so perhaps it does not matter much (except to the next administration) what it is doing to the tools. John Lehman, former deputy director of the Arms Control and Disarmament Agency, writes:

"The president tells us that 'our commitment to South Korea is undeviating and is staunch' as he withdraws U.S. ground forces from Korea. Unilateral cancellation of the B1 bomber is made 'in the interest of providing the U.S. with a strong, efficient, cost-effective national defense.' The MX missile and Tomahawk cruise missile are postponed in order to meet SALT concession and then we are told that these SALT concessions are perfectly acceptable because the weapons are not yet ready for deployment. The Nimitz aircraft carrier is vetoed as too vulnerable and expensive while the administration's own studies show it to be the least vulnerable and most cost-effective ship in the world."

The administration's defense budget involves a real decline, disguised by strange assumptions about a low inflation rate. But as a political payoff, the carrier Saratoga will be overhauled at the Philadelphia Navy Yard, where the job will cost $80 million more than necessary. Hear the administration's real voice, from Victor Utgoff, who deals with strategic arms limitation matters for the National Security Council:

"Even if the United States could attain strategic superiority it would not be desirable because I suspect we would occasionally use it as a way of throwing our weight around in some very risky ways. . . . It is in the U.S. interest to allow the few remaining areas of strategic advantage to fade away."

More interesting than the implication that strategic superiority is beyond America's capacity, more interesting even than the admission that America's strategic advantages are "few," is the idea that these few are too many. Packed into that idea is the highly political "lesson" of Vietnam and the related revisionism of some historians of the Cold War: The United States has been a source of mischief; U.S. arms-control policies should limit U.S. arms; the general aim of U.S. foreign policy should be to make U.S. actions less "risky."

The administration should be delighted. In Afghanistan, Iran, Turkey and Mexico, in SALT negotiations with the Soviets as in "normalization" negotiations with the Chinese, the United States certainly is not throwing its weight around.●

SENATE—*Monday, March 5, 1979*

(Legislative day of Thursday, February 22, 1979)

The Senate met at 12 o'clock meridian, on the expiration of the recess, and was called to order by the Honorable CARL LEVIN, a Senator from the State of Michigan.

PRAYER

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

Almighty God whose children we are, whose will we seek to discover, and whose work we would do, we give Thee hearty thanks for the noble succession of unselfish patriots who have served here and elsewhere in our Government. Make us worthy successors that the heritage be not diminished. Spare us from a shallow philosophy and from mediocre workmanship. Deliver us from the sins and diseases which eat like a canker into our national life, from pride and prodigality, from self-seeking and preying upon others, from wasteful spending and from insane arming. Give us a good conscience in the use of money and the control of power.

Open our minds to learn; open our hearts to love; open our hands to give and make us a nation whose God is the Lord. 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., March 5, 1979.

To the Senate:

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

WARREN G. MAGNUSON,
President pro tempore.

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

RECOGNITION OF LEADERSHIP

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

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.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Oklahoma.

DEATH OF FORMER SENATOR DEWEY F. BARTLETT OF OKLAHOMA

Mr. BOREN. Mr. President, it is my sad duty on behalf of myself and Senator HENRY BELLMON to inform the Senate of the death last Thursday evening of a great American and a great Oklahoman, former Senator Dewey F. Bartlett. By his death, many have lost a friend and the Nation has lost one who put public service ahead of self-interest.

The funeral service for Senator Bartlett will be held tomorrow at 11 a.m. in Tulsa, Okla., at Christ the King Catholic Church.

Senator BELLMON has remained in Oklahoma for the services. If he were present he would join me in making these remarks.

I do not need to recite for the Senate the many accomplishments of Dewey Bartlett. He was an able member of the Oklahoma State Senate where he represented Tulsa County; later he served as Governor of Oklahoma. It was my privilege to serve in my first term in a public office as a member of the State legislature during the administration of Dewey Bartlett as Governor. His personal standards of honesty and integrity left a lasting mark on the State government of Oklahoma. After serving as Governor, he was elected in 1972 to represent Oklahoma in the U.S. Senate. As a Senator he made important contributions particularly in the fields of energy, Indian policy, and national defense.

His courage and determination in the face of his last illness are an example for all of us. He was unfailingly kind and encouraging to others who suffered from the same affliction. In spite of his illness he maintained a 91-percent attendance record during his term in office. He never lost interest in serving the people and in doing the best job possible.

Dewey Bartlett has been described by some as being stubborn. In truth, he was stubborn in holding to principle. A stubborn commitment to principles in which one sincerely believes is surely an accurate definition of integrity. Our Nation could use more of Dewey Bartlett's kind of integrity. I know I speak for many in this body and across the Nation in extending our sincere sympathy to Mrs. Ann Bartlett and the members of the Bartlett family. Dewey Bartlett will be greatly missed.

Mr. President, for myself and Senator BELLMON, I send to the desk a resolution of condolence, expressing the sympathy of the Members of the Senate to the members of the Bartlett family and our admiration for former Senator Dewey Bartlett's distinguished service to the Nation, and ask for its immediate consideration.

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

The legislative clerk read as follows:

S. RES. 88

Resolved, That the Senate has heard with profound sorrow and extreme regret the announcement of the death of the Honorable Dewey F. Bartlett, who served in the United States Senate from the State of Oklahoma from 1973 until 1979.

Resolved, That the Secretary communicate these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased, together with a transcript of remarks made in the Senate in praise of his distinguished service to the Nation.

Resolved, That when the Senate recesses today, it recess as a further mark of respect to the memory of the deceased.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to its consideration.

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

A LOSS FOR OKLAHOMA AND THE NATION

Mr. ROBERT C. BYRD. Mr. President, I was saddened to learn last Friday morning of the death of former Senator Dewey Bartlett of Oklahoma. I am sure that I speak for all his friends in the Senate in extending condolences to his family and his many admirers throughout the State of Oklahoma.

