay these higher rates may well be different from those ratepayers who enjoyed the previous insufficient rates. This disparity, coupled with the severity of the increase, has invited numerous utilities to engage the Departments of Interior and Energy in extensive litigation. These rate increases can be softened, while honoring the cost-recovery principle, to ease the blow to the ratepayers and to reduce the litigation.

My proposal would do that. First, it would simply define the recovery period as 60 years. Currently, that period has been fixed at 50 years. Although that number has only resulted from traditional practice, not from specific statutory language or identifiable legislative history, the Department of Interior is convinced that legislative action is necessary to extend the cost-recovery period beyond 50 years. My proposal answers that need, so that the rate increases can be moderated somewhat and still recover costs.

Similarly, my proposal recognizes that

the failure to recover costs attributable to contract No. Ispa-514 resulted from overriding public policy considerations and that current ratepayers should not now be burdened with rate increases designed to recover those costs, from which they received no discernable benefit. It defers payment of those costs until SPA's other costs have been recovered in the 60-year period. Thus the current rate increases can be moderated. Finally, my proposal would direct the Secretary to waive the payment of interest attributable to the failure to recover the costs associated with contract No. Ispa-514. This waiver recognizes that the expenditures were motivated by national security considerations and thus that the ratepayers alone should not have to bear the related interest charges.

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

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

S. 1519

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Energy, hereinafter referred to as the Secretary, is authorized and directed to adjust the power system average rate and repayment schedule of the Southwestern Power Administration System to defer for repayment until all other reimbursable costs of said system have been returned to the Treasury, an amount representing the difference in revenue realized from past and future sales of power and energy to the Arkansas Power and Light Company, an Arkansas corporation, pursuant to contract numbered Ispa-514, dated January 29, 1952, and the revenues that would have been or would be received from sales of an equal amount of power and energy marketed under established system rate schedules.

SEC. 2. The Secretary is further authorized and directed to waive all interest charges heretofore or hereinafter incurred on such amounts the repayment of which is authorized and directed to be deferred by this Act.

SEC. 3. Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) is amended by removing the period at the end of the second sentence, and inserting a comma in its place and adding the phrase "and, in the case of the Southwestern Power Administration, that period shall not exceed sixty years." ●

By Mr. BAYH:

S. 1520. A bill to amend the Internal Revenue Code of 1954 to make certain technical corrections with respect to the treatment of gasoline mixed with alcohol; to the Committee on Finance.

● Mr. BAYH. Mr. President, the 1978 Energy Act included a provision to exempt gasoline used to produce gasohol from the 4-cent excise tax on gasoline. The exemption went into effect on December 31, 1978 and is to last 4 years in order to encourage the production and use of gasohol. However, the Internal Revenue Service was slow to promulgate regulations to implement this provision, and mass confusion reigned for several months over how to qualify for the exemption. On April 10, 1979, I wrote to Commissioner Jerome Kurtz to request clarification on this matter. I was encouraged when he replied on May 14 that he was going to give this matter his personal immediate attention. Consequently, interim regulations were issued on June 19 which have helped to ease the situation. However, one problem has arisen which needs the immediate attention of this Congress.

The Internal Revenue Service contends that no provision exists in current law to enable the Government to refund money paid by purchasers of gasoline for gasohol between January 1 and June 19, when the interim regulations were issued. However, I know first hand that Treasury Department staff advised persons unsure of what procedure to follow during this period that they had the option of paying the excise tax and then applying for a refund when the regulations were finalized. After the fact, the Department is saying "Sorry—but you cannot have the money you were forced to pay" even if it is due to their failure to issue regulations.

I believe that persons who acted in good faith during this period of time and paid the tax, expecting the Government to reimburse them, should not be penalized. I do not think it a bit unreasonable that this Congress provide legislative relief on this facet of a provision we so enthusiastically supported last year. It was the original intent of the 1978 Energy Act that no individual would pay this 4-cent excise tax on gasohol after January 1, 1979. My bill will enable persons who trusted the Government on this to regain that trust.

Many farmers, small businesses, and cooperatives will lose a substantial amount of money if this situation is not corrected. The use of alcohol fuel may be one of the solutions to our dependence on foreign oil imports and America's monopolistic oil companies. We should be doing all we can to encourage these small business enterprises rather than discouraging their interest in gasohol by allowing such action to occur.

The bill I am introducing today would give the Treasury Department the needed legislative authority to refund money paid by purchasers of gasoline used to produce gasohol by amending the Internal Revenue Code of 1954. It is my understanding that Treasury Department and IRS officials have no objection to enactment of this measure. Therefore, I think Congress should act quickly on this legislation.

I ask unanimous consent that the bill, my letter to Commissioner Kurtz, his reply, and the interim regulations be printed in the RECORD.

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

S. 1520

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subparagraph (H) of section 6416(b)(2) of the Internal Revenue Code of 1954 (relating to specified uses and resales) is amended by inserting "or in a mixture described in section 4081(c)" after "section 4041".

(b) Paragraph (2) of section 4081(c) of such Code (relating to later separation of gasoline) is amended by inserting "(or with respect to which credit or refund was allowed or made by reason of section 6416(b)(2)(H)" after "this subsection".

(c) Any amendment made by this Act shall take effect as if included in the provision of the Energy Tax Act of 1978 to which such amendment relates.

U.S. SENATE,
Washington, D.C., April 10, 1979.

Hon. JEROME KURTZ,
Commissioner, Internal Revenue Service, Washington, D.C.

DEAR COMMISSIONER KURTZ: The 1978 Energy Act included a provision to exempt gasohol from the 4 cent excise tax on gasoline. This exemption went into law on December 31, 1978. However, no regulations implementing this provision have been promulgated and confusion reigns throughout the gasohol industry as to how to take advantage of this exemption.

America's dependence on foreign oil is of great concern to me. A liquid fuels shortage sometime in the 1980's seems inevitable if we continue on our present course. Administration estimates of future world petroleum production and demand and supply of petroleum products of 3 to 8 million barrels of oil a day by 1985.

As we look to the future, I think it is clear to most of us that there is not going to be one answer to our energy problems, but that future supplies will come from a number of diverse sources. It is my belief that the use of alcohol blended with gasoline is one such alternative source that offers a solution to our complex problem of fuel resources.

The four cent exemption to the excise tax is one way to encourage production and use of gasohol. The Congressional intent behind this exemption was to make gasohol prices competitive with gasoline in order to encourage consumers to use gasohol.

Due to the lack of regulations, producers, distributors and retail marketers interested in bringing this product to the public lack specific direction as to the correct procedures to follow in order to be exempted from payment of the excise tax. They have been instructed to file IRS Form No. 637, and in some cases No. 720, but, because no regulations are in effect, suppliers will not necessarily honor this registration.

Congress intended for this exemption to go into effect as of December 31, 1978, and not to be dragged on indefinitely. It is now three months since the effective date of this exemption and the IRS has not even begun working on these regulations.

I am aware that the Internal Revenue Service has many regulations to promulgate. However, Congress provided that this exemption be in effect for only a limited time, a period of four years. In order to give this industry a boost and to begin to lessen our dependence on foreign oil, it is important that the Department of Treasury move ahead as quickly as possible to develop these regulations.

I look forward to your timely response. In particular, it would be helpful if you could address the following questions:

1. Exactly what procedure should be followed to qualify for exemption from the four cent gasoline excise tax? (Please specify what forms and who must fill them out.) After a person has complied with these instructions, how is he or she assured that the supplier will honor the exemption?

2. What is the projected timetable for promulgation of the needed regulations? What type of procedure do you anticipate will be used at that time?

3. Several persons were told to pay the excise tax and then apply for a refund. Can you please specify what the procedure is to obtain a refund on gasoline that was ultimately used for gasohol?

Thank you for your help on this matter.

Sincerely,

BIRCH BAYH,
U.S. Senator.

COMMISSIONER OF INTERNAL REVENUE,
Washington, D.C. May 14, 1979.

Hon. BIRCH BAYH,
U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: This is in response to your letter of April 10, 1979, in which you discuss the use of gasohol as an alternative source that offers a solution to our Nation's problem of fuel resources. You also raise several questions as to the tax treatment of gasohol that arise under the 1978 Energy Act.

Your first question relates to the procedures to be followed to qualify for the exemption from the excise tax on gasoline. A News Release, IR-2099, a copy of which is enclosed, was issued by the Internal Revenue Service on February 22, 1979, informing the public of the procedures to be followed to purchase gasoline free of the excise tax for the purpose of producing a qualifying mixture of gasoline and alcohol (gasohol). Although no regulations have yet been issued with respect to gasohol, the news release provides guidance to the public as to the procedures to be followed pending the issuance of the regulations.

Under the indicated procedure, generally a person wishing to purchase gasoline free of the excise tax must register with their IRS District Director. A person registers by filling out Form 637, Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code, and by filing it with their IRS District Director. The seller (producer) of the gasoline must also be registered with the IRS in order to sell the gasoline free of the excise tax. After the District Director approves the application, the purchaser of the gasoline is issued a Certificate of Registry with an identifying number. When he wishes to purchase gasoline tax free, the purchaser gives the seller of the gasoline the identifying number and the purpose for the purchase.

The seller of the gasoline, if registered, may then sell the gasoline to the purchaser tax free. However, under the provisions of the Code and regulations that presently apply in the case of other tax-exempt sales, the seller is not relieved of liability for the tax if reasonable diligence is not exercised in determining that a tax-free sale is warranted. These provisions also require that the purchaser must furnish to the seller, in writing, the identifying number and the purpose for purchase. It will be necessary to cover these issues in developing regulations relating to gasohol. Further details will be covered in the regulations which are being prepared.

Your second question relates to a timetable for the issuance of regulations and the types of procedures to be used. I will give this matter my personal attention with a view to publishing temporary regulations on an expedited basis. I will be meeting with our people next week to move the project on an urgent basis.

Your final question concerns persons who were advised to pay the excise tax and then apply for a refund or credit. You asked what procedures are to be followed to obtain a refund or credit. At present, there are no provisions in the law that permit a refund of the excise tax paid on gasoline to be used in producing qualifying gasohol. This is a matter that is currently under consideration by the Congress. Specifically, section 108(c)(2) of the Technical Corrections Bill of 1979 (H.R. 2797) contains a proposed amendment to subparagraph (H) of section 6416(b)(2) of the Code, which would allow the person who paid the tax on the gasoline (the producer of the gasoline) to file a claim for refund or credit. If adopted, this would make applicable the requirements of Code section 6416(a) that relate to conditions for allowance of a refund or credit.

I hope that the above information is responsive to your concerns. Also, please be assured that I share with you your concern for the lack of regulations on this subject, and I have issued instructions that work on them proceed on an urgent basis.

With kind regards,
Sincerely,

JEROME KURTZ.

TEMPORARY REGULATIONS

SUMMARY

This document provides temporary regulations relating to exemption from motor fuels excise taxes for certain alcohol fuels. Changes in the applicable tax law were made by the Energy Tax Act of 1978. These regulations affect producers and sellers of motor fuels and provide them with the guidance needed to comply with the law.

DATES

These regulations apply generally to sales after December 31, 1978, and prior to October 1, 1984.

FOR FURTHER INFORMATION CONTACT

Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 Attention: CC:LR:T 202-566-3328, not a toll-free call.

SUPPLEMENTARY INFORMATION

Background

This document contains temporary regulations relating to the exemption from motor fuels excise taxes for certain alcohol fuels (gasohol) under section 221 of the Energy Tax Act of 1978 (Pub. L. 95-618, 92 Stat. 3185) ("Act"). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject. A notice of proposed rulemaking with respect to final regulations appears elsewhere in this issue of the Federal Register.

Section 221 of the Act amended section 4081 and 4041 of the Internal Revenue Code of 1954 (Code) relating to excise taxes on motor fuels. Under section 4081 a 4 cent a gallon tax is imposed upon gasoline sold by a producer or importer. Under section 4041 a 4 cent a gallon tax is imposed on the retail sale or use of diesel and special motor fuels. Noncommercial aviation fuel is taxed at the rate of 7 cents a gallon on any liquid other than gasoline and 3 cents a gallon on gasoline (in addition to the 4 cents imposed under section 4081).

Section 221 of the Act added a new subsection (c) to section 4081 and a new subsection (k) to section 4041 of the Code. Under these amendments the excise taxes on motor fuels do not apply generally to certain sales of qualifying mixtures of motor fuels and alcohol (gasohol) or to the sale of motor fuels for the purpose of producing gasohol.

On February 22, 1979, the Internal Revenue Service issued IR-2099 which provided interim guidance to those wishing to take advantage of the exemption. Producers of qualifying mixtures of gasoline and alcohol, as defined in the Act, may register to purchase gasoline free of the federal excise tax. Producers were directed to register by filing Form 637, Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code, with their Internal Revenue Service District Director. Any person who in the ordinary course of a trade or business regularly purchases gasoline and alcohol in bulk quantities for mixing could be considered a producer for this purpose.

These regulations supersede the interim guidance given in IR-2099 and provide additional rules to clarify the scope and application of the exemption relating to gasohol.

Refunds or credits

There is no provision in the Code that provides for a refund or credit with respect to tax-paid gasoline used in producing gasohol. Congress is presently considering amending the Code to allow such a refund in section 108(c)(2) of the Technical Corrections Bill of 1979 (H.R. 2797). For refund or credit provisions relating to diesel, special motor and noncommercial aviation fuels, see § 138.4081(c)-1(f).

Waiver of procedural requirements of Treasury directive

There is need for expeditious adoption of the provisions contained in this document because of the need for immediate guidance to persons wishing to produce or sell gasohol. For this reason, Jerome Kurtz, Commissioner of Internal Revenue, has determined that the provisions of paragraphs 8 through 14 of the Treasury Department directive implementing Executive Order 12044 must be waived.

Drafting information

The principal author of this regulation is Robert H. Waltuch of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Title 26 of the Code of Federal Regulations, Part 138 is amended by inserting in the appropriate place the following new sections 138.4041(k)-1 and 138.4081(c)-1:

§ 138.4041(k)-1 Fuels containing alcohol.

Under section 4041(k) the tax imposed under section 4041 does not apply to the sale or use of any liquid fuel at least 10 percent of which consists of alcohol. Except where a different rule has been expressly provided, purchasers and sellers of liquids under section 4041(k) are subject to the same requirements and limitations as are imposed on purchasers and sellers of gasoline under section 4081(c). See, § 138.4081(c)-1.

§ 138.4081(c)-1 Gasoline mixed with alcohol.

(a) In general. Under section 4081(c) the tax imposed by section 4081 on the sale of gasoline does not apply to the sale of qualifying gasohol or to the sale of gasoline for the purpose of producing qualifying gasohol if the requirements of this section are met. Qualifying gasohol is referred to in this section as gasohol. Gasohol is a blend of gasoline and alcohol (whether domestic or imported alcohol) in a mixture at least 10 percent of which contains alcohol made from any product other than petroleum, natural gas, or coal. In determining whether the 10 percent alcohol requirement has been met, alcohol that is 95 or more percent pure (190 degrees or more of proof) will be considered pure if no part of the impurity is gasoline. To the extent that the alcohol is less than 95 percent pure or to the extent that any part of the impurity is gasoline, a corresponding increase in the amount of alcohol is required to meet the 10 percent requirement. For certain requirements imposed on producers of alcohol (ethanol) under chapter 51 of the Code relating to distilled spirits, see 27 CFR Part 201. For certain requirements imposed on purchasers of specially denatured alcohol (ethanol), see 27 CFR Part 211.

(b) Sale of gasoline to produce gasohol. Under section 4081(c) the sale of gasoline for the purpose of producing gasohol is not exempt unless the sale is in bulk quantities for delivery into a bulk storage tank of a producer who meets the requirements of this section. For purposes of section 4081(c), the term "producer" means any person who in the ordinary course of its trade or business regularly buys gasoline and alcohol in bulk quantities for blending for use in its trade or business or for resale. Thus, the mere purchase of gasoline for blending into gasohol does not qualify a person as a producer. A person is not a producer for purposes of

section 4082 merely because such a person is a producer of gasohol as defined in this section. Thus, the provisions of section 4083 (relating to certain exempt sales to producers) do not necessarily apply.

(c) Requirements for gasohol producers purchasing tax free.(1) Certificate of Registry. A person qualifying as a producer who wishes to purchase gasoline tax free for the purpose of producing gasohol must be registered with the district director for the district in which its principal place of business is located, unless exempt from registration requirements under section 4222(b). A person registers, if not previously registered, by completing and filing Form 637, Registration for Tax-Free Transactions Under Chapter 32 of the Internal Revenue Code, in duplicate, in accordance with its instructions. Copies of Form 637 may be obtained from any district director. Upon approval a registry number is assigned and a Certificate of Registry is issued. At the time of purchase, a registered producer must furnish to the seller in writing its registry number together with its signed statement of the exempt purpose of the purchase. Persons not required to be registered under section 4222(b) may purchase tax free by following the procedure that applies to them in the case of other tax-free sales. See § 48.4222(b)–1.

(2) Revocation or suspension of registration. The district director is authorized to revoke or temporarily suspend, upon written notice, the registration of any person and the right of such a person to purchase gasoline tax free under section 4081(c) in any case in which the district director finds that—

(i) The registrant is not a bona fide producer of gasohol;

(ii) The registrant failed to comply with the requirements of paragraph (c)(1) of this section, relating to the evidence required to support a tax-free sale;

(iii) The registrant has used its registration to avoid the payment of any tax imposed by chapter 31 or 32 of the Code, or to postpone or interfere in any manner with the collection of such a tax;

(iv) The revocation or suspension is necessary to protect the revenue; or

(v) The registrant is for some other reason not eligible under this section to retain a Certificate of Registry.

The revocation or suspension of registration is in addition to any other penalty that may apply under the law for any act or failure to act.

(d) Seller not relieved of liability in certain cases. The seller of the gasoline remains liable for the tax imposed under section 4081 if at the time of the sale the seller of the gasoline has reason to believe that all the gasoline sold by it to the purchaser is not intended for blending into gasohol or that the purchaser has failed to register or that its registration has been revoked or suspended.

(e) Special rules—(1) Limitation on tax-free sales. The exemption from the excise tax under section 4081(c) applies to the sale of gasoline only for use in producing gasohol. Therefore, unless the sale is exempt under another provision of the Code, the seller of the gasoline may sell tax free only that portion of the gasoline that is intended for use in producing gasohol.

(2) Credit sales to exempt users. Under section 6416 of the Code, the producer of gasoline is entitled to a refund or credit if tax-paid gasoline is ultimately sold to tax-exempt users in a case to which section 6416(b)(2)(A), (B), (C), (D), or (H) applies. To determine the amount of overpayment, the producer of gasoline, among other things, must be able to establish the amount of tax-paid gasoline that was sold by the ultimate vendor to tax-exempt users. Therefore, if the ultimate vendor sells both tax-paid gasoline and gasohol on credit and the sales of the two kinds of fuels are not clearly distinguished, the producer of the gasoline will not be entitled to a credit or refund with respect to the tax-paid gasoline if it can not establish the amount of the tax-paid gasoline sold by the ultimate vendor to tax-exempt users.

(f) Refunds and credits—(1) Gasoline. Except as provided in paragraph (f)(2) of this section, there is no provision in the Code that allows a refund or credit with respect to tax-paid gasoline used in producing gasohol.

(2) Mixture of gasoline and alcohol containing more than 40 percent alcohol. If a purchaser buys gasoline tax paid for blending a mixture of gasoline and alcohol containing more than 40 percent alcohol, that mixture will be treated as a special fuel under section 4041 and the refund provisions in section 6416 and the regulations under that section apply.

(3) Diesel, special motor, and noncommercial aviation fuels. If a producer (as defined in paragraph (b) of this section) buys diesel, special motor, or noncommercial aviation fuels tax paid and uses the fuel in producing exempt gasohol, then the refund provisions in section 6427 of the Code and the regulations under that section apply.

(g) Later separation and failure to blend—(1) Gasoline. If any person fails to blend gasoline purchased tax free under section 4081(c) with alcohol to make gasohol, or later separates the tax-free gasoline from the alcohol, that person is treated as a producer of gasoline as defined in section 4082 and the provisions of section 4081 relating to the sale of gasoline by a producer apply. If gasoline has been purchased tax free for the purpose of producing gasohol in excess of the amount of gasoline that the purchaser is able to establish has actually been used to produce gasohol by the records required under paragraph (h)(3) of this section, the purchaser is treated as having failed to blend the excess gasoline, and the provisions of this paragraph apply. In such case, any of the excess gasoline that is not in the purchaser's possession is treated as having been disposed of by sale or by a use that is treated as a sale under section 4082(c). See section 7201 for criminal penalties relating to a willful attempt to evade or defeat tax, and sections 6651 and 6653 for additions to tax for failure to file a return or pay tax and for negligence and fraud.

(2) Diesel, special, and noncommercial aviation fuels. If any person separates the diesel, special, or noncommercial aviation fuel purchased tax free under section 4041(k) from the alcohol, the separation is treated as a sale of the fuel for purposes of section 4041.

(h) Information; records—(1) Information to be furnished to purchaser. A producer of gasoline who sells gasoline tax free under section 4081(c) shall indicate to the purchaser that the purchaser is obtaining gasoline tax free for making gasohol. The producer may transmit this information by any convenient means, such as coding of sales invoices, provided that the information is presented with sufficient particularity so that the purchaser is informed that he has obtained the gasoline tax free and the purchaser can compute and remit the tax due if the gasoline is diverted to a taxable use.

(2) Records of seller. Every person who, but for this section would be liable for the excise tax on the sale of the gasoline, shall maintain in its records—

(i) The identity of the purchaser,

(ii) The written statement required to be given to the seller under paragraph (c) of this section, and

(iii) The quantity of gasoline sold tax free to each purchaser.

(3) Records of producer of gasohol. Any person purchasing gasoline tax free for the purpose of producing gasohol must maintain sufficient records to establish that the gasoline purchased tax free for the purpose of producing gasohol has actually been used for that purpose. Such a person must maintain records sufficient to establish to the satisfaction of the district director that alcohol, of the requisite kind, has actually been obtained by it in a quantity sufficient to have enabled it to have produced the full amount of gasohol that could have been produced from the quantity of gasoline it has acquired tax free for the purpose of producing gasohol.

(i) Effective dates. Section 4081(c) (relating to gasoline mixed with alcohol) applies to sales after December 31, 1978, and before October 1, 1984. Gasoline sold prior to January 1, 1979, and which is blended into gasohol after that date is not exempt from the tax under section 4081(c) of the Code. Section 4041(k) (relating to fuels other than gasoline) applies to sales or use after December 31, 1978, and before October 1, 1984. Where the special fuels have been blended into gasohol and have been put into the tank of a vehicle prior to January 1, 1979, the fuels are considered used prior to that date. The recordkeeping requirements under this section apply to sales or uses that occur after July 19, 1979.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805); secs. 4041(k), 4081(c) of the Code)

JEROME KURTZ,
Commissioner of Internal Revenue.●

By Mr. RANDOLPH:

S. 1521. A bill to expand the licensings and related regulatory authority of the Nuclear Regulatory Commission over storage and disposal facilities for nuclear waste, to provide for meaningful State participation in the licensing of such facilities, and to establish a schedule for implementation of waste management plannings; to the Committee on Environment and Public Works.

NUCLEAR WASTE REGULATION ACT OF 1979

● Mr. RANDOLPH. Mr. President, I introduce a bill to provide a comprehensive approach to the regulation of nuclear waste. There is simply no justification for the absence of definitive Federal guidance in this area 20 years after this Government permitted the first commercial facility to begin generating nuclear waste. It is unconscionable to continue to multiply the volume of this waste while arrangements for protection of the public health and safety from these highly toxic and long-lived substances are at best rudimentary.

In the last several years, there has been a growing awareness of this problem. Too often, however, we have tended to focus on isolation details of the overall picture. For example, there has been a recent flurry of activity on affording the States a definitive voice, on the siting of nuclear waste facilities within their borders, admittedly a key concern.

I submit, however, that the gravity of the subject matter demands no less than a measure which addresses all of issues presented.

First, this bill provides a comprehensive licensing and regulatory framework for all of Department of Energy nuclear waste facilities. To be licensed, new stor-

age or disposal facilities must meet the substantive health and technology standards provided. The facility would have to be sited in the best possible medium, incorporate the best available technology, and present no substantial probability of death serious injury or disease, or genetic damage.

For existing waste facilities of the Department of Energy, such as the tanks at Hanford, Wash., which have experienced numerous leaks over the years, the Nuclear Regulatory Commission would issue a conditional license requiring the implementation of any necessary remedial measures. In extreme cases, where the Commission determines that an existing facility cannot be made to meet the basic health standard through remedial measures, operations would be terminated and the facility decontaminated. For each Department of Energy facility which generates a significant volume of nuclear waste but is not used for storage or disposal, the Commission would periodically review and concur in the Departments waste management plan.

Second, this measure for the first time provides a meaningful State role in the decisionmaking process on locating a storage or disposal facility within its borders. Before a construction permit or operating license for a facility could take effect, the State would have 90 days to approve or disapprove. This right could be exercised by the Governor or by whatever procedure the State legislature has provided. The same compelling logic which supports vesting the States with this substantive right supports allowing the State to define the procedure for its exercise.

Third, to expedite the development of disposal technology and the deployment of disposal capacity, or to seek an early decision on whether nuclear wastes can ever be safely disposed of, the bill establishes certain deadlines. The Nuclear Regulatory Commission and the Environmental Protection Agency are required to report to the Congress by December 31, 1983, on whether a technology exists for waste disposal consistent with the basic health standard. If these agencies find in the negative, the Commission would stop issuing construction permits and operating licenses for nuclear power plants until a positive determination could be made.

The bill further requires the Commission to report to the Congress by January 15, 1987, on whether adequate disposal capacity will exist by December 31, 1990, for the volume of certain wastes projected for that date. If the finding is negative, the Commission would order the suspension of any further commercial generation of these wastes until an affirmative finding could be made.

Finally, the measure prohibits the Nuclear Regulatory Commission from licensing any facility of the Department of Energy for the storage of commercially generated spent nuclear reactor fuel unless the license bars the Secretary of Energy from assuming title to spent fuel and from assuming responsibility for its permanent disposal until a permanent disposal facility is licensed by the Commission. It would be highly irresponsible to allow this Government to subject itself to potentially enormous liability before we even know whether nuclear waste can be safely and permanently disposed of.

This bill, I repeat, represents a comprehensive approach to a most difficult issue. It provides for effective protection of the public health and safety, while balancing the concern for expeditious action and the fear of stampeding officials into ill-advised decisions. This measure, I believe, deserves the reasoned support of Members of the Senate.

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

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

S. 1521

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 "Nuclear Waste Regulation Act of 1979".

SEC. 2. Section 202 of the Energy Reorganization Act of 1974 is amended to read as follows:

"SEC. 202. (a) Notwithstanding the exclusions provided for in Section 110 a. or any other provisions of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission shall, except as otherwise specifically provided by section 110 b. of such Act, have licensing and related regulatory authority pursuant to chapters 6, 7, 8 and 10 of such Act as to facilities of the Department of Energy, for the storage or disposal of low or high level radioactive wastes, including irradiated nuclear reactor fuel, non-high level transuranium contaminated waste, radioactive gas, and decommissioned facilities, and including such materials generated by activities in foreign countries or by activities which are part of research and development or defense programs.

"(b) Prior to license issuance under the preceding subsection, the Commission shall determine that the facility—

"(1) presents no substantial probability to one or more individuals or the general population of death, serious injury or disease, or mutagenic consequences, during the toxic life of the waste to be stored or disposed therein;

"(2) presents to any individual in the general population in any year waste is to be stored or disposed therein radiation from planned and unplanned emissions and effluents which in the aggregate does not exceed ten per centum of the annual exposure standard for the uranium fuel cycle promulgated by the Administrator of the Environmental Protection Agency.

"(3) incorporates the best available technology for the isolation and containment of such waste; and

"(4) is situated in the best possible medium for the duration of storage or disposal of such waste for which the facility is designed: *Provided, however,* That the determination prescribed by this paragraph need not be made for facilities intended to demonstrate the existence of a safe and practical technology for permanent disposal, or to assess the characteristics of a particular site or medium.

"(c) For each facility, or portion thereof, of a type described in subsection (a) of this section which is in use on the date of enactment of this subsection, the Secretary of Energy shall file with the Commission within nine months of such date a report setting forth in detail environmental and safety data, including, but not limited to evidence of waste migration, instances of failure of containment, contamination of surface or ground waters, and corrective measures employed. Within one year of the submission of each such report, the Commission, in consultation with the Department of Energy, shall require such remedial measures, if any, as are necessary to assure the facility presents no substantial probability to one or more individuals or the general population of death, serious injury or disease, or mutagenic consequences. Within one year of receipt of such requirements, the Secretary fo Energy shall submit to the Commission for concurrence plans for the implementation of such requirements, including a specific schedule of compliance with any interim requirements and specific attainment dates for interim and final requirements. Upon concurrence by the Commission, such plans, compliance schedule, and attainment dates shall be a condition of the license issued for such a facility or portion thereof. In any case where the Commission determines that it would be impracticable to employ remedial measures to enable a particular facility, or portion thereof, to fully meet the public health standard provided by this subsection, the Commission shall prescribe such conditions and requirements as are necessary to protect public health and safety and the environment while facility operations are terminated and decommissioned, and specify a schedule for compliance with such conditions and requirements.

"(d) For each facility of the Department of Energy which generates a significant quantity of any of the wastes enumerated in subsection (a) of this section, the Secretary of Energy shall submit to the Commission for concurrence a report setting forth detailed plans for the management of such waste and for its ultimate disposal. The Secretary shall submit such a report for concurrence within one year of the date of enactment of this subsection, every third year thereafter, and whenever revision of such plans is contemplated. The Commission shall recommend such changes, if any, as are necessary to protect the public health and safety and the environment, and shall be satisfied that such recommendations have been implemented before affording its concurrence."

SEC. 3. (a) In addition to any requirement imposed by the National Environmental Policy Act of 1969, as amended, each license application submitted under section 202(a) of the Energy Reorganization Act of 1974, as amended, shall identify alternative sites for the facility. The applicant shall provide such data as the Nuclear Regulatory Commission deems sufficient for each such site. Except as may be required by the provisions of the National Environmental Policy Act of 1969, as amended, the Commission is authorized to waive or modify the alternative site requirement of this subsection if the subject facility is intended to demonstrate the existence of a safe and practical technology for permanent disposal or to assess the characteristics of a particular site or medium.

(b) The Commission shall develop criteria and procedures for the evaluation of alternative sites identified under subsection (a) of this section within eighteen months of the date of enactment of this section.

SEC. 4. (a) Not later than twelve months prior to filing with the Commission a con-

struction permit application for a storage or disposal facility for high level radioactive waste, non-high level transuranium contaminated waste, or irradiated nuclear reactor fuel, the prospective applicant shall notify the Governor of the State of proposed situs of an intent to file, and shall make available to the designated state representative on a continuing basis all data relevant to the intended application. The designated state representative shall be afforded a reasonable opportunity for meaningful participation at every stage of the proceedings for construction permit and license issuance.

(b) Any construction permit or license issued by the Commission for a facility of a type described in subsection (a) of this section shall be without force and effect for a period not to exceed 90 days from issuance. The State may approve or disapprove such construction permit or a license within this period by action of the Governor or by whatever procedure the State legislature has prescribed. Should the State approve, such a construction permit or license shall become immediately effective. Should the State disapprove, such license shall be voided. Should the State fail to take either action in timely fashion, such construction permit or license shall take effect on the expiration of the 90 day period.

SEC. 5. (a) The Nuclear Regulatory Commission and the Environmental Protection Agency are authorized and directed to investigate and determine:

(1) Whether a technology exists for the preparation of high level radioactive waste, non-high level transuranium contaminated waste, and irradiated nuclear reactor fuel, and for the isolation and containment of such wastes once prepared in an appropriate medium, which would permit ultimate disposal of such wastes without presenting during the toxic life thereof, a substantial probability to one or more individuals or the general population of death, serious injury or disease, or mutagenic consequences; and

(2) What issues, if any, remain to be resolved before an affirmative determination may be made pursuant to the preceding paragraph.

(b) To make the determinations required by subsection (a) of this section, the Nuclear Regulatory Commission and the Environmental Protection Agency shall conduct a public proceeding in accordance with sections 554, 555, and 556 of the Administrative Procedure Act, as amended. The Department of Energy, the United States Geological Survey, and the National Academy of Sciences shall be parties to such proceeding, and any other person whose interest might be affected shall be permitted to intervene. The Nuclear Regulatory Commission and the Environmental Protection Agency shall report their findings and determinations to the Congress and the President on or before December 31, 1982.

(c) If the report required by the preceding subsection contains a negative determination on the question presented by subsection (a)(1) of this section, the Nuclear Regulatory Commission shall—

(1) jointly, with the Environmental Protection Agency, report to the Congress and the President thereon every second year from the initial reporting date, and

(2) suspend issuance of construction permits and operating licenses for nuclear generating facilities, and approval of construction thereon pending construction permit issuance, as of December 31, 1982, until such time as the Nuclear Regulatory Commission and the Environmental Protection Agency shall report to the Congress and the President an affirmative determination pursuant to subsection (a)(1) of this section: *Provided, however,* That an operating license may be issued for such a facility after December 31, 1982, notwithstanding a suspension pursuant to paragraph (2) of this subsection if an application for a construction permit therefor was submitted prior to January 15, 1979, and the construction permit was obtained and substantial construction was accomplished thereunder prior to December 31, 1982.

SEC. 6. On or before January 15, 1987, the Nuclear Regulatory Commission, in consultation with the Department of Energy, shall report to the Congress and the President on whether adequate permanent disposal capacity as defined in section 6(a)(1) of this Act will exist on or before December 31, 1990 for the volume of high level radioactive waste, non-high level transuranium contaminated waste, and irradiated nuclear reactor fuel, from whatever source, which is projected to require such disposal within the United States on such date. If a negative determination is made, the Commission shall:

(a) report to the Congress and the President every third year from the initial reporting date, and

(b) order the suspension of further commercial generation of the wastes enumerated in this section,

until such time as the Commission shall report to the Congress that adequate permanent disposal capacity exists for the volume of such wastes, from whatever source, which requires such disposal within the United States at the time of such report.

SEC. 7. The Nuclear Regulatory Commission shall not license any facility of the Department of Energy for the storage of commercially generated irradiated nuclear reactor fuel pursuant to section 202(a) of the Energy Reorganization Act of 1974, as amended, unless such license prohibits the Secretary of Energy from entering into contracts to assume title to such waste or responsibility for the permanent disposal thereof until such time as a facility for the permanent disposal of such waste licensed by the Commission is in operation.●

By Mr. HARRY F. BYRD, JR. (for himself and Mr. WARNER):

S. 1522. A bill to amend title 18 of the United States Code to prohibit the injury or destruction of a nuclear facility; to the Committee on the Judiciary.

PROSECUTION OF PERSONS CONVICTED OF DAMAGING A CIVILIAN NUCLEAR FACILITY

Mr. HARRY F. BYRD, JR. Mr. President, my colleagues may recall the alleged nuclear fuel rod damaging incident at the Surry nuclear facility in Virginia, on May 7.

As a result of that incident and the subsequent investigation, I learned of a statutory inadequacy which would inhibit prompt and full investigation of such incidents. Further, it has been learned that this statutory shortcoming may inhibit the prosecution of individuals who have been accused of damaging a nuclear facility.

In light of this recent experience, I thought it prudent to bring this matter to the attention of the Senate in the form of legislation designed to clear up any ambiguities in Federal law or regulations which might impede either the investigation of an alleged sabotage of a nuclear facility or the prosecution of any person charged with such a crime.

The nature of the legislation is limited in scope, but it addresses a type of problem which could affect all other civilian nuclear facilities throughout the United States.

I have also brought this matter to the attention of the U.S. Department of Justice. I have been informed that the Department is working closely with the Nuclear Regulatory Commission in considering the inadequacies in the law relating to prosecution of nuclear facility damage cases.

I would hope that the committee of jurisdiction will quickly look into this important matter and schedule hearings thereon, in order that a new law could serve as a deterrent to the type of criminal action experienced in Virginia.

My distinguished colleague from Virginia, Senator WARNER, has joined me in sponsoring this bill.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 1522

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 65 of title 18, United States Code is amended by adding at the end thereof the following new section:

"§ 1365. Nuclear facilities

"(a) Whoever willfully or maliciously injures or destroys any of the works, property, building, machinery, or material of any nuclear utilization or production facility, operated or controlled by the United States, or licensed by the United States, whether constructed or in the process of construction, or willfully or maliciously interferes in any way with the working or use of any such facility, or willfully or maliciously obstructs, hinders, or delays the production, utilization, or transmission of energy from such facility, shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

"(b) An alleged violation of this section shall be investigated by the Federal Bureau of Investigation. Whenever Federal investigative or prosecutive jurisdiction is asserted for a violation of this section, the exercise of jurisdiction by any State or local law enforcement authority shall be suspended until Federal investigation or prosecution is terminated.

"(c) For the purposes of this section, the terms 'utilization facility' and 'production facility' have the same meaning as in section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014).".

(b) The table of sections for chapter 65 of that title is amended by adding at the end thereof the following new item:

"1365. Nuclear facilities.".

By Mr. THURMOND:

S. 1523. A bill to amend title 38, United States Code, to establish demonstration centers of geriatric research, education, and clinical operations within the Veterans' Administration; to the Committee on Veterans Affairs.

VETERANS SENIOR CITIZEN HEALTH CARE ACT OF 1979

Mr. THURMOND. Mr. President, today I am introducing the Veterans

Senior Citizens Health Care Act of 1979. This legislation, which was introduced in the House by Congresswoman HECKLER and cosponsored by the chairman of the House Select Committee on Aging, Mr. PEPPER, as well as the chairman and ranking minority member of the House Veterans' Affairs Committee, Messrs. ROBERTS and HAMMERSCHMIDT, along with many others, passed that body on June 5, 1979, by a recorded vote of 406 to 0.

The purpose of this act is to meet the needs of our Nation's aging veterans population by elevating geriatric medicine into a position of higher visibility and priority within the Department of Medicine and Surgery of the Veterans' Administration. There are presently 6 million U.S. veterans aged 60 and older. By 1985, this number will increase to 9 million and will eventually reach 11 million by 1995.

The Veterans Senior Citizens Health Care Act of 1979 will address the problem presented by the phenomenon of the aging veteran by authorizing the institution of a pervasive and intensive program within the Veterans' Administration's Department of Medicine and Surgery to study and to do research in the field of geriatrics. Specificially, this legislation would authorize the Administrator of Veterans' Affairs to designate 15 VA hospitals as locations for demonstration centers of research, education, and clinical operations in the field of geriatrics.

The bill would also authorize the Administrator to designate not more than five additional VA hospitals as locations for such demonstration centers within the constraints of existing hospital resources and funding by the Congress. These hospital demonstration centers, which would carry out geriatric research, education, and clinical functions in connection with affiliated medical schools, would operate for a period of 4 years. Coordinating the entire program would be the responsibility of the office of the newly created position of Assistant Chief Medical Director for Geriatrics and Extended Care within the VA's Department of Medicine and Surgery.

The bill also would authorize the establishment of a geriatrics and extended care task force. The function of the task force would be to establish administrative and management methods, to set goals and fix responsibilities for the implementation of geriatric research, education of medical personnel, and clinical operations at the demonstration centers. After 18 months, the task force would issue an interim report on the operations of the demonstration centers. At the end of the 4-year authorization, the task force would issue a final report on the integration of the operation of the programs of the demonstration centers into the mainstream of the entire VA hospital system.

The Congressional Budget Office has submitted the following cost estimate on this legislation:

Estimated budget authority

Fiscal year:	Millions
1980	$15
1981	20
1982	25
1983	25
1984	0

Estimated outlays

Fiscal year:	Millions
1980	$12.5
1981	19.3
1982	24.1
1983	24.9
1984	4.2

Mr. President, the Veterans Senior Citizens Health Care Act of 1979 would significantly enhance the quality of geriatric care now provided in VA hospital facilities and, ultimately, would provide a meaningful effort by our Government to address the needs of the 32 million elderly persons who will live in this country by the year 2000. This act will substantially upgrade the embryonic program of the VA launched in 1973, the purpose of which was to improve the quality of geriatric care in VA hospital facilities. This important legislative initiative has the strong support of the American Legion, the Disabled American Veterans, the Veterans of Foreign Wars, Amvets, Veterans of World War I, the Blinded Veterans Association, as well as the strong endorsement of leading geriatricians throughout the Nation. The Veterans Senior Citizens Health Care Act of 1979 is an important legislative proposal. It is far reaching and proposes to address a future problem with a view to finding viable solutions now. I strongly support it and urge my colleagues to do likewise.

ADDITIONAL COSPONSORS

S. 689

At the request of Mr. TALMADGE, the Senator from Missouri (Mr. EAGLETON) was added as a cosponsor of S. 689, the Veterans' Disability Compensation and Survivor Benefits Act of 1979.

S. 736

At the request of Mr. DOLE, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 736, a bill to amend the Internal Revenue Code of 1954 to clarify the standards used for determining whether individuals are not employees for purposes of the employment taxes.

S. 1165

At the request of Mr. BELLMON, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 1165, a bill to amend chapter 105 of title 10, United States Code, to provide for increases in the amounts of the monthly stipend paid to participants in the Armed Forces health professions scholarship program.

S. 1166

At the request of Mr. BELLMON, the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 1166, a bill to provide a permanent extension for the exclusion from gross income of certain amounts received under certain education programs for members of the uniformed services.

S. 1211

At the request of Mr. CRANSTON, the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1211, a bill to amend the Social Security Act to extend medicaid eligibility to certain low-income pregnant women.

S. 1275

At the request of Mr. BAYH, the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 1275, the cold-finish steel bar tariff reclassification legislation.

S. 1428

At the request of Mr. CRANSTON, the Senator from Wyoming (Mr. SIMPSON) was added as a cosponsor of S. 1428, a bill to amend the Internal Revenue Code of 1954 to allow certain individuals who are participants in employer pension plans a deduction for their contributions to such plans or for their contributions to individual retirement savings plans.

S. 1433

At the request of Mr. PACKWOOD, the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1433, a bill to improve the airplane certification process.

SENATE JOINT RESOLUTION 84

At the request of Mr. PROXMIRE, the Senator from Wisconsin (Mr. NELSON) was added as a cosponsor of Senate Joint Resolution 84, designating August 1980 as "National Sport Aviation Month."

AMENDMENT NO. 210

At the request of Mr. SASSER, the Senator from Kansas (Mr. DOLE) was added as a cosponsor of amendment No. 210 intended to be proposed to S. 712, the Rail Passenger Service authorization bill.

AMENDMENT NO. 212

At the request of Mr. SCHMITT, the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of amendment No. 212 intended to be proposed to S. 1020, the Federal Trade Commission authorization bill.

SENATE RESOLUTION 197—SUBMISSION OF A RESOLUTION DIRECTING A STUDY OF THE ADVISABILITY AND FEASIBILITY OF INSTITUTING A BIENNIAL FISCAL PERIOD

Mr. BUMPERS submitted the following resolution, which was referred to the Committee on the Budget and the Committee on Governmental Affairs, jointly, pursuant to order of August 4, 1977:

S. RES. 197

Resolved, That (a) the Committee on the Budget and the Committee on Governmental Affairs are authorized and directed to study the advisability and feasibility—

(1) of conducting the fiscal affairs of the United States Government on a 2-year fiscal period or, in the alternative, of having the Budget submitted and new budget authority enacted for two fiscal years at a time; and

(b) Such committees may conduct such study jointly or separately and shall submit their joint report or separate reports, together with their recommendations, to the Senate as soon as practicable, but not later than February 29, 1980.

● Mr. BUMPERS. Mr. President, I am submitting a resolution today which will direct the Senate Committees on the Budget and Governmental Affairs to study the advisability of conducting the fiscal affairs of the U.S. Government on a biennial basis. Under this resolution, the committees will be required to submit their recommendations to the Senate by February 29, 1980.

The annual budget cycle poses a dilemma for Congress. On one hand, annual review of authorizations and appropriations provides Congress with an opportunity to influence programs and policies, in addition to performing the oversight function. On the other hand, as annual authorizations and appropriations increase the workload of Congress, the quality of congressional oversight has diminished.

The increase in annual authorizations has made it difficult for the legislative and the Appropriations Committees to pass their legislation on time. Legislative committees complain that the May 15 deadline for reporting authorizing legislation does not leave enough time to act, while the Appropriations Committees complain that they cannot meet their deadlines because the authorizing committees act too slowly.

Before World War II authorizations were usually permanent. It has been estimated that at the end of World War II 95 percent of Federal spending, exclusive of one-time projects, was under permanent authorization. Since the war, Congress has sought to exert greater control over the Federal budget by enacting more annual authorizations, and by converting existing permanent authorizations to annual status. It has been estimated that 15 percent of the Federal budget is accounted for by annual authorizations.

Biennial authorizations would help to relieve Congress' heavy workload each year by eliminating the problem of considering annual authorizations. During hearings held in the 95th Congress on congressional procedure, a number of witnesses stated that a major problem in the House is finding time to give full consideration to measures in committee and on the House floor. Frequently, because of the workload, important measures were seen to have received only perfunctory consideration.

By relieving the heavy congressional workload, biennial authorizations would permit more time for oversight activities. A complaint common to Congress is that committees lack the time to perform this function. A 2-year authorization cycle, would allow the legislative committees to review programs more systematically and would result in better planning by Congress and the agencies. The time for more thorough oversight would be available because authorizing legislation would have to be enacted every 2 years rather than annually.

Biennial authorizations would encourage the orderly consideration of authorizations and appropriations and relieve the scheduling problems caused when authorizations are not enacted on time. Observers of the congressional budget process cite the growth in annual authorizations and the resulting backlog of legislation as the main reason for delay in the enactment of appropriations bills.

The orderly consideration of authorizations is provided for in section 607 of the Congressional Budget and Impoundment Control Act of 1974. This section encourages the use of 2-year authorizations. Section 607 reads:

In the case of a request for the enactment of legislation authorizing the enactment of new budget authority for a new program or activity which is to continue for more than one fiscal year, such request shall be submitted for at least the first 2 fiscal years.

The manager's statement to the conference report accompanying H.R. 7130, the Budget and Impoundment Control Act of 1973, discusses advance authorizations:

The managers believe that in the future it will be necessary to authorize programs a year or more in advance of the period for which appropriations are to be made. When this is done, Congress will have adequate time for considering budget-related legislation within the timetable of the Congressional budget process. The managers call attention to section 607 which requires advance submission of proposed authorizing legislation, and to the expectation that Congress will develop a pattern of advance authorizations for programs now authorized on an annual or multiyear basis.

The recent House debate on the State Department authorization bill (H.R. 3363), underscores the arguments advanced for biennial authorizations. In support of a 2-year authorization for the State Department, Representatives ZABLOCKI, GIAIMO, and FASCELL asserted that a 2-year authorization supports section 607 of the Congressional Budget Act, and is well suited for stable and predictable programs. In addition, they argued that 2-year authorizations provide for better oversight. Mr. GIAIMO declared:

Multiyear authorizations can mean major reductions in the time spent in hearings, markup, floor debate and conference. They can assure that the authorizing committee reports the bill, and floor action occurs in time for the Appropriations Committee to devote adequate time to its consideration. And it can free the authorizing committee for a much neglected activity in the Congress—that of program oversight.

A second facet of biennial budgeting involves the appropriations process. Some persons regard the appropriations process as the most effective form of congressional oversight. In "Congressional Control of Administration," Joseph P. Harris declares that, "the appropriations process is perhaps the most important single control over the departments."

In an effort to exert more control over the budget, Congress has always encouraged the use of annual appropriations. The Permanent Appropriation Repeal Act of 1934 made a number of programs that had been permanently funded subject to annual consideration by Congress. Section 139 of the Legislative Reorganization Act of 1946 ordered the Appropriations Committees to study existing permanent appropriations "with a view to limiting the number of permanent appropriations and to recommend to their respective House what permanent appropriations, if any, should be discontinued." In 1966, the Joint Committee on the Organization of the Congress declared:

We strongly believe that an annual appropriations review is the best means of insuring that Federal spending received adequate congressional attention.

Section 253 of the Legislative Reorganization Act of 1970 (Public Law 91–510) encourages Congress to insure that appropriations for continuing programs are made annually, and section 402 of the Congressional Budget Act directs the committees of both Houses to study permanent appropriations and to recommend terminations or modifications.

However, annual appropriations increase the congressional workload to the detriment of the oversight function. In addition, annual appropriations reduce the time that the Appropriations Committees have to consider the advice of authorizing committees. In short, annual appropriations mean tighter deadlines and less time for planning and the consideration of major policy issues. Allen Schick of the Congressional Research Service has stated:

Annual appropriations might convey the appearance of potent congressional command over expenditures but the reality might be a legislative body too harried to evaluate any portion effectively.

Biennial appropriations may provide more time for oversight and effective planning as well as dispersing the congressional workload.

Two-year appropriations are also discussed in a recent report by the Congressional Budget Office (CBO). The purpose of the report is to consider whether the controllable portion of the budget should be funded in advance. That is, should the decisions involving the budget be made at least 12 months before the start of the next fiscal year? CBO recommended that the Appropriations Committees establish standards under which programs could be included in a 2-year appropriations cycle.

CBO concluded that 2-year appropriations would help relieve the workload of Congress and improve the quality of budget decisions. The report also noted the benefits of 2-year appropriations on State and local government planning. Biennial appropriations would relieve the uncertainty associated with annual appropriations and permit the State and local governments to plan farther into the future.

In studying the biennial authorization and appropriations process, the committees should also review the possibility of changing to a 2-year budget resolution. Congress is increasingly concerned with the problems of workload, floor scheduling and the timely enactment of authorizations and appropriations. In addressing these problems Congress has considered the benefits of advance budgeting. The Congressional Budget Act includes a number of provisions that encourage the Budget Committees and Congress to look beyond the immediate fiscal year. Some of these provisions are:

First. The Congressional Budget Office must project the 5-year impact for every spending bill reported by the House and Senate committees;

Second. At the beginning of each fiscal year CBO must report to Congress on spending, revenue, surplus or deficit, public debt, and tax expenditures for the coming 5 years; and

Third. The President must project the effects of his annual budget proposals over 5 years.

In addition, on April 2, the President signed the Public Debt Limit Act (Public Law 96–5) that directs the Budget Committees to submit two alternative multiyear budget plans. The report of the Senate Budget Committee read:

> The dynamism of multiyear budgeting is a dramatic advancement over the static limits of single-year planning. Multi-year planning alone can allow Congress to exert firm control over spending, revenues, and the size of a deficit or surplus.

Two-year budget resolutions would provide Congress with budget control by permitting planning and the flexibility to adjust to changing economic conditions. Congress could enact 2-year budget resolutions and retain annual appropriations, while enacting 2-year appropriations on a selective basis. A multiyear budget is recommended by OMB:

> Both the President and Congress will reap significantly greater benefits from this multiyear budgeting approach than would be possible through advance appropriations.

The selective use of biennial appropriations with 2-year budget resolutions offers Congress the opportunity to study the effectiveness of a 2-year budget cycle without sacrificing much short-term control of the budget. It might also be useful in determining how congressional workload and floor scheduling would be affected by a change to the 2-year cycle, as well as whether a decrease in workload would encourage greater oversight.●

AMENDMENTS SUBMITTED FOR PRINTING

KENNEDY CENTER AUTHORIZATIONS—S. 1142

AMENDMENT NO. 331

(Ordered to be printed and to lie on the table.)

Mr. DOMENICI submitted an amendment intended to be proposed by him to S. 1142, a bill authorizing appropriations to the Secretary of the Interior for services necessary to the nonperformance arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes.

● Mr. DOMENICI. Mr. President, I send to the desk an amendment intended to enhance the financial status of the John F. Kennedy Center for the Performing Arts. My amendment would establish clear rules under which the Center may give away or provide reduced-priced tickets to its performances. This amendment would increase the Center's income by at least $200,000 yearly since each of those free tickets given free to the White House and to the chairman of the Center's Board of Trustees has a value of about $15, and some 40 such free tickets are provided daily. This legislation is similar of S. 558, which I introduced earlier this year.

Mr. President, I am convinced that too many tickets are now being given free to the staffs of the White House, the Congress, as well as to Members of the Congress and the Cabinet. Frankly, I do not believe we should ask the American taxpayer to underwrite the costs of the Kennedy Center, when we are giving tickets free to a few favored people.

Mr. President, I ask unanimous consent that the text of the amendment, together with the individual views I included with the report on S. 1142 be printed at this point in the RECORD.

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

S. 1142

On page 2, after line 5, insert the following:

"SEC. 2. The John F. Kennedy Center Act (Public Law 85–874, as amended; 20 U.S.C. 761) is amended further by adding at the end thereof the following new section, to be numbered accordingly:

"'SEC. (a) No tickets for events for which a specific schedule of charges is provided to the public may be distributed without compensation in accordance with such schedule, except tickets may be distributed:

"'(1) at reduced rates to persons aged sixty-five years or older;

"'(2) at reduced rates to assure access to the performing arts for persons who otherwise could not afford to attend such events;

"'(3) at reduced rates, or without compensation, when it is determined, no more than twenty-four hours before a particular performance, that those tickets to be distributed without compensation or at reduced rates could not reasonably be expected to be sold in accordance with the schedule of charges;

"'(4) without compensation to accredited members of the press whose purpose is to review that performance, or,

"'(5) without compensation to the President of the United States and his party when the President attends a particular performance at the Center.

"'(b) For the purpose of this section the term "schedule of charges" shall mean any list of ticket prices contained in an advertisement or display for an event.

"'(c) Any official of the Center violating this section shall be liable to a fine of no more than $100.'."

ADDITIONAL VIEWS OF MR. DOMENICI

I am pleased that the Committee on Environment and Public Works has agreed to address the many issues relating to the financing of the Kennedy Center for the Performing Arts before the Senate considers this legislation on the floor. Resolution of the parking-bonds debt and other aspects of the Center's finances must logically be considered before additional tax dollars are authorized for the Center.

Parking Bonds.—In addition to $23,000,000 in direct appropriations provided for the Center in the 1960's, the Congress authorized $20,400,000 in parking bonds for the Center. These bonds are due to be redeemed in the years 2017–2019. According to the General Accounting Office: "The bonds state that the interest and principal are to be paid from parking revenues. However, the Center has not set aside any funds or made any provision to pay the interest or amortize the principal of the bonds."

By the original agreement with the Treasury Department, interest on the bonds was deferred until December 31, 1978. The Kennedy Center has since had that date extended to December 31, 1979. By the end of this year, the Center will owe the Treasury Department some $17 million in back interest (not counting principal). It disturbs me that the Center has been unwilling to set aside even a dime towards the bonds or the accumulated interest. It is rather like a homeowner who spends to the limit of his paycheck, then refuses to pay anything on the mortgage of his home. Citizens can't get away with this; apparently the managers of the Kennedy Center can.

The problem goes back to the period before the Center was completed. The Center was running out of cash for construction work. So, rather than go to private contributors or to the Congress, it borrowed $3.5 million from the company that obtained the concession on the parking garage. The money was used to complete construction on the theaters. To obtain the loan, the Center pledged the use of its parking revenues, those same revenues that were to go to pay the parking bonds. Says GAO: "The (parking) company's proposal to provide this advance * * * was an important factor in its selection to manage the Kennedy Center's parking facility."

Currently, the Center charges $2.50 for every car that uses the three-level, 1,408-car parking garage in the evening, plus hourly charges during the day. This brings in some $1.5 million yearly. Of these revenues, 5 percent off the top goes to the parking company as a "management fee." Next, the parking company is paid for all its operating and maintenance costs. Next, a payment of about $400,000 is made yearly to the parking company toward the principal and interest on the $3.5 million, 15-year loan. Then, and only then, does the Kennedy Center receive any revenues from the garage—50 percent of the residue. (The split becomes 70 percent Kennedy Center, 30 percent to the parking company once the loan is paid off, with an 80–20 split on revenues exceeding $1.5 million.)

From 1972 through 1978, the parking garage received total revenues of $8,716,426. Of that sum, the concessionaire received $7,253,939, while the Center received $1,462,487. And those parking revenues received by the Center were used for theater operations, according to the General Accounting Office.

As early as 1975, the Committee on Environment and Public Works made the following observation:

The Committee is greatly concerned over indications from the recent General Accounting Office report and hearings on this bill

that the Center may be unable to meet its accumulated debt and to make necessary repairs, both outside the memorial aspects of the Center. This question will come into focus by 1978 when unpaid debts on the parking garage bonds fall due; the interest due in 1978 is estimated at $14.6 million.

The Committee urges that the Center and the Department of the Interior recognize what might be termed the precarious financial position of the Center and report, within one year, to the Congress on what efforts are and will be made by the Center to raise the funds needed to meet this debt, as well as to meet any costs of major repairs that may be necessary. Such a report should contain a detailed analysis of the Center's efforts to raise additional capital funds to cover such debts in order that the taxpayers will not be forced to assume the burden of such added and unnecessary costs.

A year later, the committee expanded on this view:

During the 1976 hearings before the Committee, representatives of the Kennedy Center alluded to Treasury Bonds issued to finance construction of the parking garage at the Center. Payment of interest on the $20.4 million in bonds may be deferred by the Center until December 31, 1978. At that time $14.6 million in accrued interest will be due. Officials of the Center stated that existing revenue sources, because of the manner the funds are committed, are unlikely to yield sufficient funds to pay the interest. While no specific request for Federal assistance wa- made, the testimony indicated that the Kennedy Center would be seeking relief from its obligations in the future.

Members of the Committee, during consideration of H.R. 14360 in the last Congress, expressed opposition to granting such relief. The Committee believes there is need for better information on the Center's overall financial needs and operations, and perhaps also to establish clearer lines of responsibility for the Center's disparate functions; the center for the performing arts, and the nanational monument and major tourist attraction. The Committee plans to review these matters, and may propose changes in the division of responsibilities between the Kennedy Center Board and the Federal Government. The interest of the Federal Government in the Center in this legislation is limited to providing effective oversight of the building's structural integrity in order to assure that adequate maintenance and rehabilitative measures needed to maintain its functional and aesthetic qualities are carried out.

It should be noted that the amended bill and the parking bonanza are not the only on-going Federal supports provided to the Center. Because of shabby construction work, the Congress has appropriated $4.5 million to repair leaks in the roof and in the driveway. And more work is needed inside. According to the Park Service, the Opera House needs $1,000,000 in work (carpet, wall coverings), the Concert Hall needs $300,000 (carpet, broken seats), the Eisenhower Theater needs $400,000 (carpet, ceiling fabric), and there is a need to spend $700,000 to reinsulate the garage. The total: $3.5 million, including contingencies.

And the list of taxpayer supporters goes on. While the National Endowment for the Arts gives no money directly to the Kennedy Center, the Center is still the beneficiary, both directly and indirectly, of large sums provided yearly by the Endowments. One of the Endowments' programs is its dance touring program, which provided $3,885,000 nationally in fiscal year 1978 to pick up about a third of the costs of touring dance companies. Of that sum, the Kennedy Center received $253,500 to finance a total of 9 weeks of performances by the American Ballet Theater and the New York City Ballet. The Endowment provides $3,000,000 yearly to the American Film Institute, money which indirectly enables the Institute to rent its theater in the Center.

The public has a right to know exactly how much the Center receives from the taxpayers in order to make a proper analysis of future requests, such as relief of the parking bonds.

Tickets.—An issue related to the millions of taxpayer dollars provided yearly to the Center involves free tickets. I have introduced legislation (S. 558) that would limit the Center's ability to hand out free tickets to those who can easily afford to pay, while the Center continues to come to the taxpayers for this smorgasbord of financial supports. The Center provides approximately $500 daily in free tickets (the most choice of seats) to the White House and to the Center's chairman, Roger Stevens. The White House tickets are normally used by the staff of the White House and the Congress, while the Stevens tickets are used by a variety of people, including persons being lobbied on wildlife protection issues.

The annual value of these tickets is some $175,000 yearly. While this sum certainly will not retire the Center's debt, the principle of giving freebies to those who can afford to pay, while begging for more tax dollars is simply wrong.

I applaud the Committee for its decision to confront the various issue relating to the finances of the Center, and I agree that this must be done before this legislation is considered on the floor.●

ENERGY AND WATER DEVELOPMENT APPROPRIATIONS—H.R. 4388

AMENDMENT NO. 332

(Ordered to be printed and to lie on the table.)

Mr. COHEN submitted an amendment intended to be proposed by him to H.R. 4388, an act making appropriations for energy and water development for the fiscal year ending September 30, 1980, and for other purposes.

NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS—S. 562

AMENDMENT NO. 333

(Ordered to be printed and to lie on the table.)

Mr. DOLE submitted an amendment intended to be proposed by him to S. 562, a bill to authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and section 305 of the Energy Reorganization Act of 1974, as amended, and for other purposes.

AMENDMENT NO. 334

(Ordered to be printed.)

Mr. McGOVERN proposed an amendment to S. 562, supra.

AMENDMENT NO. 335

(Ordered to be printed.)

Mr. HART proposed an amendment to S. 562, supra.

WINDFALL PROFITS TAX—H.R. 3919

AMENDMENT NO. 336

(Ordered to be printed and referred to the Committee on Finance.)

Mr. BENTSEN (for himself, Mr. DOLE, Mr. BAUCUS, Mr. BELLMON, Mr. BOREN, and Mr. GRAVEL) submitted an amendment intended to be proposed by them, jointly, to H.R. 3919, an act to impose a windfall profit tax on domestic crude oil.

● Mr. BENTSEN. Mr. President, not since the Second World War has the security and future of the United States been so threatened as it is today. In the past decade the leaders of our Nation have pursued energy policies that have restrained domestic energy production and subsidized foreign imports. We are now beginning to pay the full price for these ill-conceived policies. The OPEC nations repeatedly have demonstrated their ability and willingness to demand ever-increasing prices for their oil. According to the best estimates available the recent OPEC price increase will force inflation 2 percent higher in the United States next year and throw a million U.S. workers out of their jobs.

Our dependence on unreliable and increasingly costly foreign oil has doubled since the 1973 embargo while domestic production in the lower 48 States is in its 9th year of decline. It would be a tragic miscalculation for Congress to take action that would add to this decline. We need greater energy independence not more dependence.

For this reason, I intend to sponsor an amendment to H.R. 3919 which will exempt from the windfall profits tax the first 3,000 barrels of daily production by independent producers. This amendment would provide the capital requirements and drilling incentives needed by that segment of the petroleum industry which does nearly 90 percent of the Nation's exploratory drilling and accounts for 75 percent of the recently discovered oil and gasfields.

By exempting most independents from the tax, we can be assured that their increased earnings will be plowed back directly into exploration for additional domestic energy resources. Over the past 5 years, independents have received gross revenues of $33.3 billion but have spent $34.9 billion for drilling and exploration. The evidence is clear that independent producers are reinvesting everything they earn and then borrowing more money on top of that to explore for oil and gas. If we permit the independent producer to keep these tax dollars rather than the Government, he will use it to do what he does best—produce more energy.

Without this type of exemption I am concerned that the windfall tax will continue to erode the number of independent producers who can successfully compete with the major oil companies in the risky and increasingly technical business of oil exploration. Since the mid-1950's, the ranks of independents have been

slashed in half from over 20,000 to 10,000 today. Because independents derive income only from the discovery and production of oil, they will be much harder hit by this tax than the major oil companies which also earn income from refining, marketing, transportation, and overseas operations.

Although there remain approximately 10,000 active independents in the petroleum business, most of our domestic oil reserves are held by the slightly more than 30 major integrated companies. Preliminary estimates indicate that this amendment will release only 15 percent of the oil subject to the windfall tax, but it will exempt greater than 99 percent of the producers from the need to comply with paperwork and redtape burdens of the tax.

Because I am deeply concerned that imposing the House version of the windfall tax on independent producers might discourage desperately needed new exploration, I am offering this amendment to exempt from the tax the first 3,000 barrels a day that the independent produces. I ask unanimous consent that the text of my amendment be printed in the RECORD.

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

AMENDMENT NO. 336

On page 2, line 14, after "TAX" insert "; EXEMPTION FOR INDEPENDENT PRODUCTION".

On page 3, between lines 10 and 11, insert the following new subsection:

"(d) Exemption for Independent Oil Production.—

"(1) General rule.—There shall be exempt from the tax imposed by section 4987 so much of the production for the taxable period as does not exceed the product of—

"(A) 3,000 barrels, multiplied by

"(B) the number of days in the taxable period.

"(2) Rules for determining ownership shares.—

"(A) In the case of a taxpayer holding a partial interest in the production from a property, including an interest in a partnership, the taxpayer's production shall be an amount which bears the same ratio to the total production of the property for the taxable period as the taxpayer's participation in the revenue from the property bears to the total revenue from the property for the taxable period.

"(B) For the purpose of applying paragraph (1) to a business under common control, the Secretary shall prescribe rules similar to the rules under section 613A(c)(8).

"(C) In the case of a partnership, the amount of the exemption under paragraph (1) shall be computed separately by each of the partners, under rules similar to the rules under section 613A(c)(7)(D), and not by the partnership.

"(D) In the case of a transfer of an interest (including an interest in a partnership or trust), paragraph (1) shall be applied in accordance with rules similar to the rules under section 613A(c)(9).

"(3) Ordering rule where production exceeds exemption.—If the amount of a taxpayer's production for a taxable period exceeds the amount of the taxpayer's exemption for that period under paragraph (1), the excess shall be attributed to that part of the taxpayer's production for which the removal price per barrel is lowest.

"(4) Retailers and refiners excluded.—This subsection shall not apply in the case of a taxpayer who is excluded from the application of section 613A(c) under paragraph (2) or (4) of section 613A(d).●

NOTICES OF HEARINGS

SELECT COMMITTEE ON SMALL BUSINESS

● Mr. NELSON. Mr. President, the Select Committee on Small Business will hold a hearing to evaluate the financial impact on Wisconsin and the upper Midwest in the event the Milwaukee Railroad were liquidated.

The hearing will be held in Milwaukee, Wis., in courtroom 390 of the Federal Building, 517 East Wisconsin Avenue, on Friday, July 20, 1979, beginning at 9 a.m.

Further information on the hearing is available from the committee staff on 224–5175.●

COMMITTEE ON LABOR AND HUMAN RESOURCES

● Mr. WILLIAMS. Mr. President, I would like to announce that the time of the nomination hearing to be held by the Committee on Labor and Human Resources on Wednesday, July 18, has been changed from 2:30 p.m. to 4:30 p.m., in room 4232 Dirksen Senate Office Building. The purpose of the hearing is to consider the nominations of Leroy D. Clark to be General Counsel of the Equal Employment Opportunity Commission; Charles J. Chamberlain to be a member of the Railroad Retirement Board; and Mrs. Frankie Muse Freeman to be Inspector General of the Community Services Administration.●

SUBCOMMITTEE ON THE CONSTITUTION

● Mr. BAYH. Mr. President, the Subcommittee on the Constitution, Committee on the Judiciary, will hold a hearing on the proposed constitutional amendment providing that the term of office of Members of the U.S. House of Representatives shall be extended to 4 years (S.J. Res. 34).