Dewey Bartlett was a son of America's heartland. As such, he reflected, shared, and fostered values that are revered by millions of his fellow citizens. During his tenure in the U.S. Senate, and over the entire course of his public and private careers, he sought to serve the best interests of his neighbors, the residents of his home State, and the people of the United States.

Senator Bartlett entered politics after a successful career in ranching, farming, and business. From 1963 to 1967, he was a member of the Oklahoma State Senate. Subsequently, he was elected Governor of Oklahoma. In 1972, he was selected by the citizens of Oklahoma to represent them in the U.S. Senate, where he served until his retirement last year.

Dewey Bartlett took great pride in his Oklahoma origins, and his patriotism was unexcelled. His record as Governor and Senator was marked by a concern for the disadvantaged, the unemployed, and the underemployed. He believed in the possibilities of free enterprise, and worked unstintingly to make the opportunities of American citizenship a reality for more and more people in this country. He made a unique contribution to the Senate during his term of service, and in his passing, our Nation and the citizens of Oklahoma have lost a genuine friend and a courageous public servant.

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

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

Mr. BAKER. Mr. President, I have seldom had a friend in the Senate to whom I felt as close as I did to our departed colleague, Dewey Bartlett, and it was with deep personal grief that I learned of his death last Thursday night.

Dewey was one of the finest, most decent, most beloved men ever to have served in the U.S. Senate.

He was, in addition, one of the Nation's leading authorities on defense and energy issues, and his passing is a great loss to the country, particularly at a time when both these issues are of crucial importance and urgency to the American people.

Dewey and I first met in 1967, when I spoke at the Oklahoma Republican State Convention in Oklahoma City. I was in my first year in the Senate, and Dewey was Governor of Oklahoma at the time. As the years went on, we became not only colleagues in the Senate but very special friends, as well.

My deepest sympathy goes to Ann Bartlett and her family, and I know that sentiment is shared by my colleagues in the Senate, who so admired Dewey Bartlett as a man who could keep his good humor in the face of personal adversity and who was unfailingly more concerned with the welfare of his friends than with his own.

There are not many men I have known in my life for whom I held a greater affection or more respect. The Senate lost a great talent when he chose not to run for reelection. We have lost a great colleague and friend with his death.

Mr. HELMS. Mr. President, as is always the case when one loses a beloved friend, I spent this past weekend pondering a panorama of recollections about Dewey Bartlett—instances which were measurements of his gentility, his courage, his dedication, his love for America.

A thousand little vignettes swept by: Dewey's comments at prayer breakfast one Wednesday morning in which he acknowledged everyone's Christian duty to love his fellow man—even, as Dewey put it with a twinkle in his eye, "that guy who almost caused me to have a wreck this morning when he cut in front of me in heavy traffic."

Dewey Bartlett never had difficulty in sharing his zest for life. But I am not sure he ever realized how much he helped all the rest of us, who loved him, to maintain a bit of perspective about life.

I recall how willing he was to make calls to another dear friend of mine in Raleigh who had been stricken with a malignancy, as Dewey had been. They never met, but they shared a concern for one another, and they shared a love, because each of them cared.

And I remember, Mr. President, watching Dewey as he worked on this Senate floor. His smile in defeat was as predictable as his smile in victory. In every mattter, he cast his vote on the basis of duty and responsibility, and there was never an occasion—not even once—when he allowed political expedience to overcome principle.

Mr. President, one of Dewey Bartlett's major legislative concerns was the restoration of America's traditional legal protection to unborn children. Dewey Bartlett and I had been sworn in as Senators just a few days before the Supreme Court's fateful abortion decisions in 1973. I can remember discussing with him how the Court's action would force upon the American people a reexamination of their basic moral principles and to consider the ultimate value of each individual life.

Soon thereafter, Senator Bartlett joined a number of Senators in sponsoring a human life amendment to the Constitution and was the first Senator to sponsor an amendment to the Departments of Labor and Health, Education, and Welfare appropriation bill to end taxpayer funding of abortion. Indeed, last August, one of his final speeches on the Senate floor was in support of the Hyde amendment, or the Bartlett amendment as it was known before that, to end the use of Government money to promote the evil of abortion. Toward the end of his own personal struggle with the ultimate question as to the value of human life, Dewey Bartlett eloquently implored his colleagues to give all human life a chance.

Mr. President, Dewey Bartlett was one of the most remarkable men I have ever known. To say that I miss him is a woeful understatement. And this is one of those times when I wish I possessed the eloquence to pay adequate tribute to him. He was a great American, a wonderful friend, a splendid Senator—and, most of all, a blessed worker in the vineyards of the Lord.

To his dear wife, Ann, and to the rest of his family, Dorothy and I extend our deepest sympathy.

● Mr. GOLDWATER. Mr. President, in the past several days this country has experienced a very sad loss of one of its outstanding men. Dewey Bartlett, who had been Governor of Oklahoma, a Member of the U.S. Senate, and a captain in the U.S. Marine Corps, certainly served his country more thoroughly than most men who traveled through life. I had the extreme pleasure of sitting next to him in this Chamber and serving with him on the Armed Services Committee. He was a man of extreme courage as evidenced by the way he accepted the fate that he knew was his. He was a man of rare intelligence but, more important than that, I believe, he was a man dedicated to his country, who was unafraid to work for his country and whose contributions to our freedom were more than we often see from our citizens. I am going to miss him as a personal friend, but the country is going to miss him as an example of what Americans should aim to be during the course of their lives.●

Mr. WALLOP. Mr. President, my friend Dewey Bartlett has died. Those of us who saw the valiant struggle for life he waged the last 2 years will not soon forget the example of courage and sense of duty he daily laid before us. All of us will miss him, and all of us are the better for what he was.