The hearing will commence on July 26, 1979, at 9:30 a.m. in room 5110, Dirksen Senate Office Building. Anyone wishing to submit testimony for the hearing record should send their statement to or contact Mary K. Jolly, Subcommittee on the Constitution, 102B Russell Senate Office Building, Washington, D.C. 20510.●

COMMITTEE ON LABOR AND HUMAN RESOURCES

● Mr. WILLIAMS. Mr. President, the Subcommittee on Housing and Urban Affairs, which I chair, will hold a hearing on Wednesday, July 18, 1979 at 1:30 p.m. in room 5302 Dirksen Senate Office Building. The hearing will focus on the role of public transportation in meeting our Nation's energy problems. The only witness at this hearing will be Secretary of Transportation Brock Adams.●

SELECT COMMITTEE ON SMALL BUSINESS

● Mr. NELSON. Mr. President, on July 25 and 26, the Senate Select Committee on Small Business will participate with the Senate Agriculture Committee, Subcommittee on Research and General Legislation, in hearings on the effect of Federal agricultural research and extension policy on the structure of farming. The hearings will begin both days at 10 a.m. in room 322 of the Russell Senate Office Building. Persons with questions concerning the hearings should contact the committee staff at 224–5175 or the staff of the Agriculture Committee at 224–2035.●

COMMITTEE ON LABOR AND HUMAN RESOURCES

● Mr. WILLIAMS. Mr. President, the Committee on Labor and Human Resources will have hearings on S. 1486, a bill to exempt family farms and nonhazardous small businesses from the Occupational Safety and Health Act of 1970. The hearings will be held on Tuesday and Wednesday, September 18 and 19, 1979, commencing on each date at 9:30 a.m. The hearings will be held in room 4232 of the Dirksen Senate Office Building.

Anyone wishing to testify at these hearings, or desiring additional information should contact Mike Goldberg of the committee staff, room 4230, Dirksen Senate Office Building, Washington, D.C. 20510. Telephone (202) 224–3674.●

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ENERGY RESOURCES AND MATERIALS PRODUCTION

Mr. HART. Mr. President, I ask unanimous consent that the Energy Resources and Materials Production Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, July 18, 1979, beginning at 2 to hold a hearing on S. 1388, the Omnibus Geothermal Commercialization Act and S. 1330, the Geothermal Energy Development Act.

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

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. HART. Mr. President, I ask unanimous consent that the Energy Research and Development Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the sessions of the Senate today and Tuesday, July 17, 1979, beginning at 2 to hold hearings on title 3 of S. 1308, the Energy Supply Act.

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

Mr. HART. Mr. President, I ask unanimous consent that the Energy Research and Development Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, July 19, 1979, beginning at 2 to hold a hearing on title 8 of S. 1308, the Energy Supply Act.

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

ADDITIONAL STATEMENTS

RHODESIAN SANCTIONS

● Mr. HARRY F. BYRD, JR. Mr. President, on July 11, last week, the Presi-

dent met with Bishop Abel Muzorewa, Prime Minister of Zimbabwe-Rhodesia. This meeting by the President with the new Rhodesian head of state was a heartening development and has raised hope that the administration will turn from its unjustified and unjust policies toward the new black majority regime in Rhodesia.

But, Mr. President, trade sanctions against Zimbabwe-Rhodesia nevertheless continue. And each day sanctions are continued is a day in which the administration must be held to account for a program of de facto support for pro-Communist terrorists operating against the popularly elected Muzorewa government.

Mr. President, I ask that a Wall Street Journal editorial entitled "Selective Intervention" be printed in the RECORD. This editorial was published on July 12, and it exposes in plain terms the bankrupt and, indeed, sordid administration plan for Zimbabwe-Rhodesia and for other pro-Western nations in Africa and elsewhere.

The editorial follows:

SELECTIVE INTERVENTION

Prime Minister Abel Muzorewa of Rhodesia was granted a Camp David audience yesterday to hear, once again, how the U.S. wants him to run Rhodesia. Not bad for an administration that has espoused a policy of not interfering unduly in the internal affairs of other nations.

It would be hard to imagine a more active intervention, short of sending the Marines to Rhodesia to overthrow the elected black majority government and install either Robert Mugabe or Joshua Nkomo as chief. With the British Commonwealth meeting imminent and in the face of a clear British intent to recognize the new Rhodesian government, Secretary Vance last week persuaded Australia to join in his pressure tactics. That was a brilliant exercise of personal diplomacy, but to what end? Margaret Thatcher is not likely to thank him for making the commonwealth meeting even stickier than necessary.

The State Department objects to the features of the Rhodesian constitution that provide minority protection—the very features which brought about the internal solution and the peaceful transition to majority rule.

Perhaps protecting the Rhodesian white minority amounts to special treatment, but the principle of special treatment for minorities is certainly not absent from U.S. domestic policies. The fact that in one country it is a white minority and in the other a black minority doesn't change the principle in any way.

Not only is the U.S. attitude towards minority rights selective, but so is its attitude towards intervention. It has not chosen to intervene in Angola, where East Germans are helping the government set up concentration camps to house any black rebels who can be caught by Cuban troops.

The focus instead is on Rhodesia, and it is a focus that promotes, rather than reduces, racial divisiveness. There is every reason to fear that it is being done mainly as an adjunct to racial politics here at home. While this may sit well with some black leaders it does not please them all. One of the strongest criticisms of the administration's Rhodesian policies has come from longtime civil rights leader Bayard Rustin. In an article in the current Commentary he shows the cost to African democracy of undercutting moderate blacks like Bishop Muzorewa.

An even greater cost may well be borne by future American Presidents. It has cost the U.S. a great deal to deliver gratuitously a political setback to the British Prime Minister at a time when our European allies are losing faith in us. So has making it clear that the American policy of nonintervention applies to Cuba and Angola but not to Rhodesia. The message is clear to anyone contemplating seizing power or holding on to it: first align yourself with the Communists.

Nonintervention has its own problems, but they are preferable to preaching nonintervention and practicing selective intervention.●

THE CHANGING ROLE OF CONGRESS IN THE NATIONAL DEFENSE DEBATE

● Mr. HOLLINGS. Mr. President, recently the distinguished Director of the Congressional Budget Office, Alice Rivlin, delivered a very meritorious address on "The Changing Role of Congress in the National Defense Debate" to the U.S. Military Academy Senior Conference.

Not only is this recommended reading for the military services and those involved in budgeting for the military here in Congress, but it is also invaluable to all my colleagues as an insight into the approach of the Congressional Budget Office to military budgeting amidst the trends it sees in the years immediately ahead. Director Rivlin's remarks are particularly interesting as they cover the constraints which Congress, and the country, will face in upcoming years. Vital defense decisions are called for in the wake of the Soviet military buildup, and these decisions are inevitably made in a shifting environment involving not just Soviet activity, but also American perceptions and congressional constraints. My own conviction that we need to be doing more in the area of defense in light of Soviet activity is hardened as a result of my reading this paper. But whatever a Senator's conclusions on defense spending, those conclusions will be better informed as a result of perusing Alice Rivlin's presentation. Defense budgeting is considerably different today from what it was just 4 to 5 years ago, and everybody concerned with it needs to understand the new and wider and more demanding context in which those budgeting and spending decisions are taken.

Mr. President, I ask that these remarks of our very able CBO Director be printed in today's edition of the RECORD and I commend Alice on this contribution to our continuing Defense discussions.

The remarks follow:

THE CHANGING ROLE OF CONGRESS IN THE NATIONAL DEFENSE DEBATE

(By Alice M. Rivlin)

This conference has been convened to discuss "The Role of the Military in National Security Policy Formulation in the 1980s." General Goodpaster, in his invitation, cast the central question in a broader context, raising questions not only about the posture of the military profession but also about changes in the environment in which national security decisions are made. My comments today will focus on tendencies and new procedures that affect a major part of this environment—budget decisionmaking in the Congress.

My perspective on this question is that of an economist and Director of the Congressional Budget Office. The CBO is a staff agency of the Congress with nonpartisan responsibilities that lie mainly in support of the new Congressional budget process, created by the Budget Impoundment and Control Act of 1974. Among the CBO's responsibilities are the preparation of economic forecasts, five-year projections of federal spending under current policies, and nonpartisan analyses of alternative fiscal and programmatic policies with significant budgetary impact. From our perspective, it is possible to identify several factors that will help shape the defense budget debates of the 1980s.

One of these factors is the general performance of the economy. Projecting the performance of the economy several years into the future is, of course, a most uncertain business. The important determinants of growth, such as longer-term trends in productivity, are not well understood. Taking a relatively optimistic stand, CBO has assumed that there will be significant growth in real output over the next five years.

Whether the federal or defense sectors of the economy will experience real growth is uncertain. The public mood today presents the Congress with conflicting directives. It is clear that there is a strong demand for a reduction in the size and scope of government. But there is also substantial resistance to cutting back social programs already on the books. Moreover, the Congress is increasingly concerned about the adequacy of U.S. defense spending in the light of growing Soviet military capabilities.

In resolving these conflicts, the Congress relies not only on the long-established processes of authorization and appropriation of funds, but also on the budget process enacted in 1974. The budget process adds a new dimension to the Congressional debate by providing a framework for assessing the larger implications of the numerous budget decisions made by the authorizing and appropriating committees. This has made the budget process a focal point for debates on how to balance the competing desires for reduced federal expenditures and taxes on the one hand with measures for increased spending on defense and other important areas on the other hand.

The new budget process also highlights the need to take a longer view of issues than the one afforded by the year-to-year appropriations process. This longer view is especially important in defense, where any substantial policy change requires a perspective of several years.

Let me turn now to a more detailed consideration of the defense budgeting environment, to the new budget process, and finally, the role that the military profession may be able to play in the budget process.

ENVIRONMENT FOR DEFENSE BUDGETING

Underlying economic trends

The Congressional Budget Act of 1974 requires the Congressional Budget Office to make periodic analyses and forecasts of economic trends. Our January 1979 forecast of the economy predicted an economic slowdown in 1979, perhaps turning into a recession during the second half and followed by a moderate recovery of real growth in 1980.

Inflation will remain a major problem, particularly in its unequal impact on different economic groups and its adverse effect on overall national efficiency and on our competitiveness in some foreign markets.

Beyond 1980, CBO projections assume the economy will grow at a rate of 4.5 percent a year in real terms, which is consistent with the growth needed to achieve a 5.5 percent unemployment rate in 1984. Along this path, inflationary pressures should decrease; the annual rise in the consumer price index can be expected to decline to about 6 percent by 1984. These projections are, of course, subject to substantial change, depending upon the performance of the economy and upon unforeseen developments such as interruptions of energy supplies, a crop failure, or continued weakness in productivity growth.

This economic scenario suggests certain changes in federal spending patterns. If current national policies remain the same, economic growth would mean that the federal government's share of the gross national product would decline from about 22 percent at present to about 20.8 percent in fiscal year 1982 and to about 19.5 percent in fiscal year 1984. National defense outlays, as a share of GNP, would decline from 5.1 percent in 1978 to about 4.8 percent in 1982 and to about 4.5 percent in 1984. These projections assume no changes in law or policy; they allow only for inflation in prices and changes in numbers of beneficiaries in entitlement programs such as social security and military retirement. Thus, the real meaning of these estimates is that, if the economy grows at a healthy pace, the Congress will have room to increase spending without increasing the federal government's share of GNP.

What the Congress does will depend in part on its concern with the problems of inflation and unemployment, since government spending may affect both. The Congress could decide to reduce spending in order to hold down inflation. CBO has estimated, for example, that a cut of $15 billion to $25 billion in federal spending initiated in 1980 might reduce the inflation rate in 1984 by nearly 2 percentage points, although it would increase the unemployment rate by about 1½ percentage points. On the other hand, the Congress could decide to increase spending in order to meet the needs of defense and other programs, as well as to lower the unemployment rate. CBO has estimated that a spending program designed to lower the unemployment rate to 4 percent by 1984 as mandated in the Humphrey-Hawkins Act would increase the rate of inflation 3 percentage points by 1984. Prices would continue to accelerate as long as the attempt to hold unemployment down to 4 percent continued.

What the Congress decides to do in these matters, particularly in the field of defense, will depend not only on its concern with inflation and unemployment. It will also depend on a reading of conflicting moods among the American public.

Antigovernment mood

Today this country seems to be in an antigovernment, anti-spending mood. The mood seems to express a desire for a smaller, more efficient government that will be a smaller burden on citizens and interfere less in their lives. Public opinion polls show a declining trust in all government institutions. Voters in several states and localities have passed amendments like California's Proposition 13 requiring their governments to cut taxes or to limit expenditures. And some 30 states have now called for a constitutional amendment to balance the federal budget.

The public's mood has been strongly reflected in the Congress, and nowhere more clearly than in the drive to balance the federal budget. Passage of a bill to raise the limit on the public debt—in the past, often a routine matter—was prolonged this year while the House and Senate debated different approaches to balancing the federal budget. The resulting Public Debt Limit Act of 1979 requires the President to submit a balanced budget alternative in any year he chooses to ask for a budget in deficit. The same law directed the Senate and House Budget Committees to demonstrate, in their reports on the fiscal year 1980 budget, how to achieve balanced budgets in fiscal years 1981 and 1982. In carrying out this mandate, the Senate went farther than the House, adopting specific budget targets for 1981 and 1982 for all major spending functions and for revenues. If the Congress follows the Senate path, the result will be a significant decline in the federal government's share of gross national product over the next several years.

While this antigovernment mood is not focused on defense spending, it is likely to be felt in some aspects of the defense debate. Proposed increases in defense spending will be harder to sell to the Congress; cuts may be asked for more often in some defense programs in order to pay for increases in others; demands for efficient management of resources will increase. One may expect more than the old debate over "how much is enough," although that question will continue to be raised in the Congress. Something new has been added. Under the new budget process, defense spending must compete explicitly with nondefense spending for its share of a tighter budget.

In the short run, defense may be handicapped in this competition. Increases in defense spending may be harder to achieve than in the past. Legislators may feel it politically easier to reduce federal spending by across-the-board cuts rather than by restructuring priorities among competing programs. Moreover, the defense budget contains a disproportionate share of "discretionary" spending—meaning spending that is determined by the annual appropriations process, such as federal salaries and purchases, and can thus be controlled more easily by the Congress. This contrasts with spending that is mandated by law, such as pensions and other entitlements, or spending that is a consequence of appropriations enacted in prior years. On this basis, the House Budget Committee this year estimated that the national defense budget function for fiscal year 1980 will contain 56 percent of the discretionary, or so-called "controllable," outlays in the federal budget.

Concern over U.S. defense capabilities

Despite these vulnerabilities, the President's defense budget for fiscal year 1980 contained some real growth, in contrast to most budget functions, which remained constant or declined. The Congress, during its final deliberations on the First Concurrent Resolution on the Budget, has not made major changes in those priorities.

What has protected defense? The answer is that the Congress is clearly concerned with the implications for U.S. security of the steady increase in Soviet military power. In 1971, according to CIA estimates, the Soviet and U.S. defense budgets had approximately equal purchasing power. Since then, CIA methodology shows that the Soviet defense effort has increased by about 25 percent while U.S. defense outlays, measured in constant dollars, have decreased by 16 percent. Insofar as the CIA can tell, Soviet spending continues to rise at between 4 percent and 5 percent a year, maintaining a constant share of Soviet GNP.

A great deal of this spending appears to have been concentrated on forces that directly threaten the United States and its principal allies in Western Europe and the Far East. Categories of Soviet forces that have undergone both major modernization and overall increases in capability include intercontinental strategic offensive forces, theater nuclear forces, conventional ground and tactical air forces, and naval forces. Measured in absolute terms, the range and striking power of Soviet armed forces have increased significantly.

There is increasing apprehension in the Congress that the relative balance of forces is shifting against the West. In particular, a number of possible deficiencies in the U.S. defense posture have been identifed by members of Congress as areas of concern.

During the 1970s, the number of U.S. Navy ships declined by almost 50 percent as many older ships were retired from the fleet without replacement. New ships were larger, but total tonnage fell. Now, with fewer ships, the Navy faces demands for increased overseas deployments in the aftermath of the revolution in Iran.

Advances in the firepower and accuracy of Soviet strategic offensive forces have raised important questions about the vulnerability of our land-based "Minuteman" ICBM force. The Secretary of Defense predicts that, by the early 1980s, a "substantial threat" to the Minuteman will exist. The best response to this situation is still being hotly debated, but it is likely to add to costs at whatever level of strategic capability the Congress chooses.

The manned strategic bomber force is aging, and eventually its aircraft may have to be rebuilt or replaced.

CBO studies of NATO's posture in Central Europe have identified shortcomings stemming from a lack of sufficient pre-positioned equipment, a shortage of war reserve stocks, and insufficient readiness among reserve forces.

The deployment by the Soviet Union of the SS–20 medium-range ballistic missile and the Backfire bomber has raised concern in the Congress and among our allies about the adequacy of NATO's theater nuclear posture.

These points are not intended as an overall assessment of the strategic or conventional balance between the United States and its potential adversaries. Such an assessment is beyond the scope of this paper. But they do indicate reason for concern over our defense capability.

Other areas of concern

Defense, however, is not the only area in which budgetary needs have been noted. Others include welfare, education, manpower, and health care. Our patchwork of federal and state welfare laws is widely recognized as inequitable and inefficient. Some observers argue that the current system provides inadequate benefits for needy families, while others argue that benefits are too high to encourage work. Welfare reform proposals that seek to address these concerns are currently before the Congress. If adopted, they could add $3 billion to $4 billion a year to present federal costs. The Congress recently extended higher education benefits for middle income families. If fully funded, these could add $1 billion to $2 billion a year to the budget. It has been proposed that the Congress increase tax incentives to private employers to hire untrained persons who would otherwise not find work. Similar incentives might also be used to encourage businesses to locate in eco-

nomically distressed areas. Altogether, such incentives could cost $500 million a year in lower revenues. Finally, of course, there is National Health Insurance in its various proposed forms, with costs ranging upward from $5 billion a year.

These deficiencies in defense and other areas, taken together with the national antispending mood and the Congress' desire to cut overall federal spending, are fraught with political and fiscal conflict. The three-year spending plan devised by the Senate Budget Committee and approved by the Senate suggests one possible solution to this conflict. It envisages federal outlays falling from 22.1 percent of GNP in fiscal year 1978 to 19.3 percent by 1982. The same projection shows defense spending falling from 5.1 percent of GNP in 1978 to about 4.6 percent by 1982—well below the path necessary to maintain the 3 percent real growth in defense spending sought by the Administration. But the plan applies even greater restraint to nondefense spending, resulting in a slight increase in defense's share of the total budget.

THE CONGRESSIONAL BUDGET PROCESS: A NEW FORUM

I have tried to show how the national antigovernment, antispending mood is leading the Congress to seek ways to reduce federal spending, while at the same time concern over our national defense leads some to argue for higher defense spending. This conflict promises much debate and difficult choices over the next few years. The Congressional budget process provides a new forum for this debate, particularly the parts of the debate dealing with overall federal policy.

The present Congressional budget procedures, first exercised in 1975, were established by the Congressional Budget and Impoundment Control Act of 1974. That act created a framework for Congressional review of the federal budget. Before 1975, the Congress was unable to deal with overall expenditures and revenues in terms of a coherent set of economic goals and spending priorities. Instead, it engaged in what might be called "particle budgeting," with many subcommittees considering separate parts of the budget. For example, the activities in the President's budget under the heading of national defense were broken down in both the House and Senate into at least nine separate pieces of legislation, each considered by a different subcommittee. No committee was responsible for adding up the pieces and estimating the consequences for the economy. Nor could the Congress regularly meet budget deadlines. Often during the 1970s the defense appropriations bill was not passed until half the budget year was over.

The new budget act attempts to speed consideration and supply a framework for overall budget debate by requiring that the Congress adopt budget resolutions by specific dates. Initial spending targets are set in the First Concurrent Resolution, to be adopted by May 15. These targets are not legally binding, but they do have political force during debates on specific bills. If a bill breaches one of the targets, and there is no offsetting reduction elsewhere, the overall goal obviously will not be reached. A Second Concurrent Resolution, to be adopted by September 15, sets binding totals that can be overturned only by a subsequent Congressional vote to revise the ceiling imposed by that resolution. Moreover, all regular appropriations bills must be enacted and reconciled with the budget resolution before October 1, the beginning of the federal fiscal year.

To implement this reform, the Congressional Budget Act created three Congressional institutions. Two of these bodies are standing committees of the Congress—the House and Senate Committees on the Budget. The third is the Congressional Budget Office, which provides analytic support to both branches of the Congress. The Congressional Budget Act did not change the existing duties of the authorizing and appropriating committees. After decisions have been reached on overall levels of revenues and spending, these committees still have the major task of detailed review.

This new process, then, creates a forum for debate on desired levels of overall federal spending and revenues, as well as on spending in each of 19 functional areas. So far, the debate on overall fiscal policy has been the most satisfying, perhaps because the Budget Committees have clear jurisdiction in this area and the issues are more susceptible to analysis. With regard to tradeoffs in spending between defense and other areas, the debates have sometimes focused on broad policy, but often they have concentrated on selected details instead. Nonetheless, the Congress has arrived at revenue targets and spending targets for each of the 19 functional categories in each year since 1974.

TABLE 1.—*Results of first concurrent resolution on the budget for fiscal year 1980: In billions of 1980 dollars*

	Budget Authority *	Outlays
Spending:		
National Defense	136.6	124.2
International Affairs	12.6	7.9
General Science, Space, and Technology	5.7	5.5
Energy	18.8	6.8
Natural Resources and Environment	12.6	11.7
Agriculture	5.0	5.4
Commerce and Housing Credit	6.9	3.2
Transportation	19.5	18.2
Community and Regional Development	8.9	8.1
Education, Training, Employment, and Social Services	30.9	30.5
Health	58.1	53.6
Income Security	214.8	183.3
Veterans Benefits and Services	21.2	20.6
Administration of justice	4.2	4.4
General Government	4.4	4.3
General Purpose Fiscal Assistance	8.1	8.1
Interest	56.0	56.0
Allowances	—0.1	—0.1
Undistributed Offsetting Receipts	—19.7	—19.7
Total	604.4	532.0
Revenues		509.0
Deficit		23.0
Public debt level		887.2

* Column does not add due to rounding.

Table 1 shows the functions considered during the spending debate and the levels of revenue and spending established by this year's First Concurrent Resolution on the budget.

Effects on the defense debate

Overall consideration of the federal budget, coordinated by the Office of Management and the Budget, has long been a part of Presidential policymaking. But the Congress has had such an opportunity only since passage of the Budget Act. The new process has not altered the traditional review of the defense budget, nor was it meant to. The detailed review of weapons systems and other defense matters is still made by the Committees on Armed Services and Appropriations. Now, however, the Congress is afforded an overall review of defense and other spending levels that provides a forum for setting overall priorities before the detailed review begins. In addition, the budget process has had other important effects on the defense debate.

One major effect has been to bring new actors into the debate. Members of the House and Senate Budget Committees have the responsibility for deciding upon overall defense budget levels. They have the opportunity to educate themselves on defense issues by holding hearings and questioning witnesses. Each committee has several staff members who devote full time to analyzing defense issues, preparing budget-markup materials, and monitoring compliance with the defense budget targets.

With new actors have come perspectives. The interests of many of these members have centered on long-term budget problems and overall priorities, rather than being focused primarily on defense. This has led members to raise long-term budgetary implications as a consideration during debate on defense issues. In recent years, budget committee members have, for example, expressed concern about hidden or long-run costs on issues such as Navy ship leasing and military survivor benefits.

Because they play a different role, the Budget Committees tend to avoid the detailed, item-by-item approach undertaken by the Committees on Armed Services and Appropriations. They have concentrated instead on more general budgetary and policy issues. The Senate Budget Committee, in particular, has directed its attention to missions within each budget function in an effort to identify tradeoffs among and within these missions. In the national defense budget, for example, the committee this year considered alternating paths for strategic force levels and modernization, as well as alternative approaches to funding for tactical warfare. Some of the strategic tradeoffs it considered were different mixes of mobile MX missiles and sea-based Trident forces. Tactical warfare options included greater or lesser emphasis on NATO forces relative to forces oriented to missions outside the NATO Central Region. Not only tradeoffs, but also different budget levels, were considered and debated.

Given the constant need to accommodate a large variety of competing objectives within a given federal budget, both of the Budget Committees have made special efforts to identify efficiencies in federal spending. In the case of defense, this has resulted in a detailed scrutiny of manpower management and compensation issues. These efforts may focus more attention in the Congress on legislation that would eventually reduce costs. The House Budget Committee, in its report on the First Concurrent Resolution for Fiscal Year 1980, noted that its budget targets in the federal government as a whole assumed savings of $6 billion through enactment of cost-reducing legislation. Major targets for legislated savings were hospital cost containment and the states' share of the general revenue sharing program. Other reductions were assumed in the wage board salary structure; in cost-of-living adjustments for federal retirees; in operating subsidies for U.S. flag vessels; in Medicare and Medicaid, food stamps, Aid to Families with Dependent Children, Supplemental Security Income, so-

cial security disability, and child nutrition programs; and in several veterans' benefits. Reflecting its sincere interest in pursuing these legislative savings, the House Budget Committee has established a Legislative Savings Task Force to monitor the progress of such legislation.

The most important effect of the budget process on the defense debate may be its addition of a long-run perspective. The results of many economic policy and budgetary choices are not manifest until after two, three, or even more years; the new budget process tends to focus attention on these long-run effects. Although the Congress still makes budget decisions one year at a time, tangible progress has been made this year toward multiyear budgeting. The Public Debt Limit Act of 1979, as I noted previously, required the House and Senate Budget Committees to lay out budgets that would reach a balance in fiscal year 1981 or fiscal year 1982. The Act further directed the committees to describe the consequences of balancing the budget on employment, inflation, and national priorities, explicitly including the effects on national security. Both committees reported such long-run budgets this year. The Senate actually adopted three-year spending and revenue targets; the approach of the House differed, however, and these differences were not fully resolved. But multiyear budgeting seems likely to gain adherents over the next few years. It certainly has my wholehearted support.

This increasing focus on the long-term effects of budgetary decisions can be helpful to defense. A long-range perspective tends to relieve pressure on budget functions, such as defense, that have a high percentage of "discretionary" or "controllable" outlays. Also, major changes in the nation's defense posture take time to accomplish, and the long-run focus forces the Congress to concentrate on such issues. Indeed, emphasis on multiyear budgeting should bring Congressional procedures more into line with those in the Department of Defense, which has long emphasized five-year budgeting.

Problems in the budget process

The new budget process is not without problems. A tension inevitably exists between the general and the particular in any budget debate. The traditional decisionmaking approach followed by the Committees on Armed Services and Appropriations stresses particular line items. The Budget Committees, tasked with setting overall revenue and spending targets rather than with detailed review, necessarily work at a higher level of aggregation. But they must also, inevitably, justify their decisions by considering particulars. The Senate Budget Committee has tried to solve this problem by adopting a mission budget approach, as I have already mentioned. Both Budget Committees have been attracted to defense issues—such as manpower—that are easier to understand and analyze than more complex questions of force structure.

While these are reasonable approaches, more must be done. We need better aggregate measures of defense capability and better ways of displaying the defense budget in a small number of categories that still highlight the broad issues. These improvements will require the assistance of the Department of Defense. Such assistance, in addition to helping the Budget Committees, could improve the defense debate in an arena that may be important in shaping the size of defense spending over the next few years.

Timing is also a problem for the budget process. Even with a long-run perspective, it is difficult to master the complexities of budget decisions in a few days or weeks. The Congress, which receives the President's proposals in late January, must make its decisions on the First Concurrent Resolution by May 15. Given a month for floor debate and the resolution of House-Senate differences, this means that the Budget Committees have to act by April 15. For all practical purposes, analysis of major policy issues raised by the President, and development of alternatives, must be completed by March 15, less than two months after submission of the Administration's budget.

An informed budget debate requires an informed membership and staff. The Administration must continue, and perhaps enhance, its efforts to make available to staff and members of Congress the major policy issues and also the supporting detail in time for consideration in the Budget Committee deliberations.

A third source of conflict in the budget process is the tension between long-range planning and short-run problems. Concentration on the current budget year undermines the ability of the Congress to affect much of the federal budget, since in any one year most of the budget has been determined by decisions in past Congresses. By failing to look ahead, the Congress loses the chance to make fundamental, long-run changes. The current political mood, with its focus on setting limits to federal spending and taxing, demands that the Congress make major changes that require a longer view. At the same time, however, the natural tendency of many members of Congress—who must face elections every two years—is to concentrate on decisions that affect the current budget year. Thus, the Budget Committees are likely to face a continuing conflict between short-term concerns and the need for long-range planning.

These problems will not go away. But they can be partially met through increased assistance from the Administration, including the civilian and military personnel in the Department of Defense. To the extent the new budget process continues to play an important role in the defense debate, these efforts will serve the nation well.

The role of the military services

Finally, I would like to comment briefly on the implications of the new Congressional budget process for the military services by offering a few ideas that flow from the preceding discussion.

Both the political mood, with its emphasis on fiscal austerity, and the budget process, with its emphasis on identifying tradeoffs and efficiencies, pose a new challenge to all government institutions. In some ways, this challenge offers the military services an opportunity to strengthen their role in the budget process. Their unmatched, detailed knowledge allows them to identify possible efficiencies and tradeoffs and to formulate alternative policy solutions to national security problems. The services have already, in particular cases, offered welcome assistance to the Congressional Budget Office in its studies of national defense budget issues. Furthermore, the Congress is anxious to obtain their advice and to encourage their role in the development of defense plans and programs.

The trends that I have discussed today will, however, lead to greater emphasis on funding new programs by decreasing expenditures on existing programs. In the case of defense, these changes may involve decreases in one Service's programs to pay for those of another, or shifts among defense and nondefense expenditures. To the extent that the military intends to play a greater role in this budget debate, I believe it will have to pay closer attention to such budgetary implications than it has in the past, and present a wider range of options with its military assessments. While it is helpful to point out the increased military risks inherent in a budget that restrains growth in military spending, military professionals must now help answer broader, more difficult questions. Are there innovative ways to meet our military needs at less cost, even if these new methods cut across traditional Service lines? Which programs are critical, both in terms of military necessity and of urgency? Can other Service programs be trimmed to offset cost increases of critical new programs?

The military's advice on these difficult topics will receive careful scrutiny. Along with other professionals from doctors to economists, military professionals today confront a better educated electorate, and a Congress with new players and broader concerns. These groups will require plausible, understandable arguments for the advice that the military offers.

The challenge of supplying convincing advice on broad topics does not necessarily call for new institutions. Opportunities for the military to express itself are here, or can be created, within existing institutions. As an example, the military could utilize some of its planning documents to provide information helpful to the Congress in deciding on a tightly constrained budget. The military could also choose difficult issues that confront the Congress and propose solutions of its own; assisting the Congress in grappling with the difficult topic of changes in the military compensation system might be one such opportunity.

CONCLUSION

In some ways I have painted a gloomy picture, particularly for those involved in determining the federal budget. We face a period of deep concern over inflation. If, in our effort to curb inflation, we allow unemployment to rise, that too will cause serious concern. It is clear that we face a period of tight federal budgets. Fewer new programs will be initiated, and most new programs—however urgent—will have to be funded through decreases in existing efforts. In the general antigovernment mood of today, these formidable problems of inflation, unemployment, and limits on federal spending promise difficult and contentions debates over the federal budget.

But I also see reason for optimism. Over the past several years, the Congress has developed a process to help deal with these difficult problems. The new budget process offers a forum for a meaningful debate on spending priorities. It also offers the promise of improvements in budget making, particularly a longer-run view that is imperative if we are to restrain the growth in federal spending without devastating important defense and social programs.

Moreover, the Congress has made this process work. It has proved that it can meet the taut deadlines ordered by the 1974 legislation, that it can set detailed and overall targets for revenues and spending, that it can remain within those targets or adjust them as the nation's needs require, that it can establish an explicit fiscal policy goal, and that it can shape its particular decisions in light of the fiscal policy it has decided upon. In a time when public institutions are widely accused of inefficiency and inflexibility, the new budget process is a refreshing success.

Of course, the existence of a process does not itself resolve the difficult issues. But it provides an opportunity. If those involved in the process—military and civilian together—seize this opportunity, I believe that our

budget problems can be managed successfully.

S. 344: MORE BROAD SUPPORT FOR FEDERAL DECONTROL

● Mr. STAFFORD. Mr. President, hearings begin tomorrow on the issue of S. 344 and billboard control generally. This bill has significance beyond the question of whether or not we like billboards. It has significance, because it is a test of the Congress, to see if we are capable of admitting failure and our inability to regulate such a program reasonably. It has significance, too, for this law now poses a major infringement on the power of State and local government to zone land as they see fit.

While I realize there are other hearings and issues that are more pressing to our Nation, I believe the billboard issue carries a symbolism. It will be symbolic of our ability to extract ourselves from public control, when that control runs awry.

Mr. President, I continue to receive a variety of letters and communications on this issue. I ask that the following items be printed in the RECORD.

Letters from the Governors of Kentucky and Illinois, and an analysis of the Federal billboard law by the State of California; letters from the California and the South Dakota Chambers of Commerce, a letter from a billboard user, two articles from Seattle newspapers, and an analysis of the situation in Maine by the Maine Department of Conservation.

The material follows:

OFFICE OF THE GOVERNOR,
Frankfort, Ky., June 11, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR STAFFORD: Thank you for your letter of March 27, 1979, forwarding me a copy of your Senate Bill 344. My staff and the Kentucky Department of Transportation have reviewed this legislation along with a companion Bill, H.R. 3624, introduced by Congressman Donald J. Mitchell from New York. We are very much in favor of both of these pieces of legislation since it would offer, as you have expressed, the flexibility to the states on the participation in the various beautification programs.

Secretary Calvin Grayson has written the Kentucky Congressional Delegation expressing a favorable view towards both of these pieces of legislation. Please rest assured that I will do everything within my power to cause a favorable outcome to your proposed legislation.

Sincerely,

JULIAN M. CARROLL.

SPRINGFIELD, ILL.
June 4, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senator, Committee on Environment and Public Works, Washington, D.C.

DEAR SENATOR STAFFORD: Thank you for your letter of March 27, 1979, offering us the opportunity to comment on Senate Bill 344 and the amendment in the Surface Transportation Act of 1978 concerning compensation for signs removed.

We are in general agreement with your opinion of the 1978 amendment requiring compensation for all signs removed along interstate and primary highways. When the State caused the removal of nonconforming signs, we feel that the State should pay for them; however, when signs that are conforming under our State law are removed by local zoning ordinances or some other cause, we feel that it is improper to require the State to pay for such signs.