Any man would have forgiven a choice to live his final months closer to his family than the incredible burden of Senate duties permits. Dewey Bartlett chose duty above self, and none will deny that his duty was magnificent. Not only was he present, but he was effective. He fought for his State, his country, its military power, its energy resources, its small businessmen, its working men and women.

He was ever present during the closing 40-odd hours of continuous session when the 95th congress was brought to a close.

When the public looks to national leadership and finds it wanting, it overlooks men like Dewey Bartlett. He loved his family, his State, and his country and served all three. He was the essence of integrity, courage, and duty. Now he is gone from among us, but his memory and example remain as tributes to the qualities America seeks and needs to guide her.

TRIBUTE TO DEWEY BARTLETT

Mr. DOLE. Mr. President, death has robbed me of a good and valued friend, and taken from the people of Oklahoma and the Nation a public servant of rare distinction. For Dewey Bartlett is gone, and all who struggle to make politics a career of honor and selflessness must mourn his passing.

He was an unusual politician, a man who refused to be pigeonholed and who

never took the obvious or easy way out. He was a conservative whose vision of the future was strikingly true, a man who believed that the only thing worse than a hard heart was a soft head. And he brought to Government a passion for justice within a society of maximum individual freedom.

As a member of the Oklahoma State Senate, he was father to that State's vocational education system. As Governor, he created the Governor's Full Employment Commission. He appointed Oklahoma's first black judge, and he met monthly with a youth advisory committee to bring into play the idealism and commitment of the young.

As a Member of the Senate, he stood front and center for an America strong enough to enforce its best ideals. His efforts on behalf of our Armed Services were tireless. So, too, was his conviction that free enterprise could produce enough energy to make us independent of international cartels.

Dewey Bartlett believed in building bridges: Between black and white, young and old, business and consumer, Government and governed. He carved a career out of old virtues—bedrock honesty, a probing mind, a firm conviction that any problem could be solved, if only we could address it with all the resources at our command.

He believed that our day in the Sun was far from over, that the raw courage which transformed the prairies of Oklahoma could yet resolve the festering problems that afflict us in this complicated and confusing world.

Dewey Bartlett believed that we should strive to be all that we could be. His life exemplified the heights to which a capable and determined man could rise. He left Oklahoma a better place. But his passing leaves us all the poorer. To his wife Ann and his three children, to the people of the State he loved so long and so well, I extend my deepest sympathy. We have all lost a man who meant much.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution (S. Res. 88) was unanimously agreed to.

THE PERFORMANCE OF SENATOR ROBERT C. BYRD AT THE GRAND OLE OPRY

Mr. BAKER. Mr. President, some months ago it was my privilege to discuss with the distinguished majority leader the obvious underutilization of his talents as a musician, and suggested the premier and No. 1 forum for the illumination of that proficiency would be the Grand Ole Opry in Nashville.

I represented to Senator BYRD of West Virginia that the Grand Ole Opry was, indeed, the graduate school and the ultimate training for men and women who have great hopes and expectations for their future musical career.

It was with particular pleasure, then, that I learned that Senator ROBERT BYRD had accepted an invitation to appear and perform at the Grand Ole Opry in Nashville.

That is not the purpose for this recitation. I am rather here, Mr. President, to report to our colleagues that Senator BYRD performed with such great distinction that I have had to revise my appraisal of the Grand Ole Opry that it, indeed, was honored and privileged to have him as a consummately skilled musician who requires no further training, and to say that all of those in attendance were so gratified by his performance that we may live in jeopardy that there will be no more Saturday sessions so that the majority leader can travel to Nashville each week and perform in that forum.

Seriously, Mr. President, it was a great honor for all Tennesseans and for that distinguished aggregation known as the Grand Ole Opry to see our colleague and majority leader agree to accept this invitation. We are happy he did, and we are honored that he represented himself, the State of West Virginia, and indeed the entire country with such great distinction.

Mr. ROBERT C. BYRD. Will the distinguished Senator yield?

Mr. BAKER. I will be happy to.

Mr. ROBERT C. BYRD. I will be very brief, Mr. President, because Senator BENTSEN is waiting for recognition under his order. I will have more to say about the Grand Ole Opry later.

I thank the distinguished minority leader for his very gracious remarks and his very gracious invitation to come down to the State of Tennessee and visit the Grand Ole Opry. Having visited there, I must say that I guess I have some of the same feelings that Solomon had after visiting the Queen of Sheba. He heard all of these wonderful stories but after he got through visiting the Queen of Sheba he said the truth has not yet been told.

One has to go there to really see this great country music hall of fame and be a part of the wonderful rapport the Opry stars showed to me all the time I was there. It was a very gracious welcome on the part of all the people, by my fellow musicians and others. It was very wonderful.

Mr. BENTSEN. Will the Senator yield at this moment on that subject?

Mr. ROBERT C. BYRD. Yes.

Mr. BENTSEN. I was delighted to see the majority leader on the stage in Nashville at the Grand Ole Opry. We will be looking forward to extending an invitation to the majority leader to come to the epitome of that kind of a performance to attend Luckenbach in Texas.

Mr. ROBERT C. BYRD. I am simply overwhelmed.

Mr. BAKER. Mr. President, the Grand Ole Opry is shivering in its boots at that kind of an invitation.

Mr. President, do I have any time remaining?

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes remaining.

THE SEARCH FOR PEACE

Mr. BAKER. Mr. President, I have earlier today commended the recent efforts of President Carter to continue the search for peace in the Middle East. Since the achievement of the Camp David accords in September, the process of codifying those accords has been difficult and, at times, extremely discouraging. The President has throughout remained steadfast in his pursuit of peace and I admire his perseverence.

Today, at noon, President Carter announced that the Cabinet of Israel, at the recommendation of Prime Minister Begin, has accepted proposals offered by the United States to break the negotiating impasse. The President will further announce that on Wednesday of this week he will travel to Cairo to discuss these proposals with President Sadat.