Normally, we support the concept of voluntary State programs, however, we cannot support Senate Bill 344 due to the circumstances in which we find ourselves. Because the outdoor advertising control program was compulsory, the State of Illinois became active in 1972 and has spent a total of approximately $10 million. With this expenditure of funds, we have removed approximately 91% (32,000) of the signs which must be removed for compliance. These removals were accomplished almost entirely by negotiated agreements based on an understanding with the owners that all illegal and nonconforming signs would be removed during a period of approximately six years. In fairness to the sign owners who sold their signs and the businesses that have lost their signs, the program should be completed. The original objective of the program, to protect the taxpayers' investment and to provide more scenic highways throughout the country, is still valid and we are in favor of uniform signboard controls throughout the nation.

It does not seem consistent in Senate Bill 344 to make signboard control voluntary and to then make specific information signs on the right of way under subsection (d) mandatory. Such signing may be appropriate in states that are heavily tourist oriented and those with relatively low traffic volumes, widely spaced interchanges, and predominantly non-urban development. In a State such as Illinois, the expense and confusion that would be caused by the extensive use of specific service signing is not justified by the limited usefulness of the signs.

Subsection (e) allows "systems" for providing travel information and implies that there will be Federal participation in the cost. This should be revised to more clearly state that Federal participation is available for all parts of a travel information system including maps and brochures developed by the states.

In summary, we are not opposed to outdoor advertising but feel it should be controlled uniformly throughout the nation in accordance with Federal law and regulations. We are opposed to the almost continuous changing of the Federal law which seems always to provide additional loopholes, a weakening of objectives and more costly administration. We are opposed to mandatory regulations requiring specific service signs (logos) on the right of way.

Thank you again for the opportunity to comment on Senate Bill 344. If we can be of other service, please let us know.

Sincerely,

JAMES R. THOMPSON,
Governor.

SACRAMENTO, CALIF.,
April 6, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: In accordance with your request, attached is a history of the effect of local amortization provisions on payment for the removal of nonconforming outdoor advertising signs, with California's position on the subject.

If you desire any additional information, please let me know.

Sincerely,

PETER R. OSWALD,
Assistant Director, Legislative Affairs.

Attachment.

HISTORY

The Federal "Beautification Act,*" passed on October 22, 1965, contains provisions that require payment for the removal of signs that are nonconforming to provisions in the Act (nonconforming billboards). These nonconforming billboards may also be subject to removal without compensation pursuant to a local ordinance, usually after a three to seven year "wear out" or amortization period.

For discussion purposes, nonconforming signs affected by local ordinances will be broken into the following three time periods:

1. From 1972 (The inception of the Billboard Removal Program in California) to February 1977 (when a copy of the legal memorandum by the Office of Chief Council, FHWA, dated 3/12/76, was obtained by the Caltrans Legal Division).

2. From February 1977 to November 6, 1978 (the date the 1978 Federal "Surface Transportation Assistance Act of 1978" became effective).

3. From November 6, 1978, to the present time.

Period No. 1.—1972 to February 1977:

During this period California's policy was:

(1) Payment was not authorized for the removal of signs in this category when a local agency (City or County) had filed a suit for sign removal or a suit was anticipated in the near future, (2) except when a local ordinance was held invalid by court action, or the local agency had not been successful in having signs removed under the ordinance after a reasonable period of time.

Period No. 2.—February 1977 to November 6, 1978:

During this period, compensation for the removal of signs in this category was not authorized based upon (1) the memorandum adopted by the Office of Chief Council, Federal Highway Administration dated March 12, 1976 (which concluded that compensation need not be paid for displays removed pursuant to local zoning ordinances); (2) and the provisions of California law which provides that compensation be paid only "if Federal law requires the States to pay just compensation."

Period No. 3.—November 6, 1978 to the present time:

Compensation must now be paid for the removal of all nonconforming billboards whether or not they are in violation of local ordinances, so long as such displays were in compliance with all laws when placed (pursuant to the 1978 Surface Transportation Assistance Act of 1978).

California's position:

Each State should have the latitude to determine whether or not compensation should be paid for the removal of nonconforming billboards when they are subject to removal without compensation pursuant to a local zoning ordinance. This should be the case under existing beautification legislation which contains penalty provisions for noncompliance and any subsequent legislation that would allow States to voluntarily establish billboard controls including compensation provisions.

Prior to the enactment of the Surface Transportation Assistance Act of 1978, the following provision was contained in Subdivision (k), Section 131 of Title 23, United States Code:

"Nothing in this section shall prohibit a State from establishing standards imposing stricter limitations with respect to signs, displays, and devices on the Federal-aid highway systems than those established under this section."

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*Section 131 of Title 23, United States Code.

The recent amendment to Section 131, Title 23 Subdivision (g) requires that compensation be paid for the removal of all nonconforming billboards whether or not they are in violation of local ordinances (so long as such displays were in compliance with all laws when placed). In addition, another more difficult problem has been created by the amendment. Under the revised language of Subdivision (g), payment must also be made when displays that are fully conforming to all Federal and State criteria are removed. The number of displays subject to compensation could be expanded at any time through action of local officials (by removal of signs persuant to an ordinance). The State has no control over such actions.

The 1978 amendments depart completely from the basic purpose of the original billboard law. The original law was intended solely to establish very minimum billboard controls by the Federal Government. The States and Local Agencies were to continue to have a free hand in using conventional zoning techniques to enhance their local environment beyond the minimum controls established by the Federal Government. There is no valid reason for extending the unique federal compensation requirements to billboards that are not prohibited by the minimum federal criteria.

Without the latitude for a State to be able to determine whether or not compensation should be paid for the removal of nonconforming billboards which are also subject to removal without compensation pursuant to a local zoning ordinance, the Federal government will impose an unprecedented extension of Federal involvement in local zoning regulations.

MAY 9, 1979.

Hon. ROBERT T. STAFFORD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STAFFORD: This is to advise you of the California Chamber of Commerce's support for your bill, S. 344.

We in California have had our share of difficulties with the Highway Beautification Act, particularly in our resort and tourist areas. Now that all funds for sign removal have been deleted from the President's Budget, your measure returning control over this program back to the states seems even more appropriate.

Sincerely,

JOHN T. HAY,
Executive Vice President.

[Sent to all State Chambers of Commerce]

APRIL 30, 1979.

DEAR ———: I'm sure you have had the same basic problems with the Lady Bird Johnson Highway Beautification Act as we in South Dakota have had over the years. Our fight may have gone a little further than most states in opposition to Federal control of billboards through national legislation. But, nevertheless, it has been a problem for each of us.

Now, after many hard fights, comes Senate Bill 344, authored by Vermont Senator Robert Stafford. The bill was introduced to put the decisions with regard to billboards and highway beautification policies in the hands of the states and cities, not only for policy purposes, but for enforcement. I've seen that President Carter has eliminated all funds for sign removal from his proposed 1980 budget. Senator Stafford's bill is rather timely.

I'm writing to you at this time to ask for your support in this effort—giving a bit of home rule back to the states and localities. Your support on this particular issue would be very helpful.

Please write your senators asking for their support of SB 344 as it moves through the Senate hearing process.

Your help in this most important matter is greatly appreciated by your colleagues from South Dakota.

Your truly,

DAVE MCNEIL,
Executive Vice President.

MAY 23, 1979.

Re Senate Bill 344.
Senator ROBERT STAFFORD,
U.S. Senate, Dirksen Building,
Washington, D.C.

DEAR SENATOR STAFFORD: Thank you for introducing a bill last month that would let states and cities enforce their own beautification policies.

The highway beautification program has been a very expensive and annoying law for the motel and campground business and we in particular have been very seriously damaged by the law.

All of our signs on the highway I–29 from our motel to Kansas City, Missouri, have been removed (one without notice to us by the sign company) and there are no available new locations.

To the north we now have legal action against the State of Missouri trying to keep them from removing two signs on I–29 towards St. Joseph, Missouri, which are on property we own, (very attractive signs), but Missouri highway department doesn't feel they comply with the law.

If we have to remove those signs, we might as well go out of business because no one will know where to exit for our motel.

We urge you to continue to do all in your power to change the "Lady Bird Bill" so that independent businesses are no longer punished and only large companies who can afford the humongous signs that are now required to be seen 660 feet away from the highways will be able to advertise their businesses.

Thanking you for your interest in this matter.

Sincerely,

DON and BETTY SOPER,
Owners.

BILLBOARD BAN

The outright ban on new billboards by the Seattle City Council Monday is the strongest and boldest stand the city has taken in the years-long billboard war.

In 1973, the City Council considered such a ban on billboards. But council members wavered and finally submitted the matter to the city's voters.

A majority rejected the ban, apparently lulled by the billboard industry campaign promises to work for regulation. The catchy phrase was "regulate, don't eliminate."

Since then, not one billboard has been taken down as the result of regulation. In fact, the city's major billboard company, Ackerley Communications, has filed suit against Seattle over city attempts to legislate removal of signboards from scenic Seattle routes.

After the 1973 skirmish, the billboards industry lobbied legislators and secured passage of a state law that requires compensation for any billboards removed as the result of municipal regulations. That suit now is pending in court, along with related suits against the City of Seattle.

The latest incident in the billboard battle was discovery of a "tree trimming episode," in which 216 city trees along Aurora and Rainier avenues were pruned illegally. The pruning gave passersby a better view of the billboards. It also stirred civic anger.

The council's ban on any more signboards other than off-premise directional signs for businesses located in Seattle was led by Councilman Paul Kraabel. In his arguments, Kraabel said the visual quality of the city would be preserved by the ban. In other words, thanks to Kraabel and six of his collegaues on a clear day, we can continue to see.

COMPENSATION LAWS PROTECT BILLBOARDS

(By Herb Robinson)

When the City Council voted last week to ban erection of new billboards in Seattle (the ordinance does not affect signs already in place), only one member dissented.

Invoking memories of a tough political skirmish here six years ago, Councilman George Benson said the new ordinance ignores the mandate of voters who, in 1973, rejected an initiative measure that sponsors said would effectively "turn off" virtually every outdoor-advertising display in the city.

Inspired by a lavishly financed advertising campaign in which the sign industry said it favored "regulation but not elimination" of billboards, the voters defeated the initiative by a margin of 62 per cent.

Just as well. The measure was indeed a meat-ax solution to the problem of sign clutter here, and the climate of public opinion at the time seemed favorable to a more realistic set of controls on outdoor advertising.

Ordinarily, an argument to keep faith with a previously expressed voter mandate is almost unassailable. But Benson's ringing declaration last week ("The voters told us what they wanted," etc.) overlooked some more recent history on developments affecting sign regulation in two other legislative bodies—this state's Legislature and the United States Congress.

Environmentally conscious laws to limit outdoor advertising along interstate highways (except when passing through industrial and business districts) and on designated scenic routes were popular in the mid-1960's.

Part of what was called the "highway-beautification crusade" was led by Mrs. Lyndon B. (Lady Bird) Johnson.

In more recent years, though, both federal and state programs to reduce roadside clutter have fallen into disarray in many parts of the country.

Some say the "Lady Bird" crusade has simply flopped.

"It's time we admit," Vermont Senator Robert Stafford told a Newsweek reporter the other day, "that the Highway Beautification Act is a failure. We should seek its repeal."

If billboards control is indeed a lost cause, it is not hard to identify the principal reason.

Thanks to heavy industry lobbying, Congress and several state legislatures (including our own) have enacted laws requiring cash payments to owners whose signs are declared illegal under local control ordinances.

Those laws effectively undercut previously enunciated policies; in which the "compensation" to sign owners was simply to let offending billboards remain standing until owners could recapture their investments. And the laws confronted federal, state and local treasuries with potential cost burdens running into the millions of dollars.

Not long after the 1977 Legislature had passed a cash-compensation law (regarded widely as one of the worst bills of the session), Seattle's City Council voted a one-year moratorium on new billboards, to allow time for settling several complicated questions.

Not the least of these is whether the cash-payment law is constitutional, a question still to be decided in the appellate courts.

Meantime, another change was taking place in the sign industry here. The sale of Foster & Kleiser's Seattle operations to the Ackerley Communications Co. brought new faces to the scene, including people with no binding commitment to the 1973 industry pledges to "regulate, not eliminate" billboards.

The city and the Ackerley firm are engaged in several legal disputes, and the company complained some months back that the city had been going out of its way to plant street trees on city-owned property in such a way as to block public views of Ackerley billboards. When a number of street trees were pruned back without city authorization a couple of weeks ago, apparently to improve those views, city officials said the job was done by someone hired by the sign company.

That incident, a major public-relations boner, helped embolden the Council into last week's vote.

Yet some kind of action probably would have occurred even without the much-publicized tree-trimming episode.

That is because the sign-control issue (George Benson's polemic notwithstanding) has changed significantly since the 1973 initiative was on the ballot in Seattle.

As long as existing laws make it virtually impossible to get rid of many existing signs (there simply is not enough money available to pay for them), the Council would be foolish to open the door to the erection of still more billboards representing still greater cost obligations in the future.

If the courts uphold the cash-compensation legislation, sign-control advocates may be tempted to follow through on an idea suggested a couple of years ago by Secretary of State Bruce Chapman.

Chapman's idea is that local governments could levy a "blight tax" on all outdoor signs, legal and otherwise. The revenues from the tax would be earmarked for buying up signs that violate sign-control codes.

How It All Began

A 1965 White House Conference on Natural Beauty recommended to President Johnson control of outdoor advertising on the entire Interstate and Primary Highway Systems without exceptions. The President, however, sent a bill to Congress which exempted from control signs located in commercial and industrial areas. The bill, which became known as the Highway Beautification Act, left the manner of enforcement up to the states and penalized those states which refused to comply by reducing their federal-aid highway funds by 10%. In the effort to pass the bill, which lacked the support of conservation, planning, architectural and beautification groups, the White House agreed to two additional amendments which (1) required payment to the sign owners and land owners for removal of non-conforming signs and (2) added to the purposes of the Act a phrase which referred to the orderly and effective promotion of outdoor advertising displays. The outdoor sign industry lobbied the bill heavily. They sought passage of a law which would create the illusion of billboard control but which, in fact, served to strengthen their hold on the Nation's highways.

The purposes of the Beauty Act include an expression of Congress's desire to protect the public investment in the highways, to promote safety and the recreational value of public travel, and to preserve natural beauty. By having a reference added calling for the "reasonably orderly and effective display of outdoor advertising," the sign industry gained a sense of permanent legitimacy for billboards that legally they do not possess. Since the signs have little value in and of themselves, their value depends on the use of the public highways. Thus, many states, including Maine, only permit off-premise signs through a temporary license which must be renewed annually. Indeed, two states, Hawaii and Vermont, do not consider this use of their public highways as being in the public interest and thus prohibit billboards entirely. The spector of other states banishing billboards hangs heavy over the industry's head. For this reason, the injection of the idea that it had somehow become national policy to promote the effective display of billboards, along roadsides was relished by the outdoor sign industry.

A major loophole created

One of the most crippling provisions of the Act involves the type of land use deemed suitable for off-premise signs. Zoned and unzoned commercial and industrial areas were excluded from the places where the states were directed to impose "effective control" on signs. In these areas, the states would be allowed to place limitations on size and spacing of signs providing such restrictions were "consistent with customary use" in the local billboard industry. The Billboard Lobby in Washington thus ensured that their colleagues at the state level would have the opportunity to obtain state legislation which suited them since each state would have to pass legislation which complied with the federal law or lose 10% of their federal highway funds.

Paying for billboards

The "required compensation" provision of the law has proven to be a major problem in some states. In fact, most people agree that by convincing Congress that the taxpayers must pay cash for the removal of non-conforming signs, the sign lobbyists scored their biggest victory. Before passage of the Highway Beautification Act, 23 states had laws granting sign owners compensatory rental time (amortization) for the removal of non-conforming signs rather than cash. The Beauty Act disrupted this well established system. In some states, where hundreds of thousands of signs became non-conforming, ongoing removal programs based on amortization were brought to a standstill. In California, for example, legislation is currently being considered which would allow the state to pay for some 296,300 non-conforming signs by amortization rather than cash as required by the Beauty Act. It is estimated that the cost of buying those signs according to the dictates of the federal law would be close to $600,000,000!

In Maine, the required compensation provision has caused few problems for our Department of Transportation. $1,682,000 has been programmed, approved, and appropriated on a 75% federal 25% state basis for the purchase of about 1,500 signs. Maine taxpayers can expect to pay about $420,500 for the actual purchase of the signs plus all the administrative costs involved.

With the exception of about 305 signs owned by the National Advertising Company, the removal phase of the Highway Beautification Act in Maine is nearing completion. Those 305 signs are the subject of a current court case. Erected at a time when federal funds were unavailable for their removal, the signs have been amortized according to Maine law. Although the five year amortization period ended October 1, 1974, the signs remain in place.

Maine complies with the federal law

In 1969, the legislature passed our current Outdoor Advertising Law bringing Maine into compliance with the dictates of the federal Highway Beautification Act. While the new state law represented an improvement over previous sign regulations, it did not solve a major problem forseen by former Commissioner of Transportation David Stevens. "We see real difficulty on the Primary System," he said in 1966, "of allowing outdoor advertising devices to be erected in the unzoned areas which are supposedly being used for commercial and industrial purposes and in areas zoned as commercial and industrial. . . . It is our suggestion that on the Primary System outdoor advertising devices not be allowed except for on-premise signs or areas zoned commercial and industrial and then only if such areas are actually being used for commercial and industrial purposes. We do not believe that outdoor advertising devices should be allowed to precede the actual establishment of commercial and industrial activity in these zones." Furthermore, Commissioner Stevens indicated that he felt the sign interests should "prove their case to the extent they secure from local government a zoning ordinance." Unfortunately, Mr. Stevens' suggestion that Maine communities be given the right of approval was ignored and the outdoor advertising devices to which the Commissioner referred to are today coming home to roost in towns all over the State of Maine.

Total number of billboards reaches all time low in 1975

In 1967, 4,832 off-premise signs were located along Maine's highways, more than at any other time. Eight years later, in 1975, 3,117 remained along our roads, a decline of about 35 percent. Much of this reduction in total numbers has been the result of the Highway Beautification Act. Unfortunately, with the completion last year of the sign removal phase of the law, the number of signs can now be expected to increase rapidly.

Rate of increase of signs doubles

While non-conforming signs are being removed, other signs are being erected in conforming locations. During the period between January 1, 1974 and July 1, 1975, 290 new signs were put up. This is an average of 16 signs per month. If we compare the growth rate of off-premise signs for similar 18 month periods in 1954–55 and 1964–65, we find rates of increase of less than seven signs and two signs per month respectively. During the entire 21 year period from 1948 to 1969, the year Maine complied with the federal Highway Beautification Act, the growth rate of new signs averaged about 6 per month. It is clear that the Beautification Act has not slowed the rate at which new signs are being erected in Maine. In fact, the rate of increase during the study period is more than twice that existing during comparable time periods before enactment of the new law.

Beauty Act has little effect on billboard companies

In terms of total numbers of signs, the Beautification Act appears to have had little effect on the three major outdoor advertising companies operating in Maine. These companies own over half of all off-premise signs in existence. The net effect of the Beautification Act removal program has been to reduce the total number of company owned signs by only 97. This fact suggests that the Highway Beautification Act has favored the advertising companies over individual local business. The sign companies are constantly searching for new sites in prime locations throughout the state. Conforming locations go to the highest bidder and control over a choice location has been known to bring as much as $1,000. On the other hand, the local businessman is primarily interested in having a sign in his immediate area. This means that fewer legal sites are open to him at the time he wants to erect a sign. For these reasons, it

seems likely that over a period of time, the Beautification Act will lead to an increase in the proportion of legal outdoor advertising sites controlled by sign companies as compared to local businesses.

WHO'S PUTTING UP THE SIGNS?

[In percent]

Owner	Number of signs	Total Sign Size (square feet)
Private Individuals & Organizations	181 (62)	9,301 (29)
Commercial Outdoor Advertising Co.'s	109 (38)	23,301 (71)
	290	

Four commercial outdoor advertising companies (National Advertising, John Donnelly, United Advertising, and Shelter-All) erected about 39 percent of all off-premise signs during the 18 months studied. Significantly, these four companies accounted for 71 percent of the total sign area erected. The average size of commercial signs was 211 square feet while privately owned outdoor advertising signs averaged 52 square feet. One company, National Advertising, with headquarters in Maryland accounted for 16 percent of all signs erected, more than any other individual or organization.

Motels and Inns (15 percent), camping areas (10 percent), and restaurants (8 percent), respectively, erected the most privately owned signs. Antique and gift shops, welcome signs and service clubs, and realtors together accounted for another 13 percent. 10 percent or 29 signs were "one of a kind" and advertised a variety of things such as flying services, fence companies, and shoe stores.

MOST BILLBOARDS PLACED IN RURAL AREAS

The preservation of natural beauty is a stated objective of the Highway Beautification Act, a goal which could easily be achieved by limiting billboards to urban areas. During the study period, however, 78 percent of all signs were placed in rural areas. Even Maine's officially designated Scenic Highways are not immune from billboards and two signs were erected along such roadways during the study period.

PRIMARY HIGHWAYS MAGNET FOR BILLBOARDS

Roads are designed as primary or secondary by the Maine Department of Transportation. The criteria for classification includes consideration of the amount of traffic using the highway. While roads supporting high traffic volumes attract off-premise signs for obvious reasons, lesser traveled primaries and secondaries also draw billboards. Frequently, these signs are functionally directional in nature and could achieve their purpose in a way which would not be aesthetically undesirable. Unfortunately, their owners often capitalize on the liberal provisions of the State Outdoor Advertising Law with respect to size, height, and location. When one motel owner erects a sign of maximum size, competing motel owners feel compelled to respond in kind, *even though they may not wish to use billboard advertising at all.* In this way, present state policy encourages more and bigger signs as businesses are locked into advertising duels with competitors. In the final analysis, the only winners in this attempt to catch the eye of the travelling public are the sign makers or the commercial billboard companies which control select advertising locations.

Directional signing for local businesses as opposed to general outdoor advertising is recognized as a legitimate need. However, this purpose can be achieved without visual blight which ultimately has a negative effect on the businesses using outdoor advertising, namely tourist facilities and services.

The primary highway is clearly the type of highway preferred by outdoor advertisers in Maine. 83 percent of all signs were erected on such roads while 17 percent were placed on secondary roads. The commercial sign companies concentrate their activities on the primary system with 88 percent of their signs so located during the study period.

Off-premise signs were erected on 43 different routes in 122 Maine towns and cities. Primary roads are being used as sign sites in many areas. These signs are frequently erected by local businesses who wish to provide directional information to travelers.

DISTRIBUTION OF SIGNS BY ROUTE NUMBER

Route	5 or more signs: Number of signs	5 or more signs: Percent	Under 5 signs: Route	Under 5 signs: Route
1	92	32	1A	114
2	27	9	161	202
201	27	9	165	85
302	18	6	229	SA2
4	11	4	15	16
5	10	3	172	117
25	9	3	198	118
100	9	3	32	7
11	7	2	9	9
26	7	2	193	196
3	6	2	111	121
27	6	2	98	1
17	5	2	109	6
			15	157
			159	150

Nearly one-third of the new signs were placed on Route 1. Travelers using this principal tourist route will find few areas free of signs between Kittery and Fort Kent. Some towns, such as Woolwich and West Bath, have prohibited off-premise signs along Route 1 but these relatively sign free sections are the exception.

UNZONED AREAS MOST VULNERABLE TO BILLBOARDS

Land use at the locations of 225 new signs was checked. Signs may be erected on secondary roads without regard to land use. For this reason, land use information was not available for all 290 signs erected during the study period.

Type of land use	Number of signs	Percent
Zoned commercial	18	8
Zoned industrial	5	2
Unzoned commercial	202	90
Unzoned industrial	0	
Total	225	

Maine's outdoor advertising law currently allows billboards within 750 feet either side of one commercial or industrial activity on primary and scenic roads. This provision means that a single commercial or industrial activity with the exception of such things as temporary vegetable stands, creates a zone over a quarter of a mile long in which billboards may be located. For example, a new gravel pit on a primary or scenic highway creates a legal billboard strip over a quarter mile in length.

A MAJOR WEAKNESS

The rationale for this provision is that since an industrial or commercial zone has been created by an existing use, billboards should be permitted. Two points should be made in this regard. First, a single commercial activity hardly creates a "zone" predominantly used for commerce or industry. An earlier set of regulations from the Federal Highway Administration required states to require two or more commercial activities not more than 300 feet apart. Washington state now requires that three businesses be present on either side of the highway within 500 feet of each other before an unzoned commercial area is created. In Colorado and Oregon, billboards are not allowed in unzoned areas, and Oregon passed legislation in 1975 which prohibits their Highway Department from issuing any new permits for billboards anywhere. Secondly, the 750 foot strip allowed on either side of one commercial or industrial activity is overly generous to the outdoor advertising industry. Here again, the original Highway Beautification Act rules and regulations said in "no case shall this distance exceed 500 feet." If the reasons for the discrepancy are in doubt, the results are not. The "unzoned commercial/industrial area" provision is the weakest point in the state law and outdoor advertisers are taking full advantage of it. 90% of the 225 signs were erected in these so-called unzoned commercial areas.

VISUAL IMPACT OF NEWLY ERECTED OFF-PREMISE OUTDOOR SIGNS

County	Total public highway mileage	Miles/new sign	Visual impact index
Lincoln	780	29	1
Washington	1,198	44	2
Somerset	1,427	47	3
Waldo	1,100	57	4
Kennebec	1,585	63	5
Cumberland	2,068	65	6
Androscoggin	1,089	69	7
Hancock	1,223	71	8
York	1,989	76	9
Penobscot	2,247	97	10
Franklin	922	102	11
Oxford	1,626	108	12
Aroostook	2,394	140	13
Sagadahoc	461	153	14
Knox	667	333	15
Piscataquis	779	389	16
Total	21,564		

The relative visual impact of new off-premise outdoor signs was determined by dividing the total public highway mileage in each county by the number of new signs. This resulted in miles of highway per new sign which is a rough measure of the saturation or density of new signs. Density is one measure of the degree of visual pollution created by outdoor advertising. It should be noted, however, that this index does not consider sign size. In addition, signs are generally not uniformly distributed within counties, so that some towns may escape sign blight entirely, while others suffer disproportionately. For example, Lincoln County has the highest density of new signs, 1 per 29 miles of public highway. However, 55 percent of the signs were located in just 2 towns, Damariscotta and Wiscasset. Furthermore, all but two of the signs are located along Route 1, the most visually polluted highway in Maine. Ironically, the lure attracting multitudes of tourists to this road is scenic beauty while the tourists themselves are the lure of the billboards.

The sign which welcomes you to Wiscasset says that it's "the prettiest village in Maine," and indeed the business district is visually pleasing. Those who erect signs in this section of town must obtain approval from the Selectmen who encourage the use of a well designed standard sign. Beyond this rather small oasis from billboards, however, the town has put its trust in the Highway Beautification Act and state law. Outside of

the village, Wiscasset lacks a local sign ordinance and it's obvious that the sign laws made in Washington and Augusta have failed to protect Wiscasset's inherent beauty. In fact, Wiscasset had more signs erected within its borders during the 18 month study period than any other town in Maine. In late August, there were about 20 off-premise signs in Wiscasset and the bridge to Edgecomb. Over half of the signs advertised businesses located outside of Wiscasset. Wiscasset reaps the visual pollution while the tourist dollar is directed to businesses located in other towns.

CONCLUSIONS

1. At a cost of $1,682,000 tax dollars, the number of Maine off-premise billboards has been reduced to an all time low.

2. The rate of increase of billboards between January 1, 1974 and July 1, 1975 (after the Highway Beautification Act) was more than twice the rate of increase existing during comparable time periods prior to the act.

3. The Highway Beautification Act favors the sign companies and large national firms over local businesses.

4. Sign companies put up fewer, larger signs than individual businesses.

5. Most billboards are placed on primary roads in rural areas.

6. Nearly a third of all billboards erected during the study period went upon Route 1.

7. 90 percent of the billboards erected were in unzoned commercial areas.

RECOMMENDATIONS

A range of options are available in dealing with the problem of outdoor sign proliferation including:

1. Adopt a Vermont type law which would replace off-premise signs with a state administered uniform directional sign system. Existing off-premise signs could be grandfathered, amortized, or removed by compensation. On-premise signs would be regulated.

2. Improve controls on those highways designated as scenic. Limit off-premise signs to standardized directional signs. Enable towns and unorganized territories to work in concert to control both on-premise and off-premise signs. Provide state assistance in the establishment of information plazas on the highways.

3. Treat all state highways the same with the exception of scenic highways and the Interstate system.

4. Improve control of the so-called unzoned commercial and industrial zone by reducing its size and increasing the number of activities which must be present before the zone is recognized; or,

5. Limit off-premise signs to areas zoned commercial and industrial and used for such purposes.

6. Develop a standardized directional sign system for local businesses.

7. Strengthen on-premise sign controls outside of compact zones by enacting an overall maximum on allowable sign area.

Additional recommendations which do not entail amendments to the Outdoor Advertising Law:

8. Continue to encourage towns and cities to enact sign control ordinances. The recent court decision in Boothbay clearly establishes a town's right to prohibit billboards and to remove those standing by amortization.

9. Improve the public's understanding of outdoor signing. There is a need to demonstrate the value of high quality graphics to roadside businesses. Conversely, the tourist industry must be shown that sign blight is bad for business.

There is widespread recognition of the shortcomings of the present regulatory scheme. In 1974, the consulting firms of Northeast Markets and Arthur D. Little prepared a report entitled "Tourism in Maine: Analysis and Recommendations." Addressing the issue of outdoor advertising, the report had the following comments.

"There is room for new state responsiveness to maintain the aesthetic integrity of the state. Toward this end, there is a need for controls on signs on Maine's highways. Although it is true that a honky-tonk atmosphere created by fast-food establishments is not, in many cases, related to tourism, critics of tourism focus on those that are. Controls of this sort could be imposed at the state level, or state assistance could be provided to communities to create workable policies at the local level. In general, it can be observed that the private sector seeks fair and equal treatment; a sign control policy would only be effective if it were rigidly enforced so no one had an advantage over his competitor. No one likes the visual pollution that proliferates without controls."

"It is recommended that the state establish air and equal sign-control policies as a means to limit visual pollution." ●

BURTON LEVINSON TO HEAD NATIONAL CONFERENCE ON SOVIET JEWRY

● Mr. CRANSTON. Mr. President, on June 10, a prominent Los Angeles attorney, Burton Levinson, was elected chairman of the National Conference on Soviet Jewry (NCSJ). Burton Levinson, who succeeds Eugene Gold, has long been active in the concerns of Soviet Jewry having served as vice president of the NCSJ and chairman of the Commission on Soviet Jewry of the Jewish Federation Council of Greater Los Angeles. As the new head of the NCSJ, he plans to continue the successful work of the NCSJ and will implement new programs to increase community participation.

In October 1974, he traveled to Moscow and became one of only two lawyers from the Western World to view a political trial in over 30 years. Commenting on the recent increases in Soviet Jewish emigration, Levinson remarked:

We must now sow the seeds this year so that we can reap the benefits—such as free emigration—in tme future.

I want to congratulate Burton Levinson on his new post and wish him every success.●

WARC—A CONTINUED LOOK

● Mr. SCHMITT. Mr. President, in January, Senator GOLDWATER and I requested the Congressional Research Service to prepare a report on U.S. preparations for the World Administrative Radio Conference (WARC) to be convened in Geneva beginning in September.

Magazine articles, newspaper reports, speeches by concerned participants, testimony before the Congress, and discussions with the principal U.S. policymakers and heads of private industry, made it clear to us that the United States could be entering this important Conference inadequately prepared. In addition, the treaty resulting from the Conference will require the advice and consent of the Senate. This combination of factors caused us to request CRS to assess U.S. preparatory efforts, analyze and evaluate the U.S. positions, and review the policy positions of foreign countries, with special emphasis on the developing countries. That report has now been completed.

Unfortunately, it confirms some of the fears that I expressed on many occasions, particularly with respect to the possible politicization of the Conference by the lesser developed countries. The report describes the official U.S. position as one of cautious apprehension. This is in sharp contrast to the optimistic on-the-record comments that U.S. officials have been expressing.

In my view, this change of attitude is a positive step. Apparently, our policymakers are now realistically assessing our chances for achieving U.S. objectives at WARC. The report makes clear that the United States no longer operates in a virtual vacuum in the international telecommunications arena and that U.S. policies require careful coordination with the entire world. I will continue to join my colleagues in urging that our efforts at WARC be coordinated with other foreign policy objectives.

This important point was also emphasized in a similar context in a recent article by John Eger, former Director of the Office of Telecommunications Policy. I ask that Mr. Eger's article be printed in the RECORD.

The article follows:

A TIME OF DECISION

(By John M. Eger)

We can foresee a future in which we study, work, vote, shop, pay bills, get paid, receive or send our mail, visit the doctor, meet with friends—all through microwave satellite links to the home. Or, there will conceivably come a time when, via a wristwatch communication terminal, we can plug into a data bank of all the world's knowledge, or turn on the oven, take our messages, and otherwise help organize our daily lives.

But these personal services alone won't characterize the Information Age into which we are now moving. And they don't add up to what we mean when we talk about the communications revolution in which we are now living. Something much more important, much more significant for all of us is happening. For as we are moving into a future rich in innovation and in social change, we are also moving into a storm center of new world problems.

For here is a technology that knows no barriers, no national boundaries, and does not of itself recognize any of the essentially artifical divisions between the different people and the different places of our world. Here is a technology that does not recognize color, creed, race, or nationality but is rather supranational, acultural, and alingual. Here is a technology of sound and images and binary data bits that can indeed saturate the world.

It is a technology that creates simply by providing the means, a flow of information and ideas—a force for change throughout the world that simply will not be stopped, no matter how it is resisted.

What we are dealing with here is a technology that forces social change—something technology has always done—but on a scale and at a speed never before experienced by human beings or their institutions. And so we find ourselves suddenly immersed in an age of vast change, propelled by technology toward the revolutionary idea that we are indeed one people on this planet earth, one family living in one home, a family with common problems that must and can be solved—solved with the same telecommunications technology that has made us aware of them.

Are we ready for the consequences of this change? Are we prepared to consider the profound social, legal, economic, and political effects of technology around the world? Already there are those now holding up their hands to say we are not, in the United Nations, UNESCO, the Organization for Economic Cooperation and Development (OECD), and lesser forums—in Paris, in Geneva, in capitals and other cities throughout the world, and they are holding up their hands to block the technology, to stay or to spoil or somehow halt its irresistible flow of new ideas, to turn aside or weaken this wave of change.

Finally, are we prepared to admit that technology can be misused? That it can be misused by the very people who created it? That the world fears that the possessors of technology can electronically colonize and homogenize the rest of the world which is without it? These are the major challenges presented by the telecommunications revolution.

For the United States the Information Age presents challenges to the very political, religious, and moral beliefs upon which the country was founded.

The first challenge is for the United States to see itself as the world does—particularly as the developing nations do—with the technological capabilities to change their lives, to swamp their separate and distinct identities, cultures, languages, and religious, moral, and political beliefs.

The U.S. must recognize that a second consequence of this revolution is that it is forcing the developing nations of the world—as nothing else is forcing them—to come together, to act in concert on this issue, to protest almost in unison against the U.S. power, and to express their common fear that it will be misused.

Both the U.S. and the rest of the world must perceive the weakness, the obsolescence of existing laws in the face of the new technology. And finally the world must recognize and acknowledge the fact that, as history (recent and otherwise) has shown, there has never been any real nation defense, not even with the strictest form of censorship, against the flow of information and ideas.

Information and ideas will flow, will permeate the world. And this is the heart of the problem. It is the problem of finding a way to make the maximum use of telecommunications technology without homogenizing people, without overriding what may be the very necessary borders into which the world has been subdivided, without engulfing and diluting other value systems.

But to achieve that goal, the world must be prepared to deal with some hard questions.

If the computer-satellite-TV-microwave link that is now the essence of our telecommunications technology is to be used on a global scale, can it be used objectively, without ideological, cultural, or national bias? And should that prove an impossible goal, who will determine what the ideological, or cultural, or other bias will be? To determine this alone may be as difficult as it is to determine what is normal in the world. And yet it must be done.

If the computer-satellite-TV-microwave link is to be used to study earth, search for resources, protect crops, predict weather, warn against natural disasters and perform other services to protect and improve the quality of human life, on what basis will that protection and improvement be offered or withheld?

In terms of defense, or national security, and the rights of sovereign states to conduct their own national affairs, what are the limitations that must be placed on surveillance from space—or "electronic invasion" of national borders?

If technology is to supplant conventional devices, providing electronic mail, electronic banking, electronic newspapers, electronic educational facilities as well as electronic theatre, shopping, and other social services, who will determine the terms and conditions under which these services will be exchanged?

If the computer-satellite-TV-microwave link is to collect, store, and make use of personal data—medical, academic, professional, credit, and other information about the people it serves—customers, subscribers, believers and non-believers, citizens law-abiding and otherwise, voters and non-voters, native and foreign born, conservative and liberal, young and old—must there not be restrictions on the uses to which this personal information can be put?

Clearly, these and other related problems call for a better integration of information, computer, and communications policies.

These problems call for a whole new body of international law, a whole new round of international meetings, and agreements or treaties to form and to codify these laws. And then there must be international agreements to see that the laws, once formed and codified, are equitably enforced.

Already this process has begun, in the United Nations working group on direct broadcasting satellites, in the UNESCO subcommittee on the mass media, in the International Telecommunications Union Conferences on allocations of frequency spectrum, and in the newly created OECD policy unit on information, computers, and communications. Progress, however, is slow, agonizing, and uncertain; and the undercurrent of negotiation is permeated by fear, distrust, and perhaps ignorance of others' intentions. In addition to agreements establishing a legal framework, other agreements should look toward multinational ventures to pool and transfer technology, to predict weather, to protect crops, to guard against international tensions, and the like.

The most significant international application of technology thus far is probably the ATS–6 communications satellite launched in 1974. ATS–6 involves both the U.S. and agencies in other countries who made use of the system to meet their own internal needs. In India, for example, the Indian Space Research Organization and other national agencies built and maintained their own TV receivers, built and maintained their own earth stations and antenna, and programmed their own material on subjects of their own choosing.

There was much more involved here than the transfer of technology needed to make this possible. India, like other countries involved—Kenya, Morocco, Pakistan, to name a few leapfrogged centuries in weeks, effectively bringing to thousands of men, women, and children in 2,400 villages new ideas for agriculture, health, nutrition, family planning—effectively bringing, it should be added, self-determination programs of information to both broaden the horizons and improve the lives of their own people.* Working out similar agreements will be an increasingly major concern of foreign policy for years to come.●

POLARIS SUBMARINE LIFE EXTENSION

● Mr. BENTSEN. Mr. President, all of our defense experts are now well aware of the increasing vulnerability of our Minuteman intercontinental ballistic missiles (ICBM's) to a counterforce, first strike from Soviet ICBM's. The threat is clear and indisputable. By as early as next year, 1980, a serious threat window to all our ICBM's will open, and Minuteman vulnerability will last well beyond 1985. This Soviet threat to the single most reliable and cost-effective element of our strategic triad will clearly degrade the credibility of our retaliatory, deterrent posture. While few experts seriously fear that the Soviets will ever actually attack us with their strategic nuclear forces, some of our most experienced experts believe that this Soviet first strike threat to our ICBM's will have profound and dangerous geopolitical consequences. Because of this Soviet counterforce threat, U.S. foreign policy could be on the defensive all over the world in the 1980's. It seems clear that such a Soviet capability and challenge to us could also disrupt our foreign trade relationships, foreign investments, and alliances. Eventually, our entire domestic economic structure and the free world's economy could be affected.

It will take until 1985 before sufficient Trident submarines and air-launched cruise missiles are available to bolster the other two air and sea mobile elements of our deterrent triad. A direct solution to the Minuteman vulnerability problem is not envisioned until after 1986, which is the earliest date according to present schedules that the new MX ICBM could be operational in a survivable land-mobile basing mode. In seeking a way to minimize that opening window of our vulnerability, there seems to be neither the national will, capacity, nor the funds to accelerate any of our new strategic modernization programs.

The grave danger of Minuteman vulnerability clearly requires makeshift, nonoptimal, emergency measures. One relatively inexpensive and immediate way to bolster our deterrent posture during the period of maximum danger between 1980 and 1985 is to delay the Navy's plan to deactivate our 10 Polaris submarines which carry 160 submarine launched ballistic missiles (SLBM's). I believe that deactivation of Polaris during this high threat period is premature and a dangerous mistake. The Polaris subs still have at least 5 years of effective life left in them.

We have additional strategic problems compounding the seriousness of impend-

* *Editors' note:* A *Journal* symposium on the Indian satellite experiments will appear in a forthcoming issue.

ing Minuteman vulnerability. The Trident submarine program is intended to provide a replacement for our old Polaris subs, but long technical and industrial slippages have delayed Trident submarine construction. Moreover, while the necessary retrofit of our existing submarines with Trident I SLBM's is underway, this ongoing missile replacement program keeps many of these subs in an undeployable status each year.

Thus the combination of premature Polaris deactivation, Trident delays, and missile replacement all occurring concurrently in the early 1980's will severely reduce the number of our deployable retaliatory SLBM's from 650 to less than about 400. This alarming SLBM drawdown in the early 1980's will occur precisely when the threat to our ICBM's is at its highest peak ever, and when we will most need our sub based, survivable deterrent. Far fewer than even these minimal 400 SLBM's will ever be at sea at any one time, giving us a very thin deterrent indeed. The fact that in the early 1980's there will be such a severe reduction in our sea-based missile and sea-based warhead numbers, at this worst possible time, is indisputable and is recognized by the Navy. An international perception of further declining U.S. strength will inevitably result from the unilateral deactivation of our Polaris SLBM's during a period of growing vulnerability.

For these reasons, the Senate recently approved my Polaris amendment to the defense authorization bill for fiscal year 1980. My amendment will prohibit deactivation of Polaris until there has been a full and thorough study of the feasibility and cost of various options for extending the operational life of our 10 Polaris submarines through 1985.

Our options are to keep Polaris fully operational or to put them on a unique standby, reduced operational status. We could also modify them to perform new functions, such as to carry submarine launched cruise missiles (SLCM's), or 12 Trident I SLBM's each, or to be attack submarines. Further, we could deactivate them or dismantle them. Dismantling costs under SALT procedures are significant, but have not yet been fully considered by either the Navy or the Defense Department. The required study of our Polaris options may conclude that it could be prudent and cost effective to keep Polaris subs fully operational through 1985, or at least in a standby status minimizing crew and maintenance costs. The SLCM option seems particularly attractive for thorough study. In this time of growing danger to our national security, we simply cannot afford to discard costly weapon systems well before their useful life has expired. There are many good reasons for supporting this vital amendment to study extending Polaris life:

By bolstering our deterrent posture, keeping Polaris would effectively help compensate for the threat to Minuteman while we are waiting for our urgently needed air-launched cruise missile, Trident submarine, and MX programs to become operational in the 1981–86 period. Keeping Polaris will help buy time to modernize our other strategic forces.

The Polaris force is itself a significant military force. The 10 subs carry 160 missiles, each equipped with our most powerful sea-based warheads. Each Polaris clustered warhead is several times more powerful in nuclear explosive capability than each Poseidon warhead.

The Polaris fleet is larger than the entire strategic force of either the British or the French, making it important also in terms of strategic perceptions.

We have already purchased almost 20 years of security and deterrence for the approximately $10 billion invested in Polaris, a significant investment we would be wise to maintain. The required study would determine whether we can buy another 5 years of vitally needed deterrence for a tolerable cost. Preliminary estimates by the Navy suggest that it would cost about $1.9 billion to keep Polaris operational through 1985, an average yearly cost of $380 million.

The key question is whether the cost of keeping Polaris is acceptable in addition to the costs of our other strategic modernization programs. The Secretary of Defense himself states that with or without SALT II, our spending for strategic forces will have to be increased significantly each year through 1985. In fact, administration budget estimates call for increases in strategic spending over the fiscal year 1980 level of $10.8 billion of $0.5 billion in fiscal year 1981 and $1.3 billion in fiscal year 1982. These planned increases may not be enough, however. The Soviets have been spending roughly $10 billion more than us on strategic forces each year since 1969, an estimated 10-year total of about $100 billion. The Soviets have used most of this extra $100 billion for new missiles and submarines, and it is estimated that their high investment level in strategic forces will continue to grow under SALT II. Compared to the small planned U.S. increases and the huge past and future Soviet investments in new strategic forces, spending about $380 milion a year to extend Polaris life seems reasonable.

Several whole classes of old Soviet strategic submarines with ages comparable to Polaris are also being extended in service, and these Soviet subs will probably still be operational well beyond 1985.

The high costs of new strategic weapons are already forcing us to extend the life of our existing strategic weapons, and this extension concept could also apply to Polaris. Most of our B–52 bomber force is even older than Polaris, yet it will have to remain operational well beyond 1990. Our old Titan II ICBM's, deployed at about the same time as Polaris, are being extended in service at least through 1985 and may also be extended to 1990. Both Polaris and Poseidon subs are believed to have a useful life of 25 years. Since the oldest Polaris sub will be 20 years old in 1980, this 25 year useful life would allow Polaris to be extended through 1985. It already seems clear that our Poseidon subs will also have to last 25 years, through 1990.

While full operational status for Polaris may be most desirable, standby operation status has proven to be feasible in the short term. Two Polaris subs are already being maintained this way. Moreover, it is analogous to the way the Soviets have always maintained the largest proportion of their strategic subs fleet. Most Soviet subs are kept in standby operational status in their home ports.

At present, the Soviets are reportedly at least two submarines above their already superior SALT I levels of 62 modern submarines and 950 missiles. In comparison, the United States has only 41 subs with 656 missiles now. The Soviets reportedly also have a new "Typhoon" class of submarines under construction, comparable to our new Trident subs. But because of this original and growing disparity codified 7 years ago in SALT I, the United States should not be reducing our levels of 41 and 656. While eventually we do intend to have about 750 SLBM's by the late 1980's, there is no reason to drop below 656 until then. We should not trade existing SLBM's for planned ones available only in the future.

Most significantly, extending Polaris is fully consistent with all aspects of the SALT II Treaty. We could even keep Polaris and still add about 190 new delivery vehicles. On the other hand, one of the main administration arguments for the SALT II Treaty is that it requires the Soviets to deactivate by late 1981 about 250 delivery vehicles comparable in age to our Polaris. But United State unilateral deactivation of our 160 Polaris missiles even before the Soviet reduction diminishes the significance of the required Soviet reduction.

Additionally, keeping Polaris would provide us a cheap but valuable "bargaining chip" for negotiating the bilateral reductions projected for SALT III. One of our strategic problems is that historically we have voluntarily given up our strategic power. We should avoid deactivating our old weapons unilaterally without any quid pro quo in Soviet reductions. In the early 1960's we voluntarily deactivated our first generation ICBM's, our only IRBM's, our entire force of medium bombers, and our oldest B–52's. The Soviets meanwhile maintained their own comparable systems, and most of them are still operational even today. During the SALT II negotiating period of 1972–79, we similarly reduced our number of planned antiballistic missile (ABM) complexes from 4 to 1, and then even deactivated voluntarily our only allowed ABM complex. During SALT II, we also deactivated 100 additional B–52's, and canceled our B–1 bomber program. These unilateral reductions all occurred without any Soviet reciprocity whatsoever, and without even attempts to negotiate reciprocal Soviet reductions.

Experience should show that we must try to coordinate our force structure and arms control policies more closely,

so that bargaining leverage for negotiated bilateral reductions can be maintained. The Soviets clearly coordinate their own strategic force planning and arms control policies very carefully. The present Navy plan entails unilaterally deactivating Polaris, yet keeping all 160 SLBM launchers accountable under our SALT II force ceilings, giving us neither military benefit nor arms control bargaining leverage. Keeping Polaris could thus be a bargaining lever for mutual reductions.

Alternatively, Polaris subs could eventually be used as launch platforms for the submarine-launched cruise missiles (SLCM's) we are now developing and could deploy when the SALT II Protocol expires in 1981. Keeping Polaris could serve as another kind of a bargaining lever, to help keep open our SLCM deployment option. Keeping Polaris for SLCM deployment was proposed as early as 1972, and this option should be studied.

Finally, keeping Polaris provides a useful hedge in case SALT II is not ratified or in case the Soviets try to abrogate or breakout of SALT II suddenly sometime in the future.

During the early 1980's our national security will be severely challenged by the Soviet counterforce threat. Our very national survival is at stake. My prudent amendment requiring a study of the feasibility of retaining Polaris may provide an inexpensive and effective way to bolster our deterrent posture during the dangerous period of Minuteman vulnerability lasting through 1985. We must take at least this first modest step to reverse our long strategic decline in number of missiles and bombers. America can never allow itself to become No. 2 in effective military capability to the Soviet Union. Our security demands that we strive to preserve an overall military balance with the U.S.S.R., through SALT negotiations if possible, but also through unilateral defense efforts that are necessary.●

CAPTIVE NATIONS WEEK

● Mr. DOLE. Mr. President, while the recent release of five dissidents from the Soviet Union has been a happy development in which the free world has rejoiced, it should not overshadow the fact that oppression and repression continue to take place within the Communist dominated nations of the world. The arrest of 10 members of the Charter 77 Group in Czechoslovakia on May 29, even though it went practically unnoticed in the U.S. press, served to remind us that violations of human rights are a daily occurrence in the lives of the citizens of satellite countries.

Captive Nations Week has become an important landmark on our calendars in that it serves to focus attention on the plight of nations who are pursuing their dream of freedom in a daily struggle for human rights and self-determination, strengthened by indomitable courage and sustained by undaunted hope.

It is only in nations where citizens participate in the decisions that affect their daily lives, by being full partners in their governmental system, that a people's own destiny and the guarantee that its human rights will be observed can be accomplished. In nations where man is the servant of the state, human rights become an irrelevant issue and the "pursuit of happiness" that is integrated in our own Constitution a futile chimera—an unreachable illusion of the mind.

The Russian people hoped that a revolution, in 1917, would lead to a more just society. That dream was shattered by the realities of the Bolshevik regime which imposed a new form of autocratic rule from that which the Russians had attempted to obliterate. The formation of the Union of Soviet Socialist Republics in the 1920's marked the beginning of a new brand of Russian imperialism based on ruthless repression of individual, religious, and national rights. Ukraine, Armenia, Azerbaijan, Byelorussia, Cossackia, Georgia, Idel-Ural, North Caucasia, Turkestan, and Mongolia are all nations which fell victims to Communist expansion. The United States has never recognized the forced Soviet incorporation of the Baltic Republics of Estonia, Latvia, and Lithuania which followed their invasion by the Soviet forces after Hitler and Stalin reached an understanding concerning spheres of influence in Eastern Europe.

The imperialistic pursuits of the Soviet Union continued with the annexation of Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Rumania, and Yugoslavia who, rendered helpless by the invaders, were forced to submit to a Communist regime. The pattern of Communist domination was to be repeated in Asia and in Africa.

That those who live under Communist domination rebelled time and again, from East Germany in 1953, Poland and Hungary in 1956, to Czechoslovakia in 1968, is a demonstration of man's inherent need for freedom and a tribute to man's courage and tenacity in pursuing the fight for justice and human rights.

The Helsinki Final Act in 1975, offered new hope to those trying to free themselves of their Communist yoke. Ways to implement expectations into realities have yet to be devised. Will Madrid in 1980 complete the task begun in Belgrade in 1977?

Pope John Paul II's visit to his native Poland focused attention on religious freedom and on the commitment of Eastern European citizens to the spiritual values of the Catholic Church. The enthusiasm of the crowds demonstrated that their religious aspirations were alive and well, in spite of the barriers erected against them.

Privileged as we are in living in a democratic society, we tend to take for granted the freedom of speech, of thought and of worship that we enjoy. The 20th anniversary Captive Nations Week is a reminder that some of our fellowmen are still struggling to gain access to those same freedoms that to us are simply a given right. In observing that anniversary, let us pledge our continuing support of the countless prisoners of conscience, of the dissidents who persevere against all odds in shaking the foundations of regimes built on the destruction of the spirit of independence.●

NATIONAL GOVERNORS' ASSOCIATION SUPPORTS URGENT ACTION FOR REFUGEES

● Mr. KENNEDY. Mr. President, this past week the National Governors' Association voted to support a series of recommendations calling for urgent action to help meet the refugee crisis in Southeast Asia today.

Based upon the work of the association's committee on international trade and foreign relations—composed of Gov. Robert Ray, Gov. William Milliken, and Gov. Brendan Byrne—the Governors commended "President Carter for his decision to increase the number of refugees to be admitted into the United States over the next 12 to 24 months."

The Governors also urged continued support by Congress of State and local refugee resettlement programs—including assistance beyond 2 years—to assist the refugees in normalizing their lives in their adopted communities.

I fully share the concerns of the National Governors' Association, and I welcome their positive action and thoughtful recommendations. This week, the Judiciary Committee voted unanimously to report out the Refugee Act of 1979 (S. 643), which goes a long way in responding to the Governor's recommendations. And we shall value their comments as the full Senate considers this legislation in the days ahead.

Mr. President, I commend to the attention of the Senate the important recommendations adopted by the National Governors' Association Conference in Louisville, Ky. and July 9, and I ask that they be printed in the RECORD.

The recommendations follow:

POLICY POSITIONS: INDOCHINESE REFUGEE POLICY

Recent reports from Southeast Asia indicated that governments there will refuse entry to new refugees escaping from Indochina and will begin to forcibly repatriate many of the 276,000 refugees located in camps on their soil. Such a policy portends great possibility for further tragedy beyond the thousands that have already died while attempting to escape to freedom.

In realization of the critical situation of the Boat People refugees which pertains in Southeast Asia in the Summer of 1979, and in order to prevent the further loss of innocent lives, the National Governors' Association proposes the following policy recommendations regarding the international refugee crisis:

1. We urge Malaysia, Thailand and other countries of first asylum in Southeast Asia to halt the forced repatriation of refugees and to continue to grant temporary shelter to all refugees reaching their shores.

2. We call upon all countries in the free world to join in a collective effort to alleviate this tragic plight of these refugees. The United States cannot solve this problem alone. Rather it must be met by a genuine international effort aimed at spreading the resettlement burden as equitably as possible. To this end, we strongly endorse the concept of an international conference to address this issue and recommend participation by state government officials in the U.S. delegation.

3. As part of an expanded international

effort, we commend President Carter for his decision to increase the number of refugees to be admitted into the U.S. over the next 12–24 months.

4. To facilitate refugee resettlement and assistance, we state our support for the omnibus refugee legislation now pending before Congress. However, to maintain a hospitable climate for this additional refugee resettlement in the U.S., we urge the Congress to delete the two-year limitation on full reimbursement to the states for cash and medical assistance expenses for the refugees. We also urge the Congress to appropriate funds to provide direct payments of $450 to local school districts for each refugee child enrolled to defray costs for special English language programs.

TASK FORCE ON INDOCHINESE REFUGEES: TASK FORCE REPORT

THE CURRENT SITUATION

The recent decisions by the Thai and Malaysian governments to forcibly repatriate refugees to Cambodia and to force Indochinese refugees back out to sea and to dissuade new "refugees" from landing by shooting at them, has once again dramatically placed the issue of the "Boat People" squarely before us.

The flow of human beings out of Indochina is staggering. Close to a million people have fled Viet Nam, Cambodia and Laos since the imposition of Communist governments in 1975.

Currently over 300,000 refugees are in camps in non-communist countries of Southeast Asia. An estimated 200,000 ethnic Chinese refugees from Viet Nam have made their way to China. Another 300,000 have already been resettled in the United States and other free world countries. But still the hemorrhage continues as anywhere from 10 to 20 thousand new refugees escape each month.

Already hundreds, if not thousands of people—the majority women and children have perished. Given the apparent harsh new policies of some governments in Southeast Asia in refusing entry to new refugees it would seem certain that many more will die unless action is taken soon.

TASK FORCE ACTIONS

Since its inception four months ago, the members of the Task Force have reviewed both the international and domestic aspects of this problem to determine what actions they might take individually and what policy positions they might recommend to alleviate the tragic humanitarian plight of these people. Among their activities were the following:

On March 22, Governor Milliken wrote to the President indicating that Michigan would inagurate its own state government resettlement program to augment the efforts of voluntary agencies in that state.

On April 29, the first segment of the 1500 refugees to be resettled under the Iowa state program in 1979 arrived in Des Moines.

On May 22, Governor Byrne, Governor Milliken and Governor Ray sent a message to the leadership of both Houses of Congress urging rapid passage of supplemental funds for the State Department Refugee Program, which was grinding to a halt because its budget was exhausted. At that time—only one month before the drastic Thai and Malaysian actions—they warned that even a temporary moratorium in the U.S. refugee program could "lead to further backlogs in camps in Malaysia and Thailand . . . (which) . . . in turn could cause local officials to push refugees back out to sea with further tragic loss of innocent lives."

On May 24, Governors Milliken and Ray submitted testimony to the Subcommittee on Immigration, Refugees and International Law of the House Judiciary Committee on the new omnibus refugee bill being considered by the Congress.

On May 24, Governor Ray also met with Senator Edward Kennedy, Chairman of the Senate Judiciary Committee, to review these same points concerning the legislation.

THE NEED FOR FURTHER ACTION

The United States has already done much to try to solve the refugee problem. The Federal Government and the 50 states have received and resettled well over 220,000 refugees in the past four years. The Administration had authorized a monthly intake of 7,000 refugees per month for the remainder of the year. Other countries such as France, Australia and Canada have taken close to 100,000 all together. Yet it is clear that despite all of these actions, the problem is worsening and additional steps are necessary to save lives.

INTERNATIONAL

The members of the Task Force have identified several steps they believe could contribute to easing the situation in Southeast Asia and preventing the further tragic loss of life. Actions to ease the international situation would include:

An urgent appeal to the leaders of countries in Southeast Asia urging them to continue to allow refugees to land and not force them back out to sea.

A call for a combined international effort to address this problem.

As part of this international effort, an increase in the number of refugees to be admitted to the U.S. over the next 12–24 months. (On June 28, President Carter announced the U.S. will double its monthly quota from 7,000 to 14,000 refugees.)

DOMESTIC

There are also steps to be taken in the country to facilitate the resettlement of additional people. Within the United States the resettlement program has gone well. The most comprehensive study to date of this issue by Professor Daniel Monterro of the University of Maryland indicates that the Indochinese refugees are being assimilated into the American way of life at a surprisingly rapid rate. Well over 90 percent of all heads of households are employed and fewer than one third of these families receive any type of public assistance.

Despite this record, there are at least two problem areas which require continued attention: the need for special English training for the refugees and financial arrangements for those refugees that still require some cash or medical assistance

The Administration has proposed a new omnibus refugee bill that inter alia would ease the admission process for refugees in the future and provide some funding for English instruction for school children. Most of the provisions of the bill are constructive changes warranting the full support of the Governors. At the same time the new law would limit to two years the period during which the federal government would provide full reimbursement to the states for medical and cash assistance provided to the refugees under programs authorized by the Social Security Act.

It is the view of the Task Force that such a change would run the risk of adversely affecting the hospitable climate that now exists in most states for receiving new refugees. Any perception of increases in highly visible local taxes or "new" local spending programs to assist refugees could cause a significant reduction in the support the porgram has with the general public and elected officials.

Moreover, such a change would place an unfair burden on a few states. While initial resettlement efforts dispersed the refugees all over the country, they have tended to relocate in the warmer climates of California and Texas causing those states to shoulder a disproportionate share of what is supposed to be a national resettlement program. In order to ensure an equitable distribution of the costs of this program and maintain a receptive climate for new refugees, the Task Force believes the Federal Government should continue to provide full reimbursement for cash and medical assistance for the refugees.

A second area involves funding for special English language instruction for refugee children. Given their very tight financial situations, local school districts in areas of high refugee concentration have been hard pressed to fund such English language tutoring programs. Federal per capita grants to aid these districts were discontinued after 1977, Congress has authorized payments to the schools of $450.00 per refugee student to help defray these costs but the Administration has not supported making these funds available. The Task Force recommends that Congress now appropriate these funds to ease the pressure on impacted school districts and to ensure that refugee children receive the assistance they need to enter the mainstream of American life.

RECOMMENDED POLICY POSITIONS

Attached for consideration are four policy resolutions which address the above problems. The members of the Task Force unanimously urged they be adopted by the Full Committee. Due to the critical nature of the problems confronting these refugees and the risk of further loss of life, we also recommend that these positions be brought before the plenary session of the National Governor's Conference, under a special suspension of the rules, for immediate consideration.●

TESTIMONY OF CHARLES H. BREECHER ON H.R. 1716

● Mr. ROTH. Mr. President, my constituent, Mr. Charles H. Breecher, had hoped to testify before the Senate Armed Services Committee regarding the legislation implementing the Panama Canal Treaty of 1977. In his testimony, Mr. Breecher would have addressed a number of constitutional issues which have so far been largely neglected in debate on this legislation. Mr. Breecher previously testified before the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee.

So that Mr. Breecher's perspective is available to the Members of the Senate. I ask that the testimony he would have delivered be printed in the RECORD.

The testimony follows:

DRAFT TESTIMONY OF CHARLES H. BREECHER ON H.R. 1716

Mr. Chairman, I greatly appreciate this opportunity and privilege to testify before this Committee. My testimony concerns one point only, but a point of fundamental importance: that the U.S. Constitution does not allow setting up the Panama Canal Commission, a United States Government Agency, in the manner proposed in the implementing legislation pursuant to the Panama Canal Treaty of 1977. There is no way to pass implementing legislation setting up this Commission as ordained in the Treaty without violating the U.S. Constitution on five major issues.

Mr. Chairman, showing the unconstitutionality of H.R. 1716 is a simple, straightforward matter. The Panama Canal Commission is a United States Government Agency. Accordingly, all its nine members including the four Panamanian nationals are civil officers of the United States, exercising signifi-

cant authority of the U.S. Government. For easy reference, I have attached the text of Sec. 205(a) of H.R. 1716 and also the text of Art. III, par. 3, of the Panama Canal Treaty of 1977 at the end of my statement, the latter being essential to ascertain what's in the implementing legislation.

Enacted as U.S. law, H.R. 1716 would violate the U.S. Constitution as follows:

1. It would limit the President's appointive power to a ministerial function, giving him no choice whatever but to appoint the nominees or nominee of the Panamanian Government in a timely manner.

This is excluded by the Supreme Court decision in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) stating that the President's appointive power cannot be usurped by any other Agency. Just how far this Presidential power can be narrowed by law is unsettled, but some choice, however small, must be left to the appointing authority according to a report by the Congressional Research Service, 30 January 1978, cited in the Congressional Record, 10303–10304, 17 April 1978.

In the same vein, Chief Justice Taney stated in *United States* v. *Ferreira*, 54 U.S. 40 (1851) that while Congress may create offices, it "could not, by law, designate the persons to fill those offices." And in *Myers* v. *United States*, 272 U.S. 52 (1926), Chief Justice Taft said that Congressional prescriptions of qualifications for United States offices could not "so limit selection and so trench upon Executive choice as to be in effect legislative designation".

In conclusion, restricting the President to naming the Panamanian nominees to office in a timely manner is a violation of the U.S. Constitution as interpreted by the Supreme Court, beyond any possible doubt or argument.

Issue No. 2: The implementing legislation, pursuant to the Panama Canal Treaty of 1977, limits the President's power of removal to a ministerial function, because he must remove at the request of the Panamanian Government and may not remove Panamanians without the consent of that Government.

The removal power has been adjudicated by the Supreme Court in *Myers* v. *United States*, 272 U.S. 52 (1926), known as the Oregon Postmaster's case. It results from this decision, later confirmed in *Morgan* v. *TVA*, 312 U.S. 701 (1941), that the power of the President to remove executive officers, such as the members of the Panama Canal Commission, is absolute and cannot be restricted by law in any manner. Congress may restrict Presidential removal power only for quasi-legislative or quasi-judicial officers. Humphrey's *Executor* v. *United States*, 225 U.S. 602 (1935) and *Wiener* v. *United States*, 357 U.S. 349 (1958). The implementing legislation gives the President the right of removal, at his discretion, for the U.S. members of the Panama Canal Commission, so there is no room for argument that all members of the Panama Canal Commission are not executive officers.

None of the decisions cited nor any other authority known to me lends any support to the thesis contained in H.R. 1716 pursuant to the Treaty that the President's removal power may be restricted to the point where he cannot remove for any reason, except with the consent of a foreign Government. Nor can any basis be found in the U.S. Constitution to lodge the removal power de facto in anyone but the President, least of all in a foreign Government.

In conclusion, the provision in H.R. 1716 restricting the President's removal power for the Panamanian members of the Panama Canal Commission to a ministerial function violates the U.S. Constitution as interpreted by the Supreme Court.

Issue 3: Can the Senate's right to give advice and consent to the appointment of the members of the Panama Canal Commission be abridged?

The sole question here is whether the members of the Commission are "inferior officers," so that their appointment could by law be vested in the President alone, pursuant to Art. II, Sec. 2, cl. 2 of the U.S. Constitution.

While the wording of Art. II leaves it to the judgment of the Congress to decide on an ad hoc basis which officers are "inferior officers," this judgment must be exercised with consistency. There is no precedent known to me that members of a United States Government Agency at the level and with the authority of the Panama Canal Commission have been regarded as "inferior officers."

According to the Panama Canal Treaty of 1977, the Panama Canal Commission is to be set up by U.S. law as an independent U.S. Government Agency, outside the hierarchical control of U.S. cabinet Departments. Its decisions are not subject to Presidential approval according to the Treaty, because the United States can carry out its responsibilities under the Treaty only through the Panama Canal Commission. The President's supervisory powers are limited to his right to remove the U.S. members of the Commission at his discretion. Any restrictions on the rights and responsibilities of the Panama Canal Commission or its individual members by U.S. legislation would of course be valid in U.S. municipal law, but be a breach of the Treaty. If there be any doubt on this point, I might refer to the witness statement of Mr. Herbert J. Hansell, Legal Adviser, Department of State, before the Panama Canal Sub-Committee, Merchant Marine & Fisheries Committee, 15 February 1979, pages 13–15. There is no basis in the text of the Treaty or in the U.S. Constitution to challenge Mr. Hansell on this point that I have been able to discover.

As concerns the level of the members of the Panama Canal Commission, it is that of U.S. Undersecretaries of State. See page 430, Hearings before the Committee on Foreign Relations, United States Senate, 95th Congress, Sep. 26–30, 1977, Part I.

Conclusion: Given the level and the authority of the members of the Panama Canal Commission, and the consistent practice of the U.S. Congress, the members of the Commission cannot, by law, be exempted from Senate confirmation. There is no precedent or authority of any kind to consider them as "inferior officers" who could be exempted.

Issue 4: Can a non-resident alien be made a civil officer of the United States?

The U.S. Constitution prescribes citizenship requirements of varying length for elected officers only (President, Vice-President, Senators, members of the House of Representatives), but is silent on civil officers. Indeed, the U.S. Constitution does not lay down any mandatory qualifications for nonelective public office except indirectly.

The thesis that a non-resident alien owing no allegiance to the Government appointing him, but owing such allegiance to another country, could become an officer of the appointing Government and clothed with a significant part of its authority, is not to my knowledge accepted by any sovereign Government on earth. The makers of the U.S. Constitution, having just emerged from foreign domination, would have been the most unlikely persons to admit that possibility, so one should not be surprised that they did not rule it out explicitly.

However, there are two provisions of the U.S. Constitution which implicitly rule out that non-resident aliens could become civil officers of the U.S. Government.