Although we should be under no illusion that the road to a treaty between Israel and Egypt will now be easy, these developments offer great promise. As I have before, I offer again my support and best efforts in any way that may be helpful in this immensely significant endeavor.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. Mr. President, I, too, commend President Carter in his unstinting efforts to keep the Camp David spirit alive and well. He talked to me, likewise, earlier today, to indicate that he was going to announce at noon today the fact that the Israeli Cabinet had approved by a close vote its support for certain treaty proposals. The President also spoke to me of his plans to go to Egypt on Thursday, Friday, and Saturday of this week, and of his intention to visit Jerusalem. He indicated that Mr. Begin would be cutting short his own visit here in order that he might return home and make preparations for the President's visit.

The President is to be highly commended. I support him. I hope that the leaders of Israel and Egypt will agree upon a treaty, because the security and the stability of the Middle East are so important, not only to those two countries but also to the whole region and, over and above that, the peace of the world and the security interests of our own country. I hope that a treaty can emerge between Egypt and Israel, and that steps leading to a comprehensive peace on all fronts then may continue.

I thank the Chair.

SPECIAL ORDER

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

THE REGULATORY CALENDAR IS A FIRST STEP TOWARD A REGULATORY BUDGET

Mr. BENTSEN. Mr. President, the Federal Register usually contains a lot of bad news and a little good news. The Federal Register, which is the daily Government publication containing the full texts of all rules and regulations of the Federal regulatory agencies, has good

news when it announces regulations which protect the environment or the health and safety of our people in a way that minimizes waste and unnecessary costs. It contains good news when there is an announcement of an improvement in the regulatory process. It contains good news when there is an announcement of a rescission of a poor or badly written regulation.

On the other hand, it contains bad news when it announces regulations that are wasteful, regulations that duplicate or conflict with the regulations of other agencies, regulations that involve unnecessary paperwork, and regulations which fail to achieve their objectives in the least costly way.

Too often the news is bad. But the Federal Register of Wednesday, February 28, 1979, contained good news. On that day, the Regulatory Council published the first Calendar of Federal Regulations—a complete list of all the major regulations currently being developed by all the regulatory agencies of the executive branch, as well as the major regulations being developed by many of the independent regulatory agencies.

I welcome the publication of the Calendar of Federal Regulations because it is a necessary first step toward the development of a regulatory budget.

REGULATORY BUDGET

On January 15, 1979, I introduced legislation to create a regulatory budget—S. 51, the Regulatory Budget Act of 1979. Such a regulatory budget would put an annual cap on the compliance costs each agency could impose on the private sector through its rules and regulations. The process for establishing the annual regulatory budget would resemble the process currently used to set the fiscal budget—we would have a proposed budget from the President and annual budget resolutions from the budget committees. This would make it possible to coordinate the regulatory and fiscal budgets.

We need a regulatory budget in order to reduce the inflationary impact of unnecessary, excessive and conflicting Government regulations. Our health, safety and environmental programs are very important. They have brought immense benefits to millions of Americans. We do not want to retreat or turn back the clock—the American people want protection in these areas. But they do not want waste, and they do not want Government bureaucrats pushing up inflation through wasteful and unnecessary Government regulations.

During the past 15 years, we have made immense strides in health, safety and environmental protection. But our gains have not come cheaply. Last April, the Joint Economic Committee published a study showing that the annual cost of Government regulations will come to over $102 billion in fiscal 1979, up 40 percent just since 1976. The Commerce Department's Bureau of Economic Analysis reports that capital spending by businesses just to meet the requirements of environmental regulations comes to more than $7 billion annually—or more than 5 percent of total capital spending. The Joint Economic Committee has also published a recent GAO report showing that American businesses spend 69 million hours annually at a cost of over $1 billion satisfying more than 2,100 Government reporting and recordkeeping requirements. This GAO study only covered requirements that have been approved by GAO or OMB under the Federal Reports Act and thus excluded the very heavy paperwork burdens imposed by the Internal Revenue Service, the bank regulatory agencies and the SEC. It also did not include the paperwork burden imposed by the Government on individuals, farms, or State and local governments.

In addition, the recent growth of regulatory programs and the proliferation of new regulatory agencies has lead to regulations which are often duplicative, conflicting, and excessively wasteful. Witnesses appearing before the JEC last spring provided numerous examples of instances where compliance with one regulation required violation of another. This not only puts businesses in jeopardy, both legally and financially, it also reduces respect for the law and the Federal Government. Small businesses are often hardest hit by the morass of conflicting and duplicative regulation because they cannot afford the necessary legal advice.

We have to bring some order to the regulatory process. Although a vast number of bills have been introduced that would improve public participation in the regulatory process or improve the economic analysis of proposed regulations, there is just no substitute for a budget to give Congress and the American people a good handle on what the Government is doing.

Until recently, the present fiscal budget provided a fairly complete picture of the impact of Government on the economy. Almost all Federal activity involved spending and taxing, and these show up in the budget. But with the recent growth in regulatory programs—where businesses and individuals incur costs to achieve important social goals—the Federal budget no longer conveys a complete picture of the Government's economic impact.

Because much spending for social purposes occurs in the form of regulations, and does not appear in the budget, Congress has lost its ability to decide where additional resources could best be used. Right now, we can make rational choices between spending on low-income housing and spending on national defense, because both of these are in the budget. But we cannot make rational decisions on whether to devote more resources to cleaning up the environment or to improving workplace safety, because spending on these goals is not in the budget. Also, we cannot balance between more spending on the environment and more spending on housing, again because our spending on the environment is not in the budget. A regulatory budget would restore the ability of Congress to set our national priorities.

A regulatory budget would also provide an incentive for agencies to achieve their regulatory goals cost-effectively. With a cap on total compliance costs, agencies would search for less expensive ways of achieving regulatory goals, so that they could accomplish the maximum amount for the allowable compliance cost. Right now, with no cap on private sector compliance costs, agencies have no incentive to eliminate waste and inefficiency. As a result, too many regulations have contributed unnecessarily to inflation and lower productivity because they have not been developed in a way which minimizes waste. We do not want to cut regulatory benefits. The benefits of most of our regulatory programs are enormously important. But we want to cut out waste and inefficiency.

REGULATORY CALENDAR

The regulatory calendar, which was published yesterday in the Federal Register by the Regulatory Council, is an important development toward a regulatory budget. For the first time, we have a complete list of all the major regulations being developed by the regulatory agencies. Not only do we have the title of the regulation, but also a summary of expected benefits and costs, the economic implications of the proposed regulations, and major alternatives under study. These would all be important elements of a regulatory budget, and the regulatory calendar will help sharpen their usefulness.

Here is what the Regulatory Council says about the regulatory calendar:

> The first edition of the Calendar of Federal Regulations represents the newest and one of the most promising tools for the President, the Congress, the regulators, and the public to understand and shape the way we implement national regulatory policy goals. For the first time, we will have a comprehensive catalog of important Federal regulations while they are under development. . . .
>
> Most important, we will have this information much earlier in the regulatory process, at one time and in one place.

According to the Regulatory Council, the Calendar of Federal Regulations will improve the regulatory process in four ways. It will help identify areas of potential duplication, overlap or inconsistency. It will help identify economic sectors facing multiple regulatory activity. It will help in the developement of consistent analytical and decision-making methods. And it will help in the assessment of regulatory benefits.

Of course, this is a lot to ask. If it goes some of the way toward achieving some of these goals, it will certainly contribute to the development of a regulatory budget. But it is no substitute for such a budget. No existing regulations are included and it provides no incentive other than the possibility of agency embarrassment for the elimination of waste and unnecessary costs.

The regulatory calendar published yesterday is more than 100 pages long. I will not try to publish it in the RECORD. But I do think my colleagues and the American people should know what the regulatory agencies have in mind for us during the next few months, and so I ask unanimous consent that the table of contents of the calendar be printed in

the RECORD. I hope my colleagues will take a look at the regulatory calendar because the regulations listed will have a major impact on all Americans.

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

REGULATIONS ON THE REGULATORY CALENDAR

CHAPTER 1—HEALTH AND SAFETY

U.S. Department of Agriculture

National School Lunch Act and Child Nutrition Amendments of 1977

Regulation by the Secretary of Agriculture of food sold on school premises in competition with the National School Lunch Program---- 11391

Department of Health, Education, and Welfare

Medicare-Medicaid Anti-Fraud and Abuse Amendments

Uniform reporting systems for health services facilities and organizations- 11393

Social Security Act

Life Safety Code in hospitals, nursing facilities and intermediate care facilities ---------- 11394

Conditions of participation for skilled nursing facilities and intermediate care facilities---------- 11394

Department of Labor

Federal Mine Safety and Health Act of 1977

Mandatory safety standards for surface coal mines and surface areas of underground coal mines---------- 11395

Regulations providing for automated temporary roof support standards-- 11396

Requirements for construction and maintenance of impoundments and tailings piles at metal and nonmetal mines ---------- 11396

Requirements to provide self-contained (oxygen-generating) self-rescuers to underground metal and nonmetal miners---------- 11396

Safety and health standards for construction work on mine property--- 11397

Regulations setting forth requirements for safety and health training for mine construction workers-- 11398

Occupational Safety and Health Act of 1970

Identification, classification and regulation of toxic substances posing a potential occupational carcinogenic risk ---------- 11398

Occupational exposure standards to hexavalent chromium---------- 11399

Occupational exposure to pesticides-- 11399

Department of Transportation

Federal Aviation Act of 1958

Flammability standard for crewmember uniforms---------- 11400

Wind shear equipment requirements-- 11401

Federal Railroad Safety Act of 1970

Alerting lights display—locomotives-- 11401

Motor Carrier Act

Hours of service of drivers---------- 11402

Minimum cab space dimensions------ 11402

Port and Tanker Safety Act of 1978

Construction and equipment for existing self-propelled vessels carrying bulk liquefied gases---------- 11403

Requirements for inert gas systems for oil tankers of over 20,000 dead weight tons---------- 11403

Environmental Protection Agency

Clean Air Act

Review, and possible revision, of the national ambient air quality standards for carbon monoxide---------- 11404

Review, and possible revision, of the national ambient air quality standards for nitrogen dioxides---------- 11405

Review, and possibly revision, of the national ambient air quality standards for particulate matter-------- 11405

Review, and possible revision, of the national ambient air quality standards for sulfur oxides---------- 11406

Standards of performance to control atmospheric emissions from industrial boilers---------- 11407

Reducing benzene emissions to the atmosphere ---------- 11407

Listing of coke oven emissions as a hazardous air pollutant and reducing emissions---------- 11408

Gaseous emission regulations for 1983 and later model year heavy-duty engines ---------- 11408

Gaseous emission regulations for 1985 and later model year heavy-duty engines ---------- 11409

Particulate regulation for light-duty diesel vehicles---------- 11410

Proposed emission regulations 1983 and later model year light-duty trucks ---------- 11410

Fuels and fuel additives testing regulation ---------- 11411

Federal Insecticide, Fungicide and Rodenticide Act

Pesticide registration guidelines----- 11411

Noise Control Act of 1972

Noise emission standards for newly manufactured motorcycles--------- 11412

Noise emission standards for newly manufactured wheel and crawler tractors ---------- 11413

Resource Conservation and Recovery Act of 1976

Hazardous waste regulations: Core regulations to control hazardous solid waste from generation to final disposal ---------- 11414

Safe Drinking Water Act

Control of organic chemicals in drinking water---------- 11415

Toxic Substances Control Act

Standards and rules for testing chemical substances and mixtures------ 11416

Rules and notice forms for premanufacture notification of new chemical substances---------- 11417

Uranium Mill Tailings Radiation Control Act of 1978

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Mr. BENTSEN. Mr. President, I really believe that the Carter Administration is making a very serious effort to try to turn back this tide. In 1955, we had 10,000 pages in the Federal Register; today, there are over 70,000 pages in it. There is no way that small businessmen or an individual can possibly keep up with the new laws that they are subjected to and how they are to comply with them.