First, Art. II, Section 4 says that . . . all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

How could a non-resident alien commit treason, as defined in the U.S. Constitution? Further, how could the U.S., which has no jurisdiction over nonresident aliens, impeach and convict them for high crimes and misdemeanors? U.S. laws defining bribery, and other high crimes and misdemeanors do not apply to non-resident aliens, so what standards would be used in impeachment proceedings? How could a non-resident alien be tried at all under the due process clause? It seems evident that the makers of the U.S. Constitution did not admit the possibility that non-resident aliens could become civil officers of the United States, when they wrote the impeachment clause. Nor, to my knowledge, is there any case where a non-resident alien has been made a civil officer of the United States.

Second, Art. VI, Section 3, provides that . . . all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution. . . .

Here also, it is evident that a non-resident alien could not swear such an oath which might bring him in direct conflict with his duties as a citizen of his own country.

The drafters of the implementing legislation seem to be aware of the problem because the implementing draft says that: "Each director . . . shall take an oath faithfully to discharge the duties of his office". That provision can of course not dispense with the constitutionally required oath for all civil officers of the United States. Further, the draft implementing legislation of 3 March 1978 mentions only "foreign nationals" as directors of the Panama Canal Commission notwithstanding any U.S. law, but not non-resident aliens. It may be possible to contend that a resident alien not owning allegiance to any foreign country might become a civil officer of the United States, since he could probably be impeached and could also probably swear the oath required under Art. VI of the United States Constitution. However, the Panamanian directors would be non-resident aliens.

Conclusion: The U.S. Constitution, by implication, does not allow non-resident aliens owning allegiance to a foreign country and subject to its jurisdiction, to become civil officers of the United States, as the implementing legislation would ordain.

Issue 5: Can foreign nationality be made a mandatory qualification to hold an office under the United States, thereby excluding U.S. citizens from holding the office because of their U.S. citizenship?

If foreign citizenship is made by law a mandatory qualification to hold a U.S. office, this means that U.S. citizenship becomes an absolute bar for holding this office. This type of provision is unprecedented everywhere, and appears to be repugnant to the U.S. Constitution. Specifically, it appears to be ruled out as a violation of the privileges and immunities of the citizens of the United States which are mentioned in the Constitution (14th Amendment, Sec. 1).

The courts have been reluctant to decide cases on the basis of the Privileges and Immunities clause of the Constitution, resorting instead to some other clause, such as the due process or commerce clauses. However, in the Slaughter House Cases (16 Wallace 36, 1873) Justice Miller, delivering the opinion of the Court, specificially included the right not to be excluded from public office because of citizenship among the privileges and immunities of United States citizens guaranteed by the Constitution, saying:

"But lest it should be said that no such privileges and immunities are to be found if those we have been considering are excluded (i.e. property right), we venture to suggest some which owe their existence to the Federal Government, its national character, its Constitution, or its laws.

One of these is well described in the case of *Crandall* v. *Nevada*, 6 Wallace 24 (1868). It is said to be the right of the citizens of this great country, protected by the implied guarantees of its Constitution, "to come to the seat of government to assert any claim he may have upon that government, to transact any business he may have with it, to seek its protection, to share its offices, to engage in administering its functions. * * *"

In the same 1873 case, Justice Field said that the privileges and immunities of U.S. citizens are those which of right belong to the citizens of all free Governments, without other restraints as equally affects all persons. This dictum does define the privileges and immunities of U.S. citizens. However, it expresses the principle which has never been questioned to my knowledge, that whatever rights U.S. citizens may process as citizens, such as the right to vote or to share the offices of the U.S. Government, may not be restricted to citizens alone without the same restraints applying to non-citizens. But this is precisely what the Panama Canal legislation attempts to do: U.S. citizenship becomes a unsurmountable restraint barring from appointment to certain civil offices under the United States whereas Panamanian nationals are exempted from this restraint. This anomalous situation appears incompatible with the U.S. Constitution's implied guarantees of privileges and immunities of U.S. citizens, and also of substantive due process guaranteed by the Constitution.

It might be said that the dicta I have cited are more than 100 years old. Well, the Supreme Court does not seem to have changed its mind since 1868 that the Constitution impliedly guarantees U.S. citizens the right not to be excluded from public office because of their U.S. citizenship. I may quote Chief Justice Burger in *Foley* v. *Connelie*, 98 S.Ct. 1067, March 1978:

"The essence of our holdings to date is that although we extend to (permanent resident) aliens the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens."

To sum up, there appears to be no precedent or authority to support the exclusion of all 220 Million U.S. citizens from holding certain civil offices under the United States. This thesis also does not appear to be admitted in any truly sovereign country. It is well documented, however, in protectorates and colonies. Morocco and Tunisia prior to 1954 had such arrangements, and I also recall that Marshall K. Rokossovski, a member of the Soviet Politburo, held the job of Polish Defense Minister from 1949 to 1956.

RELATIONSHIP OF IMPLEMENTING LEGISLATION TO TREATIES

Can the implementing legislation be sustained as being necessary and proper to carry out United States obligations under an international agreement? The obvious and decisive answer to this, of course, is that no agreement with a foreign nation can confer power on the Congress, or on any branch of Government, which is free from the restraints of the Constitution. These are not my words, but those of Justice Black in *Reid* v. *Covert* 354 U.S. 1 (1957), delivering the opinion of the Supreme Court.

Throughout the enormous volume of testimony on the Panama Canal Treaties and the implementing legislation, the Executive Branch has sprinkled a great deal of highly misleading pseudo-legal information. The impression this misinformation creates is that all is finished anyway with the Senate vote 18 April 1978, that the Treaties are the law of the land, and that the House of Representatives is merely being called upon to fill in obediently a few blanks left open by the Treaty negotiators. All that is untrue.

Non-self-executing Treaties such as those on the Panama Canal merely impose an obligation in international law on the President to cause to be proposed implementing legislation to the Congress pursuant to the Treaties. That is, provided the Treaties are valid in international law which these most assuredly are not as I shall explain later. And even if that duty exists pursuant to a valid treaty, it must of course always take second place to the President's oath of office to preserve, protect and defend the Constitution of the United States.

Unless the President has reasonable cause to believe that the implementing legislation does not violate the Constitution, he may advocate it and he may not sign it if passed without breaking his oath of office, an impeachable offense. He does not need a certainty, of course, not even a preponderance of evidence; just a reasonable cause to think—even if that later turns out to be erroneous under a new Supreme Court decision—that the legislation is in accordance with the U.S. Constitution. But the President must have a respectable legal case, on every one of the five major constitutional issues I have cited. As an ordinary private citizen, with some knowledge of the Constitution, I am making the flat statement that the record shows he has no such case, unless he wishes to challenge the Supreme Court's decisions and findings.

Since the Panama Canal Treaty of 1977 is not self-executing, it is not—I repeat not—the law of the land, unless and until the Congress enacts its sitpulations into legislation. As far as the Congress is concerned, and the House of Representatives in particular, there is nothing to force it to do so other than a decent respect for the President and for last year's Senate. That rule was laid down 150 years ago by Chief Justice John Marshall, speaking for the Court in *Foster* v. *Nielson*, 2 Pct. 253 (1829), as follows:

"Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature whenever it operates of itself without the aid of any legislative provisions. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political not the judicial department and the legislature must execute the contract before it can become a rule for the court."

Accordingly, until such time as the essential non-self-executing provisions of the Panama Canal Treaty of 1977 are enacted into law, the Treaties are not the law of the land. Such essential provisions are primarily the establishment of the Panama Canal Commission, without which the U.S. cannot exercise any rights under the Treaty, and the Congressional authorization of all payments to be made to Panama. It would be manifestly absurd to contend that the U.S. and Panama intended to make a Treaty under which the U.S. had no rights at all and Panama would receive no payments whatever, so no self-executing provisions of the Treaties can come separately into effect. Moreover, international law does not recognize a bilateral treaty that is partially valid and partially invalid.

It is noteworthy that a self-executing Treaty, and the implementing legislation of all Treaties, can at any time be abrogated or amended by the Congress, the same as any other law. If there is nothing left to perform under the Treaty, that would of course be an empty gesture. But if something remains to be done under it, the amending law becomes the rule for our courts. The Supreme Court has so held repeatedly: for instance, in *Chae Chan Ping* v. *United States*, 130 U.S. 581 (1889), and in *Fong Yue Teng* v. *United States*, 149 U.S. 698 (1893). These cases involved a prior Treaty with China guaranteeing Chinese laborers the right to re-enter the United States which was abrogated by Federal statute.

If the Treaty is valid in international law, such action by the Congress is not commendable, however legal in U.S. municipal law. It may give the other party the right to seek damages through diplomatic channels or to cancel the treaty. I have referred to these cases only to show that it is quite wrong to put a Treaty on some legal pedestal, untouchable by the Congress. And if a Treaty ordains U.S. legislation that would violate the U.S. Constitution, then Congressional action rejecting such legislation is not only legal in U.S. municipal law, but is the sworn duty of each and every member of the Congress under his oath of office to support the Constitution.

Further, a treaty has no bearing whatever on the constitutionality of subsequent U.S. legislation to implement it, because a Treaty cannot amend the Constitution.

The Supreme Court has laid to rest any unfounded doubts on this matter in Reid v. Covert (1957). Speaking for the Court, Justice Hugo Black, after quoting Art. VI of the Constitution, said:

"There is nothing in this language (meaning in Art. VI) which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution. . . . It would be manifestly contrary to the objective of those who created the Constitution, as well as those who were responsible for the Bill of Rights—let alone alien to our entire constitutional history and tradition—to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions. In effect, such construction would permit amendment of that document in a manner not sanctioned by Article V. The provisions of the Constitution were designed to apply to all branches of the National Government and they cannot be nullified by the Executive or by the Executive and Senate combined. . . .

POSITION OF THE EXECUTIVE BRANCH

It appears that the Executive Branch position, or rather positions, with regard to the five constitutional issues I have outlined, are contained in two documents:

1. The Department of State addressed a letter to Delaware's Senior Senator William V. Roth, Jr., on 12 May 1978. The full text is attached to my written witness statement 7 March 1979, before the Panama Canal Sub-Committee, Merchant Marine & Fisheries Committee, House of Representatives.

The text of the letter shows that two of the five major constitutional issues are not addressed at all. State does not mention the President's removal power being restricted to a ministerial function for the four Panamanian directors of the Panama Canal Commission, nor the elimination of the Senate's right to give advice and consent to their appointment as superior civil officers of the United States.

On limiting the President's power to appoint officers of the United States, State notes that it can be restricted by law, citing as an example that the President may not appoint more than a certain number of members of his own party to certain U.S. Government Agencies. How does this admittedly lamentable fact justify restricting the President's appointment power to the point where he has no choice at all and where this power is de facto usurped by the Panamanian Government? Does State challenge *Buckley* v. *Valeo* (1976)?

On appointing Panamanians to U.S. offices created by Congress, State says that the U.S. Government may employ aliens, even nonresident aliens. What does this fact have to do with Presidential appointments to U.S. Federal offices?

On impeachment for Treason, State maintains that the governing standard with regard to the crime of treason would differ if the official were a Panamanian national, but that this poses no constitutional obstacle to the Treaty. Perhaps so, if one assumes that the President promised in the Panama Canal Treaty of 1977 to cause the U.S. Constitution to be amended. Otherwise, the crime of treason is explicitly and exclusively defined in Art. III, Sec. 3, Clause 1 of the U.S. Constitution. Or does State contend that a Treaty can amend the U.S. Constitution, challenging *Reid* v. *Covert*?

On excluding all United States citizens from four positions on a United States Government Agency because of their U.S. citizenship, State says that if we make the unlikely assumption that a protected right of U.S. citizens is involved, the Federal Government may employ classifications based on nationality so long as such action serves to enhance federal interests substantially, citing Hampton v. Mow Sun Wong 426 U.S. 88 (1976). Well, that's at last the citation of a case and I may say it is hilarious also. Mow Sun Wong involved the employment of permanent resident aliens by United States Government Agencies in such positions as janitors and file clerks. These are honorable professions, I've been a clerk myself once, but employing resident aliens in these capacities has nothing to do with appointing non-resident aliens owing loyalty to a foreign Government as civil officers of the United States. And all the Court said in this decision was that under the U.S. Constitution the Civil Service Commission did not have the authority to require U.S. citizenship as a mandatory qualification for all positions in the classified U.S. civil service, the President would have to do it himself. President Ford did so and his 1976 Executive Order has just been upheld. Vergara v. Hampton, 581 F 2nd 1281, certiorari denied April 1979.

It is my contention that State's 12 May letter raises no respectable counterargument to any of the five constitutional issues I have presented. If any member of this Committee disagrees with that conclusion, I respectfully urge him to say so.

2. A second Executive Branch position diametrically opposed to that of State is contained in a Statement by Mr. H. Miles Foy, Attorney-Adviser, Office of Legal Counsel, Department of Justice, submitted to the Panama Canal Sub-Committee on 28 February 1979. The history of this statement is interesting. Last August, Congressman Thomas B. Evans, Jr. (R-De.) wrote the Attorney General to ask for his comments on the constitutional issues I had raised. After reminders, Congressman Evans received a letter from Justice 29 January 1979 which said "Wait till we testify in reply to Mr. Breecher, who we understand has also been requested to testify". The Foy memo is that reply.

The Memo admits that Panamanians owing no loyalty to the United States cannot be permitted by the Congress to become U.S. civil officers. In circular reasoning, it concludes that therefore the four Panamanians on the Commission are not U.S. civil officers whereas the Americans are, and that therefore the four Panamanians are not subject to the provisions of the U.S. Constitution as regards their appointment. In support, Foy offers primarily his reading of the Appointments clause of the Constitution, and also cites the objectives of the Treaty and the Congressional power to turn the Canal over to Panama. He states that this power and the Treaty allow the Congress to give the Panamanians a minority, though not a majority share, in controlling the Panama Canal Commission.

Mr. Chairman, this completely novel thesis challenges the Supreme Court's 1976 definition of U.S. civil officers being persons who exercise a significant amount of U.S. Governmental authority. That authority is obviously possessed in equal degree by each and every member of the 9-man Panama Canal Commission. But the Foy memo can also be challenged by a veritable barriage of constitutional objections, as follows:

(a) Does Congress establish something other than nine U.S. civil officers by creating the Panama Canal Commission, a United State Government Agency? If so, what? Does Congress establish four positions for Panamanian apprentices? From where does Congress derive its constitutional power to create whatever those other offices are supposed to be? Emphatically not from the Treaty which can give the Congress no constitutional power it does not already possess and which moreover specifically and correctly states that the Commission must be established by law.

(b) Can the President appoint persons to be something other than U.S. civil officers? If so, what are these people? Where does the President derive his constitutional authority from to appoint them, if he does not derive it from Art. II Sec. 2? Why is this alleged additional appointment power of the President not subject to the restrictions of the Appointment Clause? Is there any precedent for such appointments?

(c) How can U.S. governmental responsibilities be exercised by persons who are not civil officers of the United States? These four Panamanian directors are surely not without some authority: consider, for instance, the perfectly likely case that for a particular decision or regulation, the four Panamanians join a U.S. minority of one or two on the board. Would that not be a decision of the Panama Canal Commission and the exercise of U.S. governmental power?

(d) Where in the U.S. Constitution or in Supreme Court interpretations thereof, can any basis be found for the fine distinction made in the Foy memorandum that it is alright to give a foreign Government a minority voice in a U.S. Government Agency, but not a majority voice?

(e) On what authority to be found in the Constitution are all 220 Million American citizens excluded from four of the nine positions on a United States Government Agency? Can the U.S. Congress so exclude them, without violating the privileges and immunities of U.S. citizens?

Mr. Chairman, when I saw the Foy Memo, I thought surely there must be some back-up for this startling new thesis. However, a letter I dashed off to the Department of Justice under the Freedom of Information Act brought me a reply dated 2 March 1979, signed by Mary C. Lawton, D/Asst. General, which enclosed another copy of the Foy Memo and said in substance: "That's all there is, we have no further analysis or back-up".

Mr. Chairman, I note of course that the Foy Memo contains the important "admission against interest" that the Congress cannot by law permit persons not owing loyalty to the United States to hold Federal offices, which is the exact contrary of what the Department of State contends in its 12 May 1978 letter to Senator Roth. However, I respectfully, or not so respectfully, wish to state for the record that the Foy Memo's conclusions concerning the alleged constitutionality of H.R. 1716 lack any substantive foundation in constitutional jurisprudence and do not appear to be backed up by any authority other than Mr. Foy himself. And I respectfully request to be told of any reason why this my conclusion might be wrong, in the opinion of any member of this Committee or of Counsel to the Committee.

INVALIDITY OF PANAMA CANAL TREATY OF 1977 IN INTERNATIONAL LAW

If the Congress rejects the implementing legislation, then in U.S. law, nothing has happened: the legislature, in the words of Chief Justice Marshall, has exercised its right to refuse to execute the contract and it therefore does not become a rule for U.S. courts.

It's different in international law which is not concerned with the municipal law of either of the parties, as a general rule. There would be a dispute, to be carried out through diplomatic channels, between the U.S. and Panama. But in that dispute, the U.S. would in my humble opinion, have an overwhelming case, provided only the President makes certain perfectly valid arguments to the Panamanian Government.

The Panamanians would say that the U.S. Constitution is no concern of theirs, and if the U.S. President has made promises in a Treaty which he can't carry out under the U.S. Constitution, that's his problem and Panama is either entitled to immediate full sovereignty over the Canal, with no U.S. rights whatever, or else to compensation in monetary terms, for breach of a Treaty, amounting to a few $billion or more. Panama would cite Article 27 of the 1969 Vienna Convention on Treaties which provides that a party cannot invoke the provisions of its internal law in justification not to perform under a treaty.

The U.S. has signed this Convention, but has not ratified it. However, the Convention is considered to be declaratory of customary international law and the Executive Branch would quite properly consider itself bound by it.

But the President would have very strong arguments to show that the Treaty is invalid, as follows:

1. There has been no ratification because identical ratification documents have not been exchanged, even after 31 March 1979. If one looks closely at the Panamanian instrument of ratification—I refer to the State Department Bulletin of July 1978—one finds that in well camouflaged language the Panamanians have rejected the DeConcini Reservation by adding something to their instrument of ratification which is not in the U.S. instrument of ratification. It is a reference to Art. 18 & 20 of the OAS multilateral Treaty which prohibits the use of force except in self-defense. The DeConcini Reservation would have amended the OAS Treaty on that point in a limited way between the U.S. and Panama, as is perfectly permissible in international law, and the Panamanians have rejected it. Until the U.S. accepts that rejection, or Panama withdraws it, there is no ratification of the Panama Canal Treaty of 1977 and Panama cannot invoke it in international law.

2. Art. 52 of the 1969 Vienna Convention says that a Treaty is void if its conclusion has been procured by the threat or use of force, in violation of the principle of international law embodied in the Charter of the United Nations. It will be remembered that Panama threatened guerrilla warfare and riots if the Senate did not give its consent. That threat was made before the effective date of the exchange of ratification instruments, in other words before the Treaty was concluded, right during the negotiations which last until the exchange of ratification instruments. This Panamanian threat to use force, neither in self-defense nor pursuant to a decision of the UN Security Council, makes the Treaty void.

3. It will be remembered that the Senate was told by the President that the Treaty had to be passed as is, because if it were amended there would have to be a new referendum in Panama under the Panamanian Constitution. Well, the Treaty was amended in many ways by the Senate ratification resolution, because whatever you call it in a bilateral treaty—reservation, condition, understanding or what have you—these are amendments. The Panamanian Government just decided to pass over that Panamanian constitutional point.

However, in international law there would be a very serious question if there was any meeting of the minds between the U.S. & Panama. Did the U.S. and Panama intend to make a Treaty which could not be enforced under their respective Constitutions?

4. It appears to be a peremptory rule of international law, inherent in the right of self-determination, that no Government has the power to place its people under foreign domination, without their consent. A peremptory rule of international law is one that is universally accepted, cannot be changed except by universal consent, and may not be abridged by special arrangement between States.

Now few people would think of it in this way, with the large U.S. and small Panama, but by giving agents of the Panamanian Government, under the full and exclusive control of that Government, significant U.S. Governmental powers, without the consent of the American people directly expressed, the U.S. Government effectively accepts a principle which is ruled out by a peremptory rule of international law. A Treaty containing such a principle is void.

It is interesting to recall that in the Rokossovski case I mentioned both Poland and the Soviet Union were careful to point out that he was born in what is now Poland and possessed dual citizenship. That was a sham of course, but it is nevertheless interesting that of the Soviet Marshalls the one born in Poland was selected by Stalin to serve as the Polish Defense Minister and that some effort was made to stress his alleged Polish citizenship.

So much for the legal consequences in international law if the Congress fails to pass implementing legislation. A quite different situation would arise if the Congress attempted to pass legislation in conformity with the U.S. Constitution on all five issues involving the Panama Canal Commission, that is by stipulating that the nine directors of the Panama Canal Commission should be Americans, appointed, confirmed and removed in accordance with traditional U.S. constitutional processes. That implementing legislation would of course stand up under U.S. law.

But in international law, the Panamanians would have excellent case to say at any time, for example when they did not like some decision by the Panama Canal Commission on tolls or wages: "You have breached the Treaty, now get out of Panama with your so-called Panama Commission and your troops. You have no rights at all under the Panama Canal Treaty of 1977, because these rights were granted to you by Panama as the territorial sovereign, to be executed only through the Panama Canal Commission, constituted as ordained in the Treaty, and by no other body which you are setting up at your convenience depriving us of our Treaty rights."

In international law, and I venture to say with U.S. public opinion also, the U.S. would be in a very difficult spot then. It would scarcely do at that junction for the President to say: "But the whole Treaty was void ab initio in international law," and give the reasons I have cited. That would be eating one's cake and wanting to have it too: The United States first breaks the Treaty on a major point, then recognizes it defacto by complying with the provisions it likes, and when challenged on the breach, claims the whole treaty was void anyway. As a legal case, it might not be without all merit, but it would assuredly be a weak reed to lean on.

CONGRESS AS THE GUARDIAN OF THE CONSTITUTION

In conclusion, Mr. Chairman, let me stress that the Supreme Court is not the only guardian of the Constitution. The Congress is just as much its guardian. Perhaps even more so, because the Supreme Court can act only after the fact and only within certain confines involving genuine litigation and individual rights.

There is one limitation, and only one, on the great and respected power of the elected representatives of the people to vote for whatever legislation they, and only they, might deem appropriate. That limitation almost never comes into play, but it applies in the case before you.

Unless a Congressman or a Senator has reasons satisfactory to himself to show substantively that the legislation he is considering does not violate the U.S. Constitution, he or she is under his oath of office to support the U.S. Constitution, obligated to raise the constitutional issue or issues, and to oppose that legislation.

In the case of the Panama Canal implementing legislation, it makes no difference if any member of the First Branch of our Government should believe, quite erroneously, that a treaty giving the Canal to Panama will go into effect 1 October 1979 regardless of what the Congress may do in the meantime, so that while he himself opposes the Treaty on other than constitutional grounds also, the lesser of two evils would be if the constitutional issue is not raised and the implementing legislation passed, so the U.S. will at least retain some rights.

Nor does it make the slightest difference if a supporter of the treaty thinks the implementing legislation is the most wonderful law ever devised in the U.S. national interest. Unless either legislator is satisfied that a respectable legal case has been made to show that setting up the Panama Canal Commission as ordained in the treaty is permissible under the U.S. Constitution, he must reject the implementing legislation proposed by the Executive Branch, as well as any amendments thereto which do not cure all the constitutional defects. The Constitution comes first.

I have stressed before that of course no certainty is required, not even a very strong case that a proposed piece of legislation is constitutional. The Congress may vote for a law it considers of doubtful constitutionality; one lawyer gives these reasons, another gives what sounds like a plausible counter-argument. But if there is no room for a well-founded doubt that the legislation might be constitutional after all, then the case is perfectly clear: each individual member of the Congress must support the Constitution as he sees the Constitution.

This concludes my formal statement. Thank you again, Mr. Chairman, for hearing me on what to me is a very emotional matter, not the Canal, but the U.S. Constitution and the protection it gives to the rights of U.S. citizens. I shall now be happy to answer any questions you, others on the Committee, or the Committee staff might have. Indeed, I would welcome each and every question at such length as you will permit.

ANNEX—WITNESS: CHARLES H. BREECHER

Here, for convenience, is the text of Art. III, par. 3 of the Panama Canal Treaty of 1977:

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the Laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such a request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

And here is the language of the implementing legislation consistent with the Treaty (Sec. 205, draft legislation dated 3 March 1978): "(a) A board of directors shall manage the affairs of the Panama Canal Commission. The President of the United States shall appoint the members of the board in accordance with paragraph 3 of Article III of the Panama Canal Treaty of 1977, and neither this chapter nor any other law prevents the appointment and service as a director, or as an officer of the Commission, of an officer or employee of the United States, or of a person who is not a national of the United States. Each director so appointed shall, subject to paragraph 3 of article III of the Panama Canal Treaty of 1977, hold office at the pleasure of the President, and, before entering upon his duties, shall take an oath faithfully to discharge the duties of his office".●

DR. FERENC NAGY

● Mr. HARRY F. BYRD, JR. Mr. President, last month a great fighter for freedom died quietly only a few miles from where we meet today, but far from his beloved country.

Dr. Ferenc Nagy rose from a peasant background to become prime minister of Hungary during those mercuric days after World War II. He struggled mightily for a democratic system in that torn land. For these efforts, he reaped persecution and abuse.

Dr. Nagy never became a U.S. citizen, but he was adopted by Virginia as an honored guest.

At his funeral, the eulogy was given by the Honorable John O. Marsh, Jr., who ably represented the Valley of Virginia in Congress for four terms and was later counselor to President Ford. He presented a moving and fitting tribute to this modern-day martyr.

Mr. President, I ask that the text of Mr. Marsh's eulogy be printed in the RECORD.

The text follows:

TRIBUTE TO THE LATE DR. FERENC NAGY

I spoke with President Ford yesterday in California about the passing of Former Prime Minister Ferenc Nagy. He asked that I read at the services today the telegram of sympathy he had sent to Mrs. Nagy and the family:

"I was deeply saddened to learn of the passing of your husband and father. Prime Minister Nagy was truly a great man and great leader, an example to all who value freedom and the Democratic process. His achievements will be long remembered and his memory greatly honored."

GERALD R. FORD.

Ferenc Nagy in his book, "The Struggle Behind The Iron Curtain," said:

"In the natural order of things, a man must face the loss of those who brought

him into the world, guided his first steps, and loved him most unselfishly."

It has been more than three decades since I met the man whose memory we honor this day. It was in Budapest in the summer of 1946.

He was the Prime Minister of his country. Hungary's last freely elected one. I was a young officer in the American Army. A member of the security guard chosen to return to Hungary their gold reserves surrendered in the previous year to the American Army and kept in vaults in Frankfurt, Germany, since the end of World War II.

To mark the return of the valuable gold treasure essential to stabilize the currency, there was an official state dinner. Seated as far down the main table as protocol could put a Second Lieutenant, I remember especially well that 7th of August evening. It was my 20th birthday—and someone told the Prime Minister. When the dinner ended, he sent for me. His warmth and humanity quickly set me at ease. He congratulated me on the day, thanked me for what my country had done, and as a memento of the occasion, penned a greeting across my invitation. We shook hands and he bade me farewell.

But I never forgot him, or his country. I came away from the experience with a certain resolution, a greater sense of purpose.

Sixteen years later, our paths would cross again. But roles and places were reversed. The capital city was Washington. He was an exile. I was a public official. He came by my office in the Cannon Building on Capitol Hill to wish a Freshman Member of Congress from Virginia well.

We reminisced about that evening in Budapest. His warm, easy manner had not changed. I was struck by the circumstance then, and on his subsequent visits when I was a Congressman and later a Counsellor to the President, as to how we had first met. Somehow I wanted to reverse the roles, feeling that he, rather than I, should be in the position of leadership. Although I would only see him infrequently, his example was my silent counsel.

Looking back, I realize my feelings were those of all who knew him. It was respect for a man of unusual intellect, talent and character. A man who stood for something of value.

Ferenc Nagy never became an American citizen. But he did become one of Virginia's adopted sons. It was appropriate that he would select the Old Dominion. He was testimony to the philosophy of Jefferson and the other founders of our great Nation.

Jeffersonian Aristocracy is defined as an aristocracy of talent and virtue. Ferenc Nagy was truly a Jeffersonian Aristocrat. From a peasant background of which he was intensely proud, be became a Prime Minister.

A child of the soil of his native land, he returned to the soil as a way of life in his new home. Although he lived near the banks of the Potomac, his heart still belonged on the Danube. He wrote:

As I walk the Virginia Furrows, the glowing vision of Hungary in this new world appears.

Dwelling close to the Nation's Capital with its monuments of bronze and stone to those who made the American heritage, he was a living monument to Freedom's real meaning.

The victim of lies, deceit and dishonesty, he remained an honest man.

Visited by disappointment, he never gave up hope.

Persecuted and oppressed, he never lost his sense of justice nor became an oppressor.

Living through embittered years, he never became a bitter man.

Having known both pomp and circumstance, and held the reins of power, he never lost his humility.

He was a platinum rod for other public officials to measure their own performance.

He was a man of quiet valor.

His loss is not just Hungary's loss. It is America's loss. It is Freedom's loss.

Now, nearly one-third of a century since we first met, I join with you to honor one whose life became a symbol. Whose ideals and ideas were never crushed by the Police State nor intimidated by an Iron Curtain. His weapons against tyranny were those qualities of the human spirit of truth, courage and honor.

Living in a foreign land, he still held within his heart the hopes and the aspirations of his people whom he loved.

Let those of us who share his dream of liberty remind ourselves of the cause to which he dedicated his life when he wrote:

By the grace of destiny, democracy shall yet embrace the world.

Ferenc Nagy—a child of faith.

Devoted husband and loving father.

Friend of Man and Freedom's Son.

Peasant of Bisse and Prime Minister of Hungary.

He was a man who had a rendezvous with Destiny.

Surely, in the ancient doctrines of our Presbyterian Church, he was one of God's Elect.●

REMARKS OF WILLIAM A. ANDRES

● Mr. DURENBERGER. Mr. President, Minneapolis recently hosted the annual meeting of the National Conference of State Retail Associations. Retailers and top executives from their 50 State trade associations were in attendance.

The highlight of the 2-day conference was an address by Mr. William Andres, chairman and chief executive officer of the Dayton Hudson Corp.

Dayton's was founded 75 years ago. It became Dayton Hudson in 1969. Today it is the seventh largest retailer in the Nation. Its 600 stores operate in 44 States with sales over $3 billion.

The roots of this American success story can be directly traced to the tradition of family philanthropy begun by company founder George Draper Dayton. His five grandchildren, all of whom are active in Minnesota business and civic affairs today, have contributed substantially to their community for decades. This Dayton family tradition has become their cornerstone of corporate policy.

Quoting Dayton Hudson Executive Committee chairman, Ken Dayton, Andres said:

We believe that business exists for one purpose only: to serve society. Profit is our reward for serving society well. Put another way, we at Dayton Hudson believe the business of business is serving society—not just making money.

True to this philosophy, Dayton's has for 34 years contributed 5 percent of their profits to the communities in which the corporation operates. Following this example, 45 Minnesota-based companies now do the same.

In an era of criticism, suspicion, and reexamination of large institutions—whether they be business, labor, or government—it is refreshing to point to a major American corporation that believes in making the community in which it operates a better place to live and work.

In introducing Mr. Andres, Wendy Borsheim, president of the Minnesota Retail Merchants Association, said:

Each of you has a local company that is synonymous with the good things in your state. In Minnesota, that company is Dayton Hudson.

Mr. President, I wholeheartedly concur with this statement and ask that Mr. Andres' keynote address be printed in today's RECORD.

The address follows:

KEYNOTE ADDRESS OF WILLIAM A. ANDRES

I'm honored to share my views on "Retailers and the Public Interest" with the participants of this important national conference of state retail associations. I firmly believe the A.R.F. (and the state associations) are in a strategic position to make a difference, both to consumers and to retailers. And I believe your importance to retailers like myself is growing every day. So I am delighted to accept your invitation to speak.

My purpose here today is three-fold:

First, to give you some background on Dayton Hudson Corporation—and how we approach our relationship with the public and public officials.

Second, to underscore our view that serving the public interest—the consumer—is the crucial element in an effective governmental relations program.

Third, to briefly identify other key elements of a truly successful lobbying program—and the key role you can (and do) play in strengthening that effort.

Let me begin by briefly describing Dayton Hudson Corporation, to give some perspective on how we approach both the public and elected public officials.

Dayton Hudson is a diversified national retail corporation formed 10 years ago by the merger of Dayton's of Minneapolis and Hudson's of Detroit. Through a series of internationally-developed strategies and acquisitions, we have grown to become the seventh largest among the nation's nonfood retailers. In April 1979 our sales passed the $3-billion mark—having reached $2 billion just a year and a half earlier. So our growth has been quite rapid.

Dayton Hudson approaches the customer through four separate and distinct retail strategies. They are: department stores such as Dayton's, Hudsons, Diamonds and John A. Brown; low-margin stores such as Lechmere and Target; specialty stores such as regional fine jewelry stores Shreve's, Caldwell's and Peacock, and our national bookstore chain B. Dalton; and Mervyn's, a softlines chain based in California.

That, in capsule form, is a picture of Dayton Hudson today. But it is a very incomplete picture without some discussion of our corporate philosophy of service—particularly our philosophy of serving the customer. My predecessor as CBO at Dayton Hudson, Kenneth Dayton, who now chairs our Executive Committee, may have said it best:

"At Dayton Hudson Corporation, we believe that business exists for one purpose only: to serve society. Profit is our reward for serving society well."

To put it another way, we believe the business of business is serving society—not just making money. There's a subtle difference.