I introduced a Federal regulatory budget to try to put an annual cap on how much these agencies can make us spend. We put a budget on them as to how much of the taxpayers' money they can spend, but the open-ended thing has been how much they are going to make us spend. The idea of what the economic impact is going to be on individuals

across this country in small business or on the cost of living, the kind of frustration that is going to come about because of it—that kind of regulatory budget would go a long way toward bringing some economic justice and a curb on inflation in this country, and I am very hopeful that my colleagues will support it.

I think this regulatory calendar is a major step forward, because it lets us know across the country what all the agencies are promulgating, so we can try to find a way to cut out the conflict and the overlap before they finally become regulations themselves, before they finally get their feet set in concrete on each of these.

I urge my colleagues to be supportive of these kinds of efforts at cutting back on the intrusion of Government into our personal lives.

ENERGY FOR WHAT?

Mr. BENTSEN. Mr. President, during the past 4 years, the junior Senator from North Carolina has earned an enviable reputation as one of the best informed, hardest working, and most effective Members of this body.

While Senator MORGAN is known primarily for his outstanding work on the Armed Services and Banking Committees, he has also taken an active interest in small business and agricultural policy.

Senator MORGAN was in Houston on February 20 to address the National Rural Electric Cooperative Association. I believe the Senator's speech on that occasion reflects his ability to master complex subject matter and communicate creative, sensible ideas in respect to energy policy.

I commend my colleague on an excellent address and ask unanimous consent that Senator MORGAN's remarks "Energy for What?" be printed in the RECORD.

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

ENERGY FOR WHAT?

It is a special thrill for me to be here in Houston today for the 37th Annual Meeting of the National Rural Electric Cooperative Association.

The reason why I was especially pleased to accept this speaking invitation has to do with what rural electrification has meant to me. I can remember when we turned on electric lights for the first time in my home on rural route #1, in Lillington, North Carolina. Having those lights was meaningful to our lives beyond description. For once we could read late at night without special strain.

Indeed, the people in this great hall are among the finest in America. I owe, along with the rest of the nation, a special debt to folks like Walter Harrison of Georgia who has attended every one of your 37 meetings and is now leaving your Board of Directors.

The people that have gathered these past few days in the nation's oil capital know the importance of energy. They know that it is energy that runs through the social and economic fiber of the nation. They know that it is energy which powers the movement of goods and people, which our factory gates open and which permits a small boy growing up in Lillington, North Carolina, to read until the wee hours of the night.

Energy is much on the minds of America's people tonight. There is talk of rationing of petroleum, the closing of gasoline stations on Sunday. We have lived with this type of discussion since the days of the Arab oil embargo in 1973. Yet, I find it interesting to note that it is a cut-off in supplies from Iran—which total only five percent of our oil consumption—that has brought on renewed discussion of gasoline rationing.

As we face declining supplies of fossil fuels, it becomes essential that we scrutinize what we use our energy for while aggressively searching for new sources.

We who come from Rural America have to be especially concerned about energy questions. We all have heard various scenarios about energy questions. We all have heard various scenarios about our energy future—including scenarios forecasting migration from rural areas to cities in order to conserve energy. Those who have not thought about those frightening scenarios only need think back to the days of the Arab oil embargo when many of the energy giants cut-off energy supplies to rural areas, pleading high transportation costs. Indeed, it was farmer cooperatives that saved the day in many rural areas of our country.

In Washington I serve as Chairman of the Senate Rural Housing Subcommittee. This responsibility and privilege, coupled with my own special background of having lived in Rural North Carolina, provides me with a strong responsibility and challenge in confronting our energy future.

In meeting this task, I have often focused on the social and economic forces which have shaped the State of North Carolina today. Certainly the strongest force has been the existence of tobacco. Because of tobacco, the Tarheel State has more farmers than any other state but Texas. We also have the smallest farm size of any significant farm state.

Indeed, tobacco has meant that North Carolina has had an opportunity for strong small towns and villages during a period of time when the very existence of Rural America was threatened in most states.

A second force which has shaped the State of North Carolina has been rural electrification. When the Rural Electrification Administration was first established in the early part of the Great Depression, only one in ten rural citizens had electricity. Today, over four decades later, nearly every rural home and farm has electric power.

The Rural Electrification Administration came into being only after a long period of neglect of rural areas by the private, investor owned utilities. Many of these private utilities said it was not feasible to electrify Rural America, but enterprising R.E.A. efforts led to many innovations which brought costs down.

The private, investor owned utilities resisted the Electric Membership Corporations and opposed in Congress the efforts to expand R.E.A.'s funding and authority.

Today, many of the antagonisms between the private, investor owned utilities and the Rural Electric Co-ops have been eliminated. Indeed, today the Co-ops and the investor owned utilities have many mutual interests, not the least of which surrounds the question of nuclear power in America's future.

As we enter the 1980's, Rural Co-ops stand at a turning point in their development. The task of rural electrification is largely complete. This, though, does not mean that there is no future role for either R.E.A. or the Rural Electric Co-ops. Indeed, I believe that this joint partnership has never faced a greater challenge.

I believe that R.E.A. and the Co-ops must fulfill a vital and innovative role if we are going to continue to have a strong Rural America.

Just as the Co-ops provided a unique response to the great problem of the 1930's—rural underdevelopment—so too can they play a vital role in spearheading the move to alternative and renewable energy sources.

By alternative and renewable energy sources, I mean such sources as solar, wind, wood, and low-head hydro, the latter being the placement of generators on existing dams which can generate tremendous amounts of electricity with a minimal amount of investment. These types of sources of energy, combined with balanced development of nuclear power will make up America's energy future as I see it.

The R.E.A. and Rural Electric Co-ops can move to the forefront of renewable energy development without major new laws or institutional changes. In fact, a re-emphasis on the "co-operative" part of Rural Co-ops can help solve one of the great energy crises of our time, the dilemma of how to connect supplies of energy produced by renewable energy sources into the electric energy grid that criss-crosses the landscape of America.

Just as the animosity between the Co-ops and the private investor owned utilities proved ultimately to be an obstruction to energy development, so too today the heated conflict between advocates of electrification and on-site energy enthusiasts threatens to needlessly complicate and delay the development of renewable energy sources. On both sides short-sighted thinking threatens progress and cooperation that are so desperately needed. Those who see renewable resources as our complete salvation—the alliance of environmentalists and solar enthusiasts—jealously guard against any intrusion of the utilities or Rural Electric Co-ops into renewable energy development. The renewable energy forces believe, wrongly, I am convinced, that solar and renewable sources can meet all of America's energy needs. There is also the mistaken view that renewables and electricity distribution systems are competitors or separable. In fact, they are and should be complementary.

Unfortunately, it is not only the environmentalists and solar advocates who are wrong. Equally wrong, in my opinion, are those individuals who see solar and renewable energy sources as unrealistic and a threat to the success of energy progress.

In fact, the goals of the two groups are quite inevitably intertwined. The Rural Electrics cannot achieve their basic goal—providing electricity at a price people can afford—with the development of renewable sources of energy. Likewise, solar and wind and other alternative sources of energy will never be viable without a carefully redesigned rate structure.

At this point I want to emphasize and explain both of these points. The importance of utility rate structure to the development of renewable sources is an often overlooked fact.

Most all solar and wind systems generate power irregularly. On cold winter nights the sun doesn't shine and on windless days the wind mills don't turn. At other times solar and wind suffer from an overabundance of energy: on windy days a farm or home with a wind mill would be able to generate more power than needed; the extra power would have to go elsewhere. Obviously, how much the wind-mill owner receives for his excess power will be very important in determining the economic success of his wind-mills.

Similarly, the Co-ops will be dependent on the phase-in of renewables to halt the upward soar of electric rates. Here I believe that the historical trends are unmistakable. Ten years ago, you could generate a kilowatt hour with as little as a hundred dollar investment. Today, it is likely to cost one thousand dollars to build the capacity from conventional sources to generate a kilowatt hour. Although rates have risen rapidly this ten fold increase in the cost of electricity from

new generating capacity has been hidden from the consumers because the newer and higher price power has been averaged in with the much greater amount of old, cheap power. This upward trend in the cost of new generating capacity shows no signs of ending.

Renewables, which ten years ago were quite uneconomic, are now competitive with the higher priced electricity generated from new capacity. The cost of renewables has fallen and will probably continue to fall or at least level off. While—barring a major breakthrough—renewable energy sources will never be as cheap as older electricity, there is every reason to believe that they will grow increasingly superior in cost to electricity from newly constructed generating plants.

I am certain that most of the people that are here today can appreciate the points I make. It is no accident that the National Rural Electric Cooperative Association, led by your very capable Executive Vice President Bob Partridge, has mounted an impressive and extensive public education campaign shepherding the need for solar energy development. Clearly, it will be people such as Bob that will be at the forefront of the type of partnership that I think is essential for the type of balanced energy development I believe our country needs.

While I have outlined how I think energy sources can be converged to meeting our needs, I think that it is essential that constraints from other directions be faced and analyzed. A recent issue of your magazine, Rural Electrification, has dealt with some of these concerns in its December issue. That specific issue asked the question, Too Much Protection?, on the cover.

This issue covered, far more comprehensively than I could address here, the problem of too much regulation. I think that everyone recognizes that Congress has been capable of over-reaction on a number of issues. You should not blame Congress. Indeed, often Congress is faced with making fundamental decisions shaping the future of America with very limited knowledge. If Congress guesses correctly, all well and good. If Congress misses the mark, then you, the people of this nation, pay the price.

I think that Congress has acted with good intentions in passing the Clean Air and Clean Water Acts. Certainly, everyone wants a clean environment. But when these laws were passed during the years of the Great Society, Congress either felt that the cost could be absorbed by ever increasing economic growth or that the costs would clearly be in the public interest. Today, a different mood prevails. The American people demand to know the cost of regulation and that the costs and benefits be carefully weighed before regulations are imposed.

The mood that prevails today I believe will contribute to a better tomorrow. Indeed, I think that the prospect for tomorrow has been made more promising by this renewed balance.

In the beginning of my speech, I asked the question, "Energy for What?" I hope that I have helped answer this question. Energy—from a combination of energy sources—for smooth and balanced growth, especially in Rural America. I applaud your organization for its thoughtful and future oriented role. It is such constructive action that makes me much more optimistic than I thought was possible just a few short years ago. I encourage you to continue to look to Rural America's future needs. With your help, we will have a stronger and more successful Rural America.

I thank you for this opportunity to share some thoughts with you.

ORDER OF PROCEDURE

Mr. ROBERT C. BYRD. Mr. President, has the Senator completed?

Mr. BENTSEN. I yield to the majority leader.

Mr. ROBERT C. BYRD. Will the distinguished Senator yield a brief period of his time, if he has completed his remarks, to the Senator from Arkansas (Mr. PRYOR) who needs a little time and did not have a previous order?

Mr. BENTSEN. I am delighted to yield to my distinguished colleague, the Senator from Arkansas, who has taken such a leadership role so early in his tenure here. I observed that the other day, on the job he did, with some very effective work on the rice program in this country.