For our corporation, serving society begins with the way we do business—clean stores, courteous employees, quality merchandise with "satisfaction guaranteed," honest dealings with our suppliers, full disclosure with stockholders and consumers alike. But it doesn't end there. Our sense of social responsibility extends to contributing an amount equal to 5 percent of our federally taxable profits to charitable purposes. Our objective: To enhance the quality of life in the communities where we operate, making them

better places in which to live, work and do business. We officially adopted the Five Percent Policy 34 years ago. Now 45 Minnesota-based companies do the same.

Dayton Hudson's approach to serving the community goes beyond philanthropy to a partnership with the community that is perhaps unique to its structure and emphasis. Ours was the nation's first corporation to establish an entire unit devoted to improving the community—our Environmental Development Department. Today, countless other corporations have followed suit—we're happy to say—and such departments are now commonplace. Under the professional management of Wayne Thompson, former city manager of Oakland, California—who heads the department—our legislative program is openly executed and scrupulously bi-partisan. It is done in full cooperation with the Minnesota Retail Merchants Association—under Wendy Borsheim's able leadership. And it has earned Dayton Hudson the respect of both political parties. But the time our corporate executives give to the community and to public affairs is what is outstanding—and for good reason. We make it part of their performance appraisal—with goals, objectives and systematic review. At Dayton Hudson, the fact is: we don't have time for executives who don't have time for their communities.

This philosophy has considerable impact on the way we approach our relationships with public officials. Our public affairs unit sees as its job the mobilization of all our executive resources in dealing with the public decision-making process. In a way, its approach is identical to the retail training operation—whose job is not to *do* the training but to get line retail executives to do the training.

This principle works well in the government relations area, too. The involvement of our executives in our Minnesota legislative program has grown every year, and we are proud of it. At this year's "Box Score Luncheon"—where we report on the session to executives who were involved—there were more than 120 executives on the invitation list. Now we are gradually extending our executive involvement to other states and Washington, D.C. with the Corporate Action Network, which is based on the Minnesota experience. For the most part, we rely on your associations and our national associations. But we are building our direct involvement in other key states and the nation's capital. We have a great deal of work to do before our network is complete—or completely effective. But we have growing evidence of our potential for impact—and we are committed to being informed, being ready, and being available. As we grow and expand, you will hear more from us, see more of us, and be able to depend more on us.

The Dayton Hudson approach is more than structure and strategy—it is substance, as well. Our legislative program includes public interest issues in addition to those that directly affect our "bottom line." We have long made it a practice to lobby in the public interest—funding for the arts, for public housing, and other government commitments essential to the healthy growth of our communities. A few years ago Minnesota business helped wage a campaign to increase state funding for the arts. In one session—in this state which is largely rural and quite populist in attitude—on a unanimous vote in both houses, state funding for the arts increased fourfold.

This past legislative session—in addition to the items of obvious "bottom line" concern to retailers—we supported a number of other legislative proposals we think will contribute to an improved economy for all, including: $800 million in state bonds to help low-and middle-income Minnesotans buy or remodel homes; a further increase in state funding for the arts; $25 million for Shade Tree Disease Control, a severe problem in our metropolitan areas.

Some of our legislative successes have increased our taxes, but all of them increase our earnings—now and for years to come—because they strengthen the quality of life for the people of our communities. In a recent national survey of MBA graduates, Minneapolis-St. Paul ranks No. 1 in the nation for culture—and No. 1 for its schools. We're No. 4 in over-all quality of life. We know that's important in attracting quality executives here—and in keeping them, once they're here. In fact, former Gov. Elmer Andersen—the CEO of Fuller Co.—once said, "Minnesota businesses face two tough problems: first, getting people to come here; second, getting them to leave."

One final point regarding our government relations approach: it has a positive thrust, not just a negative one. We recognize, of course, that opposing bad legislation will always be a necessity. But we feel that proposing positive alternatives is an approach that is essential to our continuing credibility and success, in the long run. An excellent example is Lifeline Utility Rates—where business subsidizes energy costs for the poor and the elderly—which simply drives costs up for everyone, helps some who don't need it, and still doesn't offer much help to those truly in need. Instead, we have proposed a positive alternative: The Lifeline Rate Break Credit under which a direct income subsidy would be given to qualified people in need out of tax revenues. We think it would be a more equitable and more efficient solution to a very urgent problem. And, the important point is, it takes us out of the posture of simply being *against* something.

Focusing on the consumer—the public interest, if you will—is, in my opinion, the most significant single element in a truly effective public affairs programs. That is my central thesis here today—and I'd like to tell you why. The first reason we must put the consumer first is: it's our job. After all, representing the customer is what retailing is all about. The basic job description of a retailer is to serve as the "customer's purchasing agent." It's the very foundation of our business. So it should be a natural role for us in public issues as well.

For example, the basic argument retailers are making in the campaign to reduce tariffs on imported goods is that it's in the customer's long-term best interests. Expanded trade allows us to act as the customer's purchasing agent all over the world—with considerable benefit to customers and retailers alike.

The second reason to focus on the consumer: It's good for business. Looking out for the customer is the only sure-fire way to long-term financial success in retailing that I know of. In annual strategy sessions with our operating companies, we review plans for improving our business: plans for improving gross margins; plans for reducing expenses; plans for increasing merchandise turnover. But we have learned from experience that there is one overriding question that must be answered first: "How can we better serve our customer?" The balance of the questions tend to take care of themselves.

It's a successful merchandising philosophy that I think has stood Dayton's—and Dayton Hudson—in good stead over the years. And I think it applies equally well to the public affairs area.

The simple fact is, as consumers prosper, so does our business. First you have to protect the market before you can begin to protect your market share. So I firmly believe retailers should be at the forefront of the "consumer movement" helping to give it some direction, rather than reacting negatively to it. Frankly, I believe that many businesses—and not just retailers—have been shortsighted in seeing consumerism as a problem with which they must contend, rather than a business-building opportunity available to all.

The third reason retail government relations programs must focus on the customer is: It's the most effective approach. There's no doubt about it, there's a new breed of legislator in Congress these days—and in our state capitols as well. They're generally younger, better educated, more independent, less party-oriented and more constituent-oriented than in the past. For whatever reasons, this "new breed" of legislator is responding less readily to traditional pressures from so-called "special interests"—even from the President or the Governor. Because of this trend, the only way for retailers to have credibility in our dealings with today's legislators is to speak for the consumer—to put our legislative proposals to the ultimate test and ask, "What's in it for the customer?"

A consumer-focus is only the first of several crucial elements of a truly effective governmental relations program. In my opinion, other essential components are these:

To establish priorities

To mount a united front, and

To achieve grassroots participation by retailers.

Because they are so important, I'd like to take a few minutes to discuss them with you.

First, priorities. It would be highly inappropriate for me to stand here and tell you about the multitude of issues that face retailers on the legislative front. You're the experts. You're on the front lines. You don't have to hear that from me. In most states where we do business, we are almost totally dependent upon you and your state retail associations to protect our interests in the state capitols. As our Target operations expand, this fact is becoming more clear every day—and Target is increasingly taking an active role in state associations.

But my point is that because the potential for concern is so vast, it is absolutely essential to establish some legislative priorities—to identify a few key issues that have more relevance to retailers than others and focus the limited staff power in that direction. Otherwise our efforts become so diluted as to be totally ineffective. This is a fact of life that has come home to retailers in recent years, and recent results on the national front indicate that prioritization really pays.

The second element is to mount a united front on those key issues. Business has learned its lesson by watching how organized labor works within the legislative process. I think—especially because of the fine work of the American Retail Federation and the NRMA—concerted efforts have been made in key national issues of concern to business, with highly commendable results. It may be premature to say we've finally gotten "our act together," but it certainly appears that we have made important progress.

What was for years a steady string of legislative victories by organized labor appears finally to have slowed, and a more unified voice of American business is beginning to be heard once again. A united front by business helped defeat many measures that looked good in theory—but which, in practice, would have been actually anti-consumer. In addition, retailers were successful in extending investment tax credits to rehabilitating retail structures, and the new international trade treaty, although not all we would have liked, certainly is *more* to our liking (and more of a benefit to the consumer) than it would have been without a united front.

Another reason for these positive results is participation by retailers at the grassroots level—the final element of an effective campaign. Whether in Washington or St. Paul

or Sacramento or Albany, legislators respond to calls, letters and personal contacts from their constituents more readily than to paid lobbyists. Grassroots lobbying is a process that pays dividends both ways. The local retailer—whether a local Target store manager or a CEO like myself—learns more about the legislative process and avoids "surprises." Moreover, business ceases to be a "faceless constituency" to those in positions of power within government, and it becomes more difficult to stereotype business, once we become local individuals—tax-paying voting constituents.

In conclusion, we must give credit where credit is due—and compliment the American Retail Federation for its significant contribution to these new heights of effectiveness. I firmly believe the national federation and the many state retail associations represented here today are playing a strategic role in the improved relations between retailers and government. Your decentralized approach facilitates the participation of retailers like myself. Your groundwork makes it easy for retail executives like me to pick up the telephone, or write a letter, and make a contact with a member of Congress on a specific matter, with a specific message. And I applaud those many instances when your instructions are specific, not vague—because vague pleas for help require more time and are easy to put aside in favor of more pressing matters.

These same strategies that I have outlined today—which I feel have been so effective at the national level—can, and should, be used at the state level to improve our effectiveness there, as well: priorities; a united front; full participation by line retail executives.

More important, if we rededicate ourselves to the most crucial task—representing the consumer's interests, as well as our own more narrow ones—there are no limits to the heights of effectiveness we can achieve. Working together, I am convinced we can continue our progress—and advance the common interests of retailers and consumers alike.

Thank you very much.●

THE TRAVEL INDUSTRY

● Mr. McGOVERN. Mr. President, as a result of a few serious spot shortages of gasoline this summer, our Nation's third largest industry—travel and tourism—has experienced a critical financial decline. Thousands of families across the Nation have altered their plans for vacations and business trips due to the perception that the gasoline shortage is nationwide. The highly publicized shortages on both the east and west coasts have had the effect of warning the American public not to travel anywhere.

I am among the first to admit that this country has a serious energy problem on its hands, and that swift action by the administration and the Congress is essential to move toward energy self-sufficiency. However, I do not think it necessary or wise to tell the American public to stay at home. There are several steps we can and must take to conserve motor fuels, but it is not essential to do this at the expense of family vacations and the tourism industry.

For the most part, South Dakota—which is heavily dependent on tourism—has substantial gasoline supplies. Many other States share this position. Those regions receiving regular influxes of travelers and tourists also receive gasoline allocations higher than other regions. Consequently, this year we have plenty of gasoline but no visitors.

Unfortunately, this perception of a nationwide gasoline shortage has caused tourism levels in South Dakota to decrease by over 40 percent in some cases. Any continued decline could result in bankruptcies and a serious impact on our State's economy.

I believe that the administration, in concert with the affected States, should make an effort to let the public know where gasoline supplies are available. If the tourism industry is allowed to recapture some of its losses for the remainder of the summer, we may be able to avert numerous bankruptcies and in some cases, regional requests for economic disaster aid.

Mr. President, I ask that a letter from one of my constituents, Mr. Jerry Gill of Rapid City, S. Dak., be printed in the RECORD.

The letter follows:

JULY 9, 1979.

Senator GEORGE MCGOVERN,
Dirksen Office Building,
Washington, D.C.

DEAR GEORGE: Thank you for meeting with the Black Hills Tourism Industry last Monday, July 2, 1979, in Rapid City.

I am sure you perceived the real truthfully business crisis that our industry is now in the midst, and the very real hardships and unavoidable employee layoffs that are now happening, and the many bankruptcies that may occur by the end of the season and certainly before 1980, if this downturn of travel is not corrected very shortly!

You do know, I am sure, that Mt. Rushmore National Memorial, our state's best barometer of travel, is down 23 percent in 1979 over 1978 for the first six months, down 27 percent in June 1979 over June of 1978, and for the first 8 days of July is down 40 percent over the first 8 days of July 1978. Projections for the balance of the summer through Labor day are just as bleak. As there is now only 8 weeks left of our peak business season, any turn around of this trend must be immediate if we are to avoid the dire circumstances which will surely follow such a debilitating season. Also, very similar trends and figures are the same throughout the traditional summer travel areas in the west and midwest.

During the July 2, 1979, meeting here, you stated you would try to get some of your fellow Senators from Western States to join you in announcing on the Senate Floor that there is gasoline availability in South Dakota and the other Western States, and that tourists can travel without a fear of shortages. That you would do this on a weekly basis now through October. Please follow through on this. We need all the help we can get!

Further, I still believe that you and other Senators from Western States must impress on President Carter and his Department of Energy the very real crisis our industry is now in, that a very positive announcement be made from the White House and the DOE, that gasoline is available in vacation areas, and that all families should take the vacation of their choice.

Further, that daily gasoline reports be given by the national TV and radio media, right along with their weather reports, as a regular segment of their news and weather, a "Gas Map" same as a weather map, truthfully showing areas of problems and areas of no problems. This information is available from AAA sources and other sources. Such urgings from Congressional leaders such as yourself, DOE and President Carter, to the national media people to present such a program would be received favorably I would hope, and continued insistances on such a report would precipitate I believe a favorable cooperation by the media.

George, the time for procrastination, the time for action, has long past. Immediate positive measures must be taken.

Sincerely,

JERRY GILL.●

A NEW OPPORTUNITY FOR HEALTH CARE

● Mr. DURENBERGER. Mr. President, today's New York Times carries an interesting column by Robert Heyssel on the cost of health. Mr. Heyssel is director of Johns Hopkins Hospital. The point of the article is that it would be a mistake to believe that further expansion of the Government's role in health is an appropriate solution to problems of health care cost and delivery.

Mr. Heyssel points to a number of actions which should be taken to correct faults in the existing health system rather than rebuilding the whole structure as some have proposed. The key is competition. Competition to replace the inflationary cost reimbursement procedure which is a major problem with the existing system. The approach suggested by Mr. Heyssel is similar to legislation which I proposed last week, the Health Incentives Reform Act. My proposal is intended to provide effective and efficient care at a reasonable cost. As Mr. Heyssel states, "competition will work and can provide high-quality accessible care."

I would urge my colleagues to read Mr. Heyssel's article which follows:

THE COST OF HEALTH

(By Robert M. Heyssel)

BALTIMORE.—The debate over the medical-care "crisis" and how to solve it may well have reached a crisis of its own.

Out of sheer frustration with the plethora of conflicting facts, polls and proposed solutions, we may find ourselves willing to adopt a "do something—anything" approach in order to put an end to this confusing and exhaustive debate.

It would appear that no problem or issue in American society today can be characterized as other than a "crisis." Perhaps the attention of the citizenry can only be gained by warning it that all or part of the Republic is in danger of imminent collapse.

To ignore the health-care-cost problem or deny that it is of concern to Americans would be wrong.

But to tell the American people that a comprehensive national health insurance program will get them more medical care at no more cost or only slightly more is equally wrong.

To argue that costs will not rise as rapidly with a full-blown system of national health insurance ignores the experience of other nations.

There is a series of problems in American medicine today, not a "crisis." These problems are not peculiar to any of the highly developed countries, nor difficult to understand in a historical context.

The fact is that our problems grow directly out of a broad range of scientific discoveries, of societal change and political decisions.

All of them stem from success: success in biology and physics, and the application of that knowledge to medicine.

While it's popular to blame the doctors, medical schools and the hospitals for the "crisis," one might as well blame the physicists. They, after all, helped put together the framework of understanding and the

technology that made possible modern biological investigation.

This, in turn, led to the explosion of medical technology that we have today and the demand of the people that it be made widely available to everyone, a demand responded to by the Government.

Research and technology have changed the product and the results of medical care in the last two decades. We are not paying for iron lungs and orthopedic repair of polio-damaged limbs. Pneumonia does not kill 30 percent of its victims. But we are paying for kidney transplants, total hip replacements, coronary bypass procedures, and radiation treatments, along with sophisticated emergency care of severe trauma patients. A day in a cancer hospital can cost up to $600. Each new medical or scientific breakthrough improves the quality and the outcome of care, but in most instances the cost of care rises proportionately.

Incorporating the latest advances in medical treatment while combating the forces of inflation in supplies, labor and energy is a daily challenge for hospital administrators and others seeking to provide quality care at a reasonable cost.

Solving the health care cost problem may be difficult, but we should capitalize on present strengths and not be crisis-oriented.

Stimulating competition, forcing some changes in the current system where needed, is in the long run a less risky and better alternative than the proposals that seek wholesale change under the legislative and regulatory aegis of the Federal Government.

We should not set out to dismantle the system we've put in place with great effort and at great expense.

First, there is a need to change the way the medical system pays both physicians and hospitals. The customary fee-for-service system for surgeons and physicians is a mechanism constructed to lead to over-use of many available procedures. We have a successful model of one alternative—the health maintenance organization—and we should build on it. There is evidence that competition will work and can provide high-quality accessible care.

Second, we must move away from cost reimbursement for hospitals and toward incentives and pricing policies that create something more akin to a free market.

Third, we need to establish an element of personal choice and responsibility in the payment system. We need to establish a basic but clearly limited set of covered health benefits that all third-party payers must offer. There should be sharp limitation on hospital coverage, based on diagnostic and medical condition, with no or partial payment for purely elective or cosmetic procedures or treatment, and full coverage for necessary or vital care related to disease or illness. Purchase of insurance to cover the elective or cosmetic care must be paid for by the recipient or counted wholly as taxable income if provided as a fringe benefit.

Finally, we need to understand that our way out is not through cutting off research money, maintaining the status quo through regulation, or sliding into a federally dominated system through federally financed and regulated national health insurance.

Rather, relief will come by stimulating new knowledge and new technology and through increased competition brought about by restructuring the incentives and choices for hospitals, physicians, and the consumers of medical care.●

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session for not to exceed 1 minute to consider the nominations on the calendar beginning with "New Reports" on page 1 and going through page 2, going through page 3, and omitting Calendar Nos. 250 and 251 on page 4, but proceeding then with the nominations placed on the Secretary's desk in the Air Force, Army, Navy, and Marine Corps.

Mr. BAKER. Mr. President, reserving the right to object—and I will not object—I reserve only for the purpose of advising the majority leader that the nominations identified by him are cleared on our calendar and we have no objection to proceeding to their consideration and their confirmation.

Mr. ROBERT C. BYRD. I thank the minority leader.

There being no objection, the Senate proceeded to the consideration of executive business.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

IN THE ARMY

Sundry nominations in the U.S. Army.

IN THE NAVY

Rear Admiral Kent J. Carrol, U.S. Navy, to be Vice Admiral.

INTERSTATE COMMERCE COMMISSION

Darius W. Gaskins, Jr., of the District of Columbia, to be a member of the Interstate Commerce Commission.

Thomas A. Trantum, of Connecticut, to be a member of the Interstate Commerce Commission.

Marcus Alexis, of Illinois, to be a member of the Interstate Commerce Commission.

NOMINATIONS PLACED ON THE SECRETARY'S DESK IN THE AIR FORCE, ARMY, NAVY, AND MARINE CORPS

Sundry nominations in the Air Force, Army, Navy, and Marine Corps which had been placed on the Secretary's desk.

Mr. ROBERT C. BYRD. Mr. President, I move en bloc to reconsider the vote by which the nominations were confirmed en bloc.

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

The motion to lay on the table was agreed to.

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

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

(All nominations today are printed at the end of the Senate proceedings.)

ORDER FOR RECOGNITION OF SENATOR CHURCH TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the two leaders are recognized, each for not to exceed 1 minute, tomorrow morning, Mr. CHURCH be recognized for not to exceed 15 minutes.

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

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

ORDER FOR CONSIDERATION TOMORROW OF NUCLEAR REGULATORY COMMISSION AUTHORIZATIONS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that upon the completion of the order for the recognition of Mr. CHURCH tomorrow, and no later than 9:35 a.m., the Senate resume consideration of the Nuclear Regulatory Commission authorizations bill.

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

RECESS UNTIL 9:15 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 order previously entered, that the Senate stand in recess until 9:15 a.m. tomorrow.

The motion was agreed to; and at 6:40 p.m., the Senate recessed until tomorrow, Tuesday, July 17, 1979, at 9:15 a.m.

NOMINATIONS

Executive nominations received by the Senate on July 16, 1979:

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Daniel Edward Leach, of Virginia, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1984. (Reappointment)

IN THE COAST GUARD

The following temporary officers of the U.S. Coast Guard for promotion to chief warrant officer, W-2:

John P. Delong	Theodore G. Roberge
Robert D. Olsen	Louis R. Skorupa
Paul D. Luppert	Martin L. Phillips
Paul R. VonProtz	

The following temporary chief warrant officers, W-2 of the U.S. Coast Guard to be permanent chief warrant officers:

Paul Mularchuk	John C. Simmons
Jerry A. Paxton	James B. Reynolds, Jr.
Robert J. Dinehart, Jr.	Wallace R. Hunter
Urlich R. Warnat	Resta N. Cauley, Jr.
Thomas E. Dembinsky	Ronald A. Perry
Cornelius Howlett	Gerald W. Schmer
Robert R. Shoop	Raymond C. Sanford
Bryan J. Norman	James F. Fromm
David G. Delorme	Everett P. Clark II
David T. Powell	John D. Clark
Duane K. Herbert	Claude D. Pendegraph
Alvin G. King, Jr.	William G. Wetherington, Jr.
Jack C. Wilson	Jerry W. Lemon
Donald C. Roark	Ralph W. Cromley
Paul M. Short	Harold R. Springsteen
John A. Kress	Charles F. Skelly
Walter L. Carr	Leon F. Simmons
Clarence L. Lusk	Samuel G. Maness
Raymond A. Morris, Jr.	Barry J. Cobaugh
Norman E. Lemoine	Gerald S. Taylor
Ottis D. Raybon	John D. Merrill
Robert C. Feduik	William E. Mulkern
Horace V. Johnson	Robert O. Rucker
David R. Demers	George M. Allen
Bobby B. Butler	Raymond T. Ulrich
James T. Beckermann	Earl L. Reed
Norbert V. Amano	Richard J. McGrew, Jr.
Rowlin J. Browning	James J. Kohlhepp
Marsden H. Warren, Jr	Jimmy L. Holbert
Julio R. Salazar	Charles L. Gang
Lemo B. Rohrig	Dale L. Walker
James W. Long	

Maurice E. Smith
Malcolm O. Bassett
Robert E. Wiseman
Robert N. Gardner
Earl D. Beegle
John P. Camey
Michael W. Dubose
William P. Zazzo
Howard P. Jackson
Thomas J. Reidy
Rafael Rivera
Richard M. Meidt
David D. Bradney
Stephen D. Willmann
Richard S. Argo II
Edward F. Clancy, Jr.
Timothy H. Harris
William R. Johnson
Keith E. Norden
Timothy F. Manry
Joseph H. Hoffman, Jr.
David L. Grant
Braxton L. Holland
Ronald W. Hunt
William C. Kennedy, Jr.
Harry J. Dasher
Guy R. Sorensen
John F. McCaslin
John A. Pellegrini
Joe B. Atterbury
Hubert L. Hood, Jr.
James P. Mackay
Timothy R. Mayer
Alfred P. McNab III
Charles W. Mattoon
James D. Agar
Archie C. Goodwin
Edward D. Huckeba
Jon J. Huff
Norton C. Chastain
John A. Giehl
John C. Blackford
Jesse J. Findley
Robert B. MacKenzie
Leon F. Boland
Alva Cooper
John W. Head
Don A. Mahoney
Michael F. Abbott
John M. Powers
Craig A. Reynolds
Richard E. Spinney
Billy R. Hairgrove
Newman L. Cantrell
Larry A. Everman
Daniel R. Oakley
Donald W. Cowell
Frank G. Dzieciolowski
James D. Caudill
James E. Bradshaw
Robert W. Greiner
Julian R. Cates
Donald E. Pace
Gordon S. Carter
Thomas D. Hetsler
Roger G. Maxwell
Anthony J. Trackerman
Curtis A. Forbes
James H. Crimmins, Jr.
Frank M. Memmesheimer
Richard S. McNair
Kenneth R. Chambers
Robert J. Moynihan, III
Thomas H. Specht
James R. Brown
John H. Marx
Cornelius A. Johnson, Jr.
Carl R. Skinner
John E. Niemi
Maurice W. Gardner
James L. Cropper, Jr.
Charles D. Smith
Robert L. Beauparlant
Charles K. Conner
David S. Stonebrook
James R. McKnight, Jr.
David G. Deabenderfer
Robert J. Campbell
William L. Wagner
Thomas E. Chapman
Harold W. Willis, Jr.
Louis P. Nanni

The following temporary officers of the U.S. Coast Guard for promotion to chief warrant officer, W–3:

James D. Stribling
Robert T. Douville
James W. Gydish

The following temporary chief warrant officers, W–2 of the U.S. Coast Guard to be permanent chief warrant officers W–3:

Charles S. Whitehouse
John A. Tolejko
Gerald D. Johnson
John B. Beasley
Frederick K. Hunke
Rutrell Martin
Clarence L. Wentworth, Jr.
Ceasar A. Paras
Ronnie M. Hudson
James R. Bailey
Charles G. Lacey
William C. Held, Jr.
David E. Eslick
Clifford W. Heideman
James R. Stonelake
Herbert C. Self, Jr.
Robert D. May
Carroll V. Wince
Warren J. Toussaint
Edward E. Schwabe
Faye A. Amundson
Donald K. Robinson
Frederick H. Allen
Billy M. McCullough
William G. Uhrig
Luman E. Heji
Glenn A. Lewis
John E. Schwartz
Robert L. Buettner
Alva C. Anderson
Harry W. Sites
Raymond Wild, Jr.
Charles E. Hickey, Jr.
Harold E. Walters
Carl T. Goretski
Florencio D. Pascua
William T. Lancaster
James A. Mock
William C. Brizendine
Patrick E. Newman
Larry M. Luzader
Albert J. Becker
Edward R. Pritchett
Robert V. Venables
Carl W. Murry
David M. Johnson
Bruce R. McMahill
Charles A. Teaney
Ronald A. Messura
Robert A. Warbutton
David R. Gay
Peter R. Kelleher
Robert E. Armstrong
Wildon E. Steele
Edward J. Hodgdon
John D. Seaman, Sr.
William H. Aldrich
Ronald G. Walters
James A. Carpenter
Charles F. Maher
Robert L. Couchman
Raymond E. White III
William T. Myers
Timothy P. Riordan
Richard V. White
Armond K. Tennier
Albert J. Klapetzky
Ernest W. Yost
Theodore S. Jones
Wayne H. Carlton
Robert A. Buotte
Richard C. Carr
Ralph W. Willard
Page J. Shaw
Franklin D. Yelton
Troy P. Rhodes
Robert A. Cushing
Frank E. Kopszywa
Wesley G. Shallock
Charles J. Castello
Harry T. Hill
Gary S. Austin
Tommy W. Hancock

The following temporary officers of the U.S. Coast Guard for promotion to chief warrant officer, W–4:

Joseph E. Tamalonis
James W. Amos
Richard A. Kirkman

The following reserve officer in the U.S. Coast Guard to be a permanent commissioned officer in the grade of lieutenant (junior grade):

Elias J. Moukawsher

The following officers of the U.S. Coast Guard for promotion to the grade of lieutenant (junior grade):

Richard Y. AtLee II
Malcolm Z. Pittman
Phillip L. Biedenbender
Karl E. Sanders
Edward A. Blackadar
Scott D. Bair
William S. Asprey
David R. Gomez
Mark E. Allen
Kenneth Miller
Kenneth C. Davis III
Joseph B. Martin
Lional R. Munsey

IN THE AIR FORCE

The following officer for appointment in the Regular Air Force, in the grade indicated, under the provisions of section 8284, title 10, United States Code, with date of rank to be determined by the Secretary of the Air Force.

To be captain

Brainerd, Helen A. [redacted]

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with the dates of rank to be determined by the Secretary of the Air Force.

MEDICAL CORPS

To be lieutenant colonel

Marshall, Angus, [redacted]

To be major

Hathaway, Ralph E., [redacted]
Vandersarl, Jules V., [redacted]

To be captain

Charlat, Richard A., [redacted]
Gangitano, John L., [redacted]
Walker, Edgar A., Jr., [redacted]

To be first lieutenant

Lee, Bradford H., [redacted]
Tice, Andrew W., Jr., [redacted]

DENTAL CORPS

To be captain

Houston, Glen D., [redacted]
Wendt, Stanley L., Jr., [redacted]

To be first lieutenant

Lipsinic, Francis E., [redacted]
Murata, Steven M., [redacted]

The following persons for appointment as Reserve of the Air Force, in grade indicated, under the provisions of section 593, ttile 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated.

MEDICAL CORPS

To be colonel

Blattman, John E., [redacted]
Hansen, Robert W., [redacted]
Huey, James R., Jr. [redacted]

To be lieutenant colonel

Brenner, Harris, [redacted]
Chai, Kyong, Suk, [redacted]
Clark, Max A. [redacted]
Janis, Leon O. [redacted]
Kampfer, Merlin W., [redacted]
Polonsky, Leonard, [redacted]
Ridge, Charles H. [redacted]
Weiss, Gerald N. [redacted]
Zilveti, Carlos B., [redacted]

DENTAL CORPS

To be lieutenant colonel

Eyman, Russell G. [redacted]
Wright, Gordon L. [redacted]

The following person for appointment as Reserve of the Air Force in the grade indicated, under the provisions of section 593, title 10, United States Code.

LINE OF THE AIR FORCE

To be lieutenant colonel

Thomas, James G. [redacted]

The following officers for promotion in the Air Force Reserve, under the provisions of sections 593 and 8376, title 10, United States Code.

MEDICAL CORPS

Lieutenant colonel to colonel

Edinger, Albert G., Jr., [redacted]
Winter, Oliver S. [redacted]

LINE OF THE AIR FORCE

Major to lieutenant colonel

Baker, Robert L, [redacted]
Bridge, James E., [redacted]
Carlson, Myron R., [redacted]
Fischer, Joseph W., [redacted]
Gordon, Massalena M., [redacted]
Hayslett, Hilbert H., Jr., [redacted]
Holder, William W., [redacted]
Leppa, Larry D., [redacted]
Lindeke, Ronald C., [redacted]
McConoughey, Marvin L., [redacted]
McKimmey, Jerry L., [redacted]
Rochester, James S., [redacted]
Snell, Richard D., [redacted]
Sweeting, Gerald W., [redacted]
Wedra, Arthur H. [redacted]

MEDICAL CORPS

Andre, Donald A., [redacted]
Cabebe, Fernando S., [redacted]
Gallardo, Salvador A., [redacted]
Sharp, John R., [redacted]

The following-named Air Force officer for reappointment to the active list of the Regular Air Force, in the grade of lieutenant colonel, Regular Air Force, under the provisions of sections 1210 and 1211, title 10, United States Code, with active duty grade of temporary lieutenant colonel, in accordance with sections 8442 and 8447, title 10, United States Code.

LINE OF THE AIR FORCE

Asselanis, George K., [redacted]

IN THE AIR FORCE

The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with dates of rank to be determined by the Secretary of the Air Force:

To be captain

Abravaya, Ralph I., [redacted]
Absher, Lennol K., [redacted]
Ackland, Charles T., [redacted]
Adamovich, Daniel A., [redacted]
Adams, Alan L., [redacted]
Adams, Rolla C., [redacted]
Adcox, Thomas A. [redacted]
Agin, Ronald W. [redacted]
Agostini, Daniel A., [redacted]
Ahmann, James R., [redacted]
Albertazzie, Thomas E., [redacted]
Albracht, George A., [redacted]
Albright, Robert E., [redacted]
Albright, Robert P., [redacted]
Aldrich, David G., [redacted]
Alexander, Johnny D., [redacted]

Allbritton, Billy J., xxx-xx-xxxx
Allison, Lavoin K., xxx-xx-xxxx
Alston, Howard R., Jr., xxx-xx-xxxx
Alves, Paul J., xxx-xx-xxxx
Ama, Bron T., xxx-xx-xxxx
Amstuz, Terry L., xxx-xx-xxxx
Anderson, Emery D., xxx-xx-xxxx
Anderson, John M., xxx-xx-xxxx
Anderson, Kenneth R., xxx-xx-xxxx
Anderson, Ronald A., xxx-xx-xxxx
Archuleta, James T., xxx-xx-xxxx
Armour, Robert W., xxx-xx-xxxx
Armstrong, George A., III, xxx-xx-xxxx
Arndt, Linda J., xxx-xx-xxxx
Arnold, Paul V., xxx-xx-xxxx
Ashbaugh, John B., xxx-xx-xxxx
Asher, Charles R., xxx-xx-xxxx
Asher, Michael D., xxx-xx-xxxx
Ashing, David W., xxx-xx-xxxx
Ashley, Charles W., xxx-xx-xxxx
Ashton, Caleb B., xxx-xx-xxxx
Avery, Stephen E., xxx-xx-xxxx
Bain, Keith E., xxx-xx-xxxx
Baird, Jay L., xxx-xx-xxxx
Balch, Sammy D., xxx-xx-xxxx
Baldwin, Peter, Jr., xxx-xx-xxxx
Ball, George J., xxx-xx-xxxx
Ballantine, Terry R., xxx-xx-xxxx
Bareither, Van A., xxx-xx-xxxx
Barker, Sheila M., xxx-xx-xxxx
Barnett, William H., Jr., xxx-xx-xx...
Bartek, George J., xxx-xx-xxxx
Bartsch, Thomas M., xxx-xx-xxxx
Basler, Nicholas J., xxx-xx-xxxx
Bates, Michael D., xxx-xx-xx...
Bath, Thomas A., xxx-xx-xxxx
Battista, Thomas R., xxx-xx-xxxx
Baughn, Lawrence E. Jr., xxx-xx-...
Bayne, Charles H., xxx-xx-xxxx
Becker, Donald J., xxx-xx-xxxx
Bedor, Wayne M., xxx-xx-xxxx
Bell, Thomas I., xxx-xx-xxxx
Beisner, Christopher C., xxx-xx-xxxx
Belisle, Thomas M., xxx-xx-xxxx
Bell, Dennis R., xxx-xx-xxxx
Bell, Stephen C., xxx-xx-xxxx
Belote, Frank L., Jr xxx-xx-xxxx
Bennett, David T xxx-xx-xxxx
Bennett, Dennis R., xxx-xx-xxxx
Berecek, Emil M., III, xxx-xx-xxxx
Bergquist, Timothy M., xxx-xx-xxxx
Berkland, David E., xxx-xx-xxxx
Berkshire, Ronald A., xxx-xx-xxxx
Bernard, Richard E., xxx-xx-xxxx
Beulke, Linda M., xxx-xx-xxxx
Bickel, Larry E., xxx-xx-xxxx
Bienstock, Steven A., xxx-xx-xxxx
Birchak, Paul K., xxx-xx-xxxx
Bischoff, Mark U., xxx-xx-xxxx
Blackledge, Kenneth R., xxx-xx-xxxx
Bladen, James B., xxx-xx-xxxx
Bloomfield, Richard, xxx-xx-xxxx
Boatwright, James E., III, xxx-xx-xxxx
Boblitt, David W., xxx-xx-xxxx
Boggs, Vollie, Jr., xxx-xx-xxxx
Boller, Richard A., xxx-xx-xxxx
Bollhoefer, Richard L., xxx-xx-xxxx
Bollich, William P., xxx-xx-xxxx
Bonen, Carolyn A., xxx-xx-xxxx
Booker, David L., xxx-xx-xxxx
Booker, Theodore G., xxx-xx-xxxx
Boone, David B., xxx-xx-xxxx
Both, Donald M., xxx-xx-xxxx
Bowen, Craig S., xxx-xx-xxxx
Bowley, James W., xxx-xx-xxxx
Bowman, Gene S., xxx-xx-xxxx
Box, Rickey L., xxx-xx-xxxx
Box, Roy G., XXXX
Boyer, Stephen P., ...
Brach, David S., xxx-xx-xxxx
Bradley, Paul B., xxx-xx-xxxx
Brandenburg, David W., xxx-xx-xxxx
Brandley, David C., xxx-xx-xxxx
Braun, David W., xxx-xx-xxxx
Braun, Louis D., III, xxx-xx-xxxx
Breitenbach, Richard L., xxx-xx-xxxx
Brennan, William J., xxx-xx-xxxx
Breslin, Paul J., xxx-xx-xxxx
Brewer, Larry H., xxx-xx-xxxx
Brewer, William F., xxx-xx-xxxx
Briganti, Joseph F., xxx-xx-xxxx
Briggs, Randall A., xxx-xx-xxxx
Brown, Charles V., xxx-xx-xxxx
Brown, Dale F., xxx-xx-xxxx
Brown, David L., xxx-xx-xxxx
Brown, Edward E., xxx-xx-xxxx
Brown, James E., xxx-xx-xxxx
Brown, Thomas F., xxx-xx-xxxx
Brown, Thomas W., xxx-xx-xxxx
Brown, William J., xxx-xx-xxxx
Brownlee, Calfort M., xxx-xx-xxxx
Bruce, Robert C., xxx-xx-xxxx
Bruch, George F., Jr., xxx-xx-xxxx
Brunette, Frederic G. S., xxx-xx-xxxx
Brunner, Stephen C., xxx-xx-xxxx
Buchanan, Delbert H., Jr., xxx-xx-xxxx
Buffalo, Edith B., xxx-xx-xxxx
Burgess, Deral W., xxx-xx-xxxx
Burke, Philip W., xxx-xx-xxxx
Burkhart, William R., xxx-xx-xxxx
Burnet, Edwin S., xxx-xx-xxxx
Burns, Daniel L., xxx-xx-xxxx
Burns, Robert, III, xxx-xx-xxxx
Bush, Hickman E., xxx-xx-xxxx
Butler, Brett M., xxx-xx-xxxx
Byars, William S., Jr., xxx-xx-xxxx
Bynum, William F., xxx-xx-xxxx
Calle, Maurice W., xxx-xx-xxxx
Camblin, Gregory K., xxx-xx-xxxx
Cameron, Leonard D., xxx-xx-xxxx
Camp, Omer R., Jr., xxx-xx-xxxx
Campbell, Donald W., xxx-xx-xxxx
Campbell, Walter B., III, xxx-xx-xxxx
Caramanica, Nicholas G., xxx-xx-xxxx
Cardinal, Lawrence D., xxx-xx-xx...
Carpen, Thaddeus R., Jr., xxx-xx-xxxx
Carryer, Roy D., xxx-xx-xxxx
Carter, Ronald D., xxx-xx-xxxx
Carver, William A., xxx-xx-xxxx
Case, Versel T., xxx-xx-xxxx
Casey, Ronald C., xxx-xx-xxxx
Cassidy, Michael D., xxx-xx-...
Cathcart, Terry L., xxx-xx-...
Catullo, Anthony A., xxx-xx-xxxx
Cella, George L., xxx-xx-...
Chace, William L., xxx-xx-xxxx
Chapman, John C., xxx-xx-xxxx
Chase, John S., xxx-xx-xxxx
Chrisman, Kenneth A., xxx-xx-xxxx
Clancy, Vincent F., Jr., xxx-xx-xxxx
Clark, Joanne L., xxx-xx-xxxx
Clark, Larry B., xxx-xx-xxxx
Clarke, Steven A., xxx-xx-xxxx
Clary, Morris D., xxx-xx-xxxx
Clauson, Dale W., xxx-xx-xxxx
Clyde, Edward S., xxx-xx-xxxx
Cole, Everett B., Jr., xxx-xx-xxxx
Coleman, Cranston R., Jr., xxx-xx-xxxx
Coleman, Marvin G., xxx-xx-xxxx
Collinsworth, Ross B., xxx-xx-xxxx
Conner, Robert L., xxx-xx-xxxx
Cooke, Melanie B., xxx-xx-xxxx
Coombs, Robert S., xxx-xx-xxxx
Corr, Brian W., xxx-xx-xxxx
Corradi, Michael E., xxx-xx-xxxx
Coverdale, Scott C., xxx-xx-xxxx
Cox, Donald R., xxx-xx-xxxx
Cox, Donald R., xxx-xx-xxxx
Crane, Royce I., xxx-xx-xxxx
Craw, Marshall W., xxx-xx-xxxx
Crawford, David A., xxx-xx-xxxx
Creamer, David A., xxx-xx-xxxx
Cross, Michael G., xxx-xx-xxxx
Cruise, John A., xxx-xx-xxxx
Cummings, Larry P., xxx-xx-xxxx
Cuneo, James B., xxx-xx-xxxx
Curran, James T., xxx-xx-xxxx
Currier, Walter B., xxx-xx-xxxx
Curry, John R., xxx-xx-xxxx
Daigle, Elliott L., Jr xxx-xx-xxxx
Daniel, James W., Jr., xxx-xx-xxxx
Davis, Robert C., xxx-xx-xxxx
Davis, Roger T., xxx-xx-xxxx
Davy, William R., xxx-xx-xxxx
Daye, Thomas R., xxx-xx-xxxx
Dean, Thomas R., xxx-xx-xxxx
Debellis, David A., xxx-xx-xxxx
Debruin, Larry A., xxx-xx-xxxx
Decker, Paul O., xxx-xx-xxxx
Dee, Bernard E., Jr., xxx-xx-xxxx
Delaney, William M., xxx-xx-xxxx
Demarchi, Daniel, xxx-xx-xxxx
Dennis, Benny W., xxx-xx-xxxx
Denu, John L., xxx-xx-xxxx
Denzer, Raymond D., xxx-xx-xxxx
Depaula, Vincent S., Jr., xxx-xx-xxxx
Deponte, Manuel, Jr., xxx-xx-xxxx
Derenski, Peter A., xxx-xx-xxxx
Devitt, James E., xxx-xx-xxxx
Dill, Charles D., xxx-xx-xxxx
Dilly, Robert L., xxx-xx-xxxx
Dingman, Walter W., xxx-xx-xxxx
Dirks, Jeffrey M., xxx-xx-xxxx
Doan, Henry C., xxx-xx-xxxx
Dominguezyrodas, Gerardo, xxx-xx-xxxx
Doolittle, Edward G., xxx-xx-xxxx
Doty, Lester E. R., xxx-xx-xxxx
Dougherty, Charles M., xxx-xx-xxxx
Dougherty, William J., xxx-xx-xxxx
Drasky, William J., xxx-xx-xxxx
Driggs, Charles H., xxx-xx-xxxx
Drury, Dennis D., xxx-xx-xxxx
Drust, John M., xxx-xx-xxxx
Ducharme, Rick P., xxx-xx-xxxx
Duffell, Robert W., xxx-xx-xxxx
Dumas, Windell M., xxx-xx-xxxx
Duncan, Daniel E., xxx-xx-xxxx
Duncan, Lesley R., xxx-xx-xxxx
Dunn, Melvin A., Jr., xxx-xx-xxxx
Duringer, Pierre R., xxx-xx-xxxx
Durnal, Edward L., xxx-xx-xxxx
Dysko, Peter A., xxx-xx-xxxx
Edmund, Robert F., xxx-xx-xxxx
Edwards, William T., xxx-xx-xxxx
Eller, Barry A., xxx-xx-xxxx
Ellingson, Dean A., xxx-xx-xxxx
Ellringer, Robert F., xxx-xx-xxxx
Elrod, Thomas M., xxx-xx-xxxx
Erbacher, Paul J., xxx-xx-xxxx
Ericson, Robin J., xxx-xx-xxxx
Ertle, Kenneth A., xxx-xx-xxxx
Esslinger, Jack H., xxx-xx-xxxx
Everett, Robert H., Jr., xxx-xx-xxxx
Ewing, William B., Jr., xxx-xx-xxxx
Exum, Donnell R., xxx-xx-xxxx
Faber, Peter M., xxx-xx-xxxx
Fagan, Charles J., III, xxx-xx-xxxx
Fakler, Thomas L., xxx-xx-xxxx
Faubion, Ernest R., xxx-xx-xxxx
Fehd, Dale F., xxx-xx-xxxx
Feldman, James K., xxx-xx-xxxx
Ferguson, Dwane L., xxx-xx-xxxx
Fernandez, Alberto F., xxx-xx-xxxx
Ferraro, Michael A., xxx-xx-xxxx
Finan, Gregory K., xxx-xx-xxxx
Finck, Charles F., III, xxx-xx-xxxx
Finn, John G., xxx-xx-xxxx
Finn, Thomas A., III, xxx-xx-xxxx
Fisk, James A., xxx-xx-xxxx
Flanagan, William C., Jr., xxx-xx-xxxx
Fleming, Jerome L., xxx-xx-xxxx
Fleming, Norman D., xxx-xx-xxxx
Flynt, Jack W., II, xxx-xx-xxxx
Fodrey, Gary L., xxx-xx-xxxx
Foley, Louise A., xxx-xx-xxxx
Fondren, James W., Jr., xxx-xx-xxxx
Ford, Norbert J., Jr., xxx-xx-xxxx
Forgiel, Stephen C., xxx-xx-xxxx
Fortune, William F., xxx-xx-xxxx
Foster, Roger A., xxx-xx-xxxx
Frazelle, David R., xxx-xx-xxxx
Freeman, Michael C., xxx-xx-xxxx
Fried, Bruce A., xxx-xx-xxxx
Froebe, Charles F., xxx-xx-xxxx
Fuller, Donald G., xxx-xx-xxxx
Fulton, Jesse B., Jr., xxx-xx-xxxx
Fulton, Phil A., xxx-xx-xxxx
Fus Walter R., Jr., xxx-xx-xxxx
Gardner, Michael C., xxx-xx-xxxx
Garlington, Jerry L., xxx-xx-xxxx
Gasaway, Jimmy D., xxx-xx-xxxx
Gaudreau, Raymond L., xxx-xx-xxxx
Geary, David L., xxx-xx-xxxx
Geneczko, Joseph C., xxx-xx-xxxx
Gentile, Joseph, xxx-xx-xxxx
Geraldson, David A., xxx-xx-xxxx
Gering, John L., Jr., xxx-xx-xxxx
Gibb, Susan M., xxx-xx-xxxx
Gibbons, William P., xxx-xx-xxxx

Gilbert, Norman F., xxx-xx-xxxx
Gilstrap, Jesse W., xxx-xx-xxxx
Goins, Joel S., xxx-xx-xxxx
Gorges, James R., xxx-xx-xxxx
Gosetti, Thomas A., xxx-xx-xxxx
Gosline, Robert M., xxx-xx-xxxx
Grady, Brian D., xxx-xx-xxxx
Graham, David J., xxx-xx-xxxx
Graham, Edward L., xxx-xx-xxxx
Grant, Charles L., xxx-xx-xxxx
Graves, William L., III, xxx-xx-xxxx
Gray, Charles H., xxx-xx-xxxx
Gray, Douglas A., xxx-xx-xxxx
Gray, Jeffrey B., xxx-xx-xxxx
Green, Cameron K., xxx-xx-xxxx
Green, James C., xxx-xx-xxxx
Greer, Joseph W., Jr., xxx-xx-xxxx
Gregg, Larry A., xxx-xx-xxxx
Gresham, Benny R., xxx-xx-xxxx
Griess, Wayne D., xxx-xx-xxxx
Groff, Steven D., xxx-xx-xxxx
Groves, Roger W., xxx-xx-xxxx
Grubb, Jane A., xxx-xx-xxxx
Guebard, Jerry R., xxx-xx-xxxx
Guith, David J., xxx-xx-xxxx
Gustafson, Paul R., xxx-xx-xxxx
Gustafson, Robert H., xxx-xx-xxxx
Hales, Michael D., xxx-xx-xxxx
Haley, Kenneth R., xxx-xx-xxxx
Hall, Casswell S., xxx-xx-xxxx
Hamme, Dennis L., xxx-xx-xxxx
Hammer, Mark S., xxx-xx-xxxx
Hammond, Bruce R., xxx-xx-xxxx
Hanks, Charles E., Jr., xxx-xx-xxxx
Hansen, Marvin R., xxx-xx-xxxx
Hanson, Donald F., xxx-xx-xxxx
Harding, Craig D., xxx-xx-xxxx
Harrison, William J., Jr., xxx-xx-xxxx
Harrop, Alfred, xxx-xx-xxxx
Hart, Louis T., Jr., xxx-xx-xxxx
Hartnett, Francis T., xxx-xx-xxxx
Harvey, Francis M., xxx-xx-xxxx
Harvey, James L., xxx-xx-xxxx
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The following officers for appointment in the Regular Air Force, in the grades indicated, under the provisions of section 8284, title 10, United States Code, with a view to designation under the provisions of section 8067, title 10, United States Code, to perform the duties indicated, and with dates of rank to be determined by the Secretary of the Air Force:

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To be captain

Baldwin, Charles C., xxx-xx-xxxx
Cottrill, Charles D., xxx-xx-xxxx
Goodwin, Clarence B., xxx-xx-xxxx
Griffin, Harry E., xxx-xx-xxxx
Haley, Patrick J., xxx-xx-xxxx
Higgins, Francis E., xxx-xx-xxxx
Hinsch, Ray W., xxx-xx-xxxx
Kohl, Gary D., xxx-xx-xxxx
McPheeters, Chilton W., xxx-xx-xxxx
Oldham, James F., xxx-xx-xxxx
Peine, Leslie A., xxx-xx-xxxx
Schwartzman, Joel R., xxx-xx-xxxx
Seidlitz, Charles C., xxx-xx-xxxx
Willis, Larry E., xxx-xx-xxxx

To be first lieutenant

Bernard, Andre M., xxx-xx-xxxx
Kahn, Justin G. G., xxx-xx-xxxx
Klein, Alan M., xxx-xx-xxxx
Long, Lewis C., II, xxx-xx-xxxx
Lundin, John O., xxx-xx-xxxx
Williamson, Jack D., xxx-xx-xxxx

JUDGE ADVOCATE CORPS

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Young, Robert J., xxx-xx-xxxx

To be first lieutenant

Chappell, Benjamin R., xxx-xx-xxxx
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Hammill, William B., xxx-xx-xxxx
Hunt, Philip C., xxx-xx-xxxx
Miller, Jules F., xxx-xx-xxxx
Orck, Charles E. xxx-xx-xxxx
Pratt, Andrew C., xxx-xx-xxxx
Smith, Stephen D., xxx-xx-xxxx
Swerdzewski, Joseph, xxx-xx-xxxx
Taylor, Charles E., xxx-xx-xxxx

NURSE CORPS

To be captain

Fletcher, Joyce J., xxx-xx-xxxx

To be first lieutenant

Adams, Timothy M., xxx-xx-xxxx
Allen, Susan D. xxx-xx-xxxx
Anderson, Karlina A., xxx-xx-xxxx
Bennington, Karen R., xxx-xx-xxxx
Bishop, Stephanie S., xxx-xx-xxxx
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Tilghman, Joan S., xxx-xx-xxxx
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Wright, Geraldine K., xxx-xx-xxxx
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MEDICAL SERVICE CORPS

To be captain

Hendren, George R., xxx-xx-xxxx

To be first lieutenant

Bannick, Richard R., xxx-xx-xxxx
Black, Michael E., xxx-xx-xxxx
Boone, Charles W., xxx-xx-xxxx
Bossart, Bruce N., xxx-xx-xxxx
Campbell, Thomas R., xxx-xx-xxxx
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Wittgan, Larry F., xxx-xx-xxxx

VETERINARY CORPS

To be captain

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Crowder, Harvey R., xxx-xx-xxxx
Darrigrand, Andre A., xxx-xx-xxxx
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James, Viola S. xxx-xx-xxxx
Keller, William C., xxx-xx-xxxx
Kiel, Jonathan L. xxx-xx-xxxx
Swerdlin, Scott J., xxx-xx-xxxx
Zeier, Bernard L. xxx-xx-xxxx

To be first lieutenant

Addis, Dorlyn L. xxx-xx-xxxx
Burgoon, Charles C., xxx-xx-xxxx
Greenamyer, Judith J. xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

To be captain

Castiglione, Robert F., xxx-xx-xxxx
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To be first lieutenant

Anderson, Robert C., xxx-xx-xxxx
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New George R. xxx-xx-xxxx
Newberry, Katherine R., xxx-xx-xxxx
Normark, James W., xxx-xx-xxxx
Nuckols, David C. xxx-xx-xxxx
Panyik, Robert J. xxx-xx-xxxx
Parker, James L. xxx-xx-xxxx
Riggs, Raleigh E., xxx-xx-xxxx
Seignious, George W., IV, xxx-xx-xxxx
Sharpton, Lester M., xxx-xx-xxxx
Shelley, Michael L., xxx-xx-xxxx
Shwed, John A., xxx-xx-xxxx
Singleton, Isaac C., xxx-xx-xxxx
Sprester, Forrest R., xxx-xx-xxxx
Stephenson, Mark R., xxx-xx-xxxx
Sugden, Brian W. xxx-xx-xxxx
Traweek, Anthony C., xxx-xx-xxxx
Tucka, James A., xxx-xx-xxxx
Varca, Philip F., xxx-xx-xxxx
Ward, Michael J. xxx-xx-xxxx
Young, Dale A. XXXX

IN THE NAVY

The following-named lieutenants (junior grade) of the U.S. Navy for temporary promotion to the grade of lieutenant in the line and various staff corps, as indicated, pursuant to title 10, United States Code, section 5769 (line), 5773 (staff) and 5791, subject to qualification therefor as provided by law:

LINE

Malokofsky, Kenneth C., Jr.
McLeod, Ronald C.
Nees, Randy E.
Palmer, David L.
Place, Dana A.
Scheuermann, Michael F.
Sweeney, Kevin J.
Whitford, Max D.

NURSE CORPS

Bane, Deborah E.
Hendryx, Joe K.
Hinkel, David C.
Marshall, Susan E.
Quilesquinones, Hector J.
Rush, Kenneth
Thibodeaux, Barry L.
Walker, Martha B.

The following-named lieutenant of the U.S. Navy for temporary promotion to the grade of lieutenant in the staff corps, as indicated, pursuant to title 10, United States Code, sections 5773 and 5791, subject to qualification therefor as provided by law:

NURSE CORPS

Finch, James V.

The following-named lieutenant of the U.S. Navy for temporary promotion to the grade of lieutenant commander in the line, pursuant to title 10, United States Code, section 5769 and 5791, subect to qualification therefor as provided by law:

Foley, Patrick A.

Lt. Cmdr. Medhat G. Ashamalla, Medical Corps, of the Reserve, of the U.S. Navy for temporary promotion to the grade of commander in the Medical Corps of the U.S. Navy as a Reserve officer, pursuant to title 10, United States Code, section 5505 and 5791, subject to qualification therefor as provided by law.

The following-named ensigns for temporary promotion to the grade of lieutenant (junior grade) in the line and staff corps, as indicated, pursuant to title 10, United States Code, section 5784 and 5791, subject to qualification therefor as provided by law:

Amos, Scott J.
Anthony, Jacob A., III
Ashby, Sherman F.
Aspery, Timothy M.
Atkinson, Dale K.
Bailey, Tony M.
Balmert, Mark W.
Bankston, Edwin D.
Beasley, Harrison A., Jr.
Beavers, Charles R.
Bennett, William W.
Beyer, Russell S.
Billings, Alfred J.
Blue, Mark D.
Bogdanowicz, Robert A.
Boveri, Stephen L.
Boyd, Auston W., Jr.
Brown, Julian M.
Brooks, Steven L.
Buchanan, Vernon D.
Budweg, Gregory J.
Buehrig, Christopher J.
Caram, John M.
Card, Kendall L.
Carpenter, Glen H.
Chapman, Craig H.
Cheever, James R.
Christensen, Ryan L.
Clow, Michael J.
Colchin, Gregory L.
Colvin, Billy A.
Cook, Douglas Jr.
Coomes, Kenneth W.
Cravens, Paul B.
Crowell, Ronald A.
Darabond, James M.
Decker, William L.
Desvousges, Raymond J.
Dicken, William A.
Donaldson, Scott L.
Donovan, Michael W.
Drescher, Richard B.
Driskill, Don W.
Dye, Gary B.
Ecung, Mario M.
Erb, Barry C.
Erwin, Clarke M.
Esquivel, Jesus A. N.
Estes, Richard T.
Evans, Richard E.
Ferry, Patrick R.
Fitzgerald, Daniel T.
Fleming, Marc A.
Fobes, Duncan K.
Fulwiler, Barry A.
Gardner, John E.
Gaughan, Peter P.
Gembler, Jeffrey L.
Gengo, Joseph T.
George, James M.
Gerard, Paul S.
Gerfin, Mark K.
Gill, Michael J.
Green, Scott W.
Gresham, Arthur W.
Griset, John D.
Gruben, Raymond L.
Gunder, Dominic J.
Hagedorn, William H.
Hague, James R.
Hall, John F., II
Hamilton, Steven W.
Haney, Richard F.
Harris, Craig F.
Hartsig, Darrell R.
Hoeinghaus, Michael J.
Holland, David W.
Howard, Robert L.
Hungerford, Roger A.
Iverson, Michael L.
Jacobs, Thomas L.
Jacovelli, Michael A.
Johnson, Gerald L.
Jones, Jerry M.
Jones, Robert A.
Kaiser, James C.
Keim, Ronald G.
Knoblauch, Keith A.
Lanzer, Bradley N.
Laptas, Michael H.
Layne, Charles A.
Lestrange, Peter J.
Lindmark, Carl R.
Llewellyn, Richard D.
Mallo, Gary O.
Mallory, Charles W.
Martinezdeandino, Joseph M.
McCartney, Pat G.
McCormick, Macushla M.
McCurry, Patrick T.
McKenney, Mark J.
McKinney, David L.
Mellon, Terry L.
Mickelson, John W.
Miller, Michael G.
Monfeli, Frank C.
Morais, Roger J.
Morrison, William R.
Moser, Alan C.
Murich, Dave J.
Muske, Kenneth M.
Nagle, Richard J., III
Neal, James F.
Nelson, Richard W.
Nickless, Cloyd E.
Niermeier, John D.
Nolan, John E.
Palmer, Scott E.
Papso, Anthony W., Jr.
Payne, Richard A.
Payne, Richard H.
Peterson, Daniel T.
Phelps, Alva W.
Piepkorn, Cary L.
Podhasky, Joseph C.
Price, James P.
Rafto, Jon B.
Reidenbach, Dan A.
Rishel, Robert I.
Rowley, Udo H.
Salm, James M.
Samford, Thomas D., IV.
Savignac, Mark D.
Schilling, Steven L.
Schmitz, Jeffrey A.
Schuller, Jerome A., Jr.
Schulze, Kurt D.
Seipel, Dennis J.
Sette, Karl R.
Shaw, Mark L.
Sheffield, Glenn A.
Silvira, Robert R., Jr.
Smith, Forrest J.
Takahashi, Stanley S.
Taylor, Reeves R., Jr.
Thomas, Timothy M.
Thompson, Reginald.
Toll, Raymond F., Jr.
Tripp, Taylor T.
Valdes, Ernest L.
Walker, Joel N.
Walker, Steven C.
Walker, William H.
Wallace, James W. F., IV.
Warren, Wesley P.
Watson, Dwain P.
Weaver, James L.
Weglicki, Michael S.
Weintraub, Edward E.
Weissinger, Richard W.
Wheeler, William H.
Whitsell, John B.
Wigglesworth, James J.
Wilbur, Thomas M.
Williams, David T.
Wilson, Eldon J.
Wilson, Reed M.
Wiseman, Robert J.
Yoder, Albert W.

SUPPLY CORPS

Bursey, Major D., Jr.
Carlson, Eric W.
Chelune, Richard.
Davis, Richard M., Jr.
Fink, William M.
Guice, William T., Jr.
Guthmuller, Harry L.
Heinen, James C.
Hosner, Jeffrey R.
Knight, Robert L.
Oliver, Randal K.
Rhea, Russell H.
Scheffs, Dale K.
Staudt, Calvin C., Jr.

CIVIL ENGINEER CORPS

Biggins, Timothy F.
Gleason, Joe M.
Keil, Gary J.
Lundin, Walter F.
Lynch, Joseph M. III.
Schanze, Christopher

The following named women ensigns for temporary promotion to the grade of lieutenant (junior grade) in the line, as indicated, pursuant to Title 10, United States Code, Section 5787b and 5791, subject to qualification therefor as provided by law:

Bres, Elizabeth V.
Day, Linda M.
Gonzalez, Karen-Ann
Miller, Barbara J.
Vanderpool, Priscilla A.

The following-named lieutenant of the line, of the U.S. Navy for appointment in the Supply Corps, as a permanent lieutenant (junior grade) and temporary lieutenant, pursuant to title 10, United States Code, section 5582(b) and 5791, subject to qualification therefor as provided by law:

Beck, Kenneth J.

The following-named ensign of the line, of the U.S. Navy for appointment in the Supply Corps, as a permanent ensign, pursuant to title 10, United States Code, section 5582(b) and 5791, subject to qualification therefor as provided by law:

Burbs, Scott H.

IN THE MARINE CORPS

The following-named temporary disability retired officer for reappointment to the grade of lieutenant colonel in the Marine Corps, pursuant to title 10, United States Code, section 1211, subject to the qualifications therefor as provided by law:

Moroney, Ellen B.

The following-named Naval Reserve Officers Training Corps graduates for permanent appointment to the grade of second lieutenant in the Marine Corps, pursuant to title 10, United States Code, section 2107, subject to the qualifications therefor as provided by law:

Badzioch, Kathy M.
Blackburn, William H.
Briggs, Carol E.
Broussard, Kittredge D.
Busler, Bradley R.
Caspers, Jeffrey L.
Clayborn, Allen W.
Corbett, Lawrence P.
Deboever, George V.
Detling, Rex E.
Easton, James K.
England, John W.
Fielder, Douglas T.
Godinich, Vincent J.
Gustafson, Norman W.
Jordan, James T.
Keating, William M.
Kinslow, Armand D.
Malone, Jean T.
McCulley, Stephen C.
McGlaun, Glenn E.
McMillan, Michael H.
Mitchell, Keith H.
Nellums, Henry O.
Patzman, Laurence S.
Pozen, Joseph P.
Rath, Daniel L.
Rudasill, Meade H.
Russell, Angela G.
Straub, Edward
Verstegen, John A.
Wilkes, Jack L.

The following-named Army Reserve Officers Training Corps graduate for permanent appointment to the grade of second lieutenant in the Marine Corps, pursuant to title 10, United States Code, section 5585, subject to the qualifications therefor as provided by law:

Patterson, Kevin F.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 16, 1979:

Interstate Commerce Commission

Darius W. Gaskins, Jr., of the District of Columbia, to be a member of the Interstate Commerce Commission for the term expiring December 31, 1984.

Thomas A. Trantum, of Connecticut, to be a member of the Interstate Commerce Commission for the term expiring December 31, 1985.

Marcus Alexis, of Illinois, to be a Member of the Interstate Commerce Commission for the term expiring December 31, 1985.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

In the Army

The U.S. Army Reserve officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a), 3371 and 3384:

To be major general

Brig. Gen. James Carroll McElroy, Jr., xxx-xx-xxxx

Brig. Gen. Gordon Clark McKeague, xxx-xxx-x...

Brig. Gen. Henry Watts Meetze, xxx-xx-xxx-...

To be brigadier general

Col. Walter Kazuhiko Tagawa, xxx-xx-xxxx
Col. Robert Quince Jones, xxx-xx-xxxx
Col. Roy Rocco Moscato, xxx-xx-xxxx
Col. Gerald Gaines Sanderson, xxx-xx-xxxx
Col. Robert Gardner Ownby, xxx-xx-xxxx
Col. Edward Richard Burka, xxx-xx-xxxx
Col. James Riley Montgomery, xxx-xx-xxxx
Col. Thomas Stoneham Edwards, xxx-xx-x... xxx-...
Col. Robert Edward Louque, Jr., xxx-xx-... xxx-...

The Army National Guard of the U.S. officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3385.

To be major general

Brig. General Robert Lee Meyer, xxx-xx-... xxx-...

Brig. General Harry Van Steel, Jr. xxx-xx-x... xxx-...

To be brigadier general

Col. Carl Eugene Briscoe, xxx-xx-xxxx
Col. James Kenneth Corley, xxx-xx-xxxx
Col. Melvin John Crain, xxx-xx-xxxx
Col. Louis (NMN) Buckett, xxx-xx-xxxx
Col. Charles Eugene Franklin, xxx-xx-xxxx
Col. Robert Donald James, xxx-xx-xxxx
Col. Glenn Harold Kothmann, xxx-xx-xxxx
Col. James Ballard McGoodwin, xxx-xx-...
Col. Harry Alfred Moldaw, xxx-xx-xxxx
Col. David Lawrence Nudo, xxx-xx-xxxx
Col. Andrew Gus Skalkos, xxx-xx-xxxx
Col. Ivan Ray Smith, xxx-xx-xxxx.
Col. Leo Paul Tritsch xxx-xx-xxxx.

The Army National Guard of the U.S. officers named herein for appointment as Reserve commissioned officers of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3392:

To be major general

Brig. Gen. Billy Gene Wellman, xxx-xx-... XXXX

To be brigadier general

Col. George Eugene Coates, xxx-xx-xxxx
Col. John Francis Gore, xxx-xx-xxxx
Col. Warren Glenn Lawson, xxx-xx-xxxx
Col. Charles Junior Wing, xxx-xx-xxxx

In the Navy

The following-named officer, having been designated for commands and other duties of great importance and responsibility in the grade of vice admiral within the contemplation of title 10, United States Code, section 5231, for appointment while so serving as follows:

To be vice admiral

Rear Adm. Kent J. Carroll, U.S. Navy.

In the Air Force

Air Force nominations beginning Eric C. Berry, to be second lieutenant, and ending Richard C. Warner, to be second lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on June 21, 1979.

In the Army

Army nominations beginning Ronald J. Bordenaro, to be colonel, and ending Donald C. Potter, to be lieutenant colonel, which nominations were received by the Senate and appeared in the Congressional Record on June 21, 1979.

In the Navy

Navy nominations beginning Alden S. Salcedo, to be ensign, and ending Raymond F. Taylor, to be commander, which nominations were received by the Senate and appeared in the Congressional Record on June 21, 1979.

In the Marine Corps

Marine Corps nominations beginning Glenn E. Allen, to be colonel, and ending Catherine Y. Telford, to be colonel, which nominations were received by the Senate and appeared in the Congressional Record on June 21, 1979.

HOUSE OF REPRESENTATIVES—*Monday, July 16, 1979*

The House met at 12 o'clock noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

God of our fathers, and our God, by whose creation all peoples and nations exist, and by whose mighty acts we are redeemed and sustained, we ask Your favor on our Nation, its leaders, and people.

We thank You for the richness of our land, all you have given us as a measure of Your bounty. We confess that we have not been good stewards of our wealth. Forgive us, O Lord, from seeing our responsibility only for our day and time, yet grant us the vision to build for today and the future, united in the awareness of our common commitment to the welfare of all people.

We earnestly desire Your blessing on the Nation and this assembly, that with righteousness and honor we may labor together for the common good.

In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 1512. An act to authorize additional funds for fiscal year 1979 for intelligence and intelligence-related activities of the Federal Bureau of Investigation.

CONSENT CALENDAR

The SPEAKER. This is Consent Calendar day. The Clerk will call the only bill on the Consent Calendar.

NAVAJO-HOPI RELOCATION COMMISSION AUTHORIZATION OF APPROPRIATIONS INCREASE

The Clerk called the bill (H.R. 3661) to increase the authorization of appropriations under the act of December 22, 1974 (88 Stat. 1712).

There being no objection, the Clerk read the bill as follows:

H.R. 3661

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 25(a)(5) of the Act of December 22, 1974 (88 Stat. 1712, 1723), is amended by deleting the figure "$500,000" therein and inserting, in lieu thereof, the figure of "$1,000,000": *Provided*, That no new budget authority for fiscal year 1979 is authorized to be appropriated.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

The SPEAKER. This concludes the call of the Consent Calendar.

PRESIDENT CARTER'S FORCEFUL ADDRESS TO THE NATION

(Mr. BINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)