Mr. PRYOR. I thank the Senator.

(The remarks of Mr. PRYOR made at this point in connection with the introduction of legislation are printed in today's RECORD under Statements on Introduced Bills and Joint Resolutions.)

SPECIAL ORDER

Mr. BENTSEN. Mr. President, unless the majority leader desires some of the remainder of my time, I am prepared to yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Chair now recognizes, under the previous order, the Senator from West Virginia for a period of not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, are there other orders for the recognition of Senators, other than mine?

The ACTING PRESIDENT pro tempore. No, there are not.

Mr. ROBERT C. BYRD. Would the distinguished Senator from Kansas like to have some time?

Mr. DOLE. Yes, to make a statement.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Kansas as much of my time as he desires.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

(The remarks of Mr. DOLE are printed under tributes to former Senator Bartlett).

Mr. DOLE. Mr. President, I thank the distinguished majority leader for yielding.

Mr. ROBERT C. BYRD. The Senator is welcome.

Mr. President, I yield now to the Senator from Michigan (Mr. LEVIN) as much time as he needs from the order.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Michigan is recognized.

AUSCHWITZ RECONNAISSANCE PHOTOGRAPHS

Mr. LEVIN. Mr. President, I make this statement on behalf of myself and Senator BOSCHWITZ. Mr. President, the Central Intelligence Agency has recently released aerial reconnaissance photographs depicting the layout of the Nazi death camp at Auschwitz. The photographs, taken in 1944 and 1945, provide further evidence that Allied authorities were aware of the slaughter taking place at Auschwitz during the latter years of the war, which makes even more disturbing the fact that no direct attempt was ever made to disrupt it.

The question of why the Allies did not undertake any military action against the camp or the rail lines used to transport prisoners to it has been a painful one throughout the postwar years. The just released photographs do not by any means represent the first evidence that the Allies were aware of the Auschwitz death camp. As historian David Wyman relates in his article "Why Auschwitz Was Never Bombed" (Commentary, May 1978), information about the camp was confirmed by a detailed report of two escapees, which reached the Allies in June 1944.

Despite repeated appeals that the United States direct bombing raids at the rail lines or the murder installations at the camp, the War Department consistently refused, on the grounds that—

> The suggested air operation is impracticable for the reason that it could be executed only by diversion of considerable air support essential to the success of our forces now engaged in decisive operations.

Wyman points out, however, that more than 2,800 bombers struck targets in the region around Auschwitz between July and November 1944, and it seems clear that some of the bombing raids could have included the camp, or been diverted to it when poor conditions obtained at the primary targets.

The release of the reconnaissance photographs should assist in a reexamination of the decisions made by American and Allied authorities, in light of the information that was available to them. No purpose would be served by an attempt to assign blame retrospectively for the failure to take steps which might have saved so many lives. I do think, however, that we could learn a great deal about how our society and its decisionmakers react to humanitarian crises. The vicissitudes of the current administration's human rights policies demonstrate that we as a Nation still have not resolved the critical problem of how humanitarian concerns should be interrelated with what are perceived to be our overriding political and military interests. This conflict is nowhere more poignantly illustrated than in our reaction to the inestimable tragedy of the Nazi holocaust.

Because these questions need to be restudied, I applaud the President for his decision to turn the photographs over to the Holocaust Commission. I hope the President will direct all Federal agencies to release all information which bears upon these events, so that we may reconstruct with greater accuracy the historical record of that era, and draw from it lessons which may help guide our future conduct.

Mr. President, I ask unanimous consent that an article on this subject from the Washington Post of February 23, 1979, be printed in the RECORD.

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

1944 PHOTOS SHOWED AUSCHWITZ CAMP

(By Thomas O'Toole)

Allied aerial reconnaissance photographs revealed the existence of the Nazi death camp at Auschwitz more than a year before the end of World War II, which raises anew the

question of why the Allies never bombed the camp or the rail line that took victims to the camp.

Aerial photos taken of Auschwitz by American and British reconnaissance planes from April 4, 1944 to Jan. 14, 1945, clearly show the camp's gas chambers and crematoria where victims' bodies were burned. Several photos show prisoners undergoing disinfection and standing in line to be tattooed. One photo shows a line of 1,500 prisoners being led into the camp from 85 railroad boxcars parked at the end of the rail line just outside the camp gate.

The photographs, along with a scholarly treatise tiled "Holocaust Revisited," have just been turned over to the National Archives by the Central Intelligence Agency, which also passed the photographs on to the White House. It is understood that after seeing the photographs, President Carter sent them to Elie Wiesel, chairman of the Holocaust Commission and a survivor of Auschwitz.

Just why the CIA passed the pictures on to the archives is not clear. The authors of the CIA report accompanying the pictures said: they were moved to research and write the report after seeing the television serial, "The Holocaust."

"My hope is that we stimulate the interest of historians in the use of photographs taken through aerial reconnaissance," Dino A. Brugioni, one of the authors of the CIA report, said yesterday. "It is an untapped source of history."

The immediate reaction to release and publication of the photographs may be primarily one of anger. Jewish scholars have long asked why the Allies did not bomb Auschwitz or the rail line leading to it, a question that is sure to be brought up again with the release of the pictures.

"A recurring question since World War II has been why the United States rejected requests to bomb the gas chambers and crematoria at Auschwitz or the railroads leading to Auschwitz." University of Massachusetts historian David S. Wyman wrote in Commentary magazine last May, "Such requests began to be numerous in the spring of 1944."

Proponents of such an attack recognized that it would have killed many of the inmates, but the Germans were going to kill them anyway and destroying the camp might have saved other intended victims.

Destruction of the rail line would have hampered the transport of nearly 1 million Hungarian Jews, who were being moved to Auschwitz at the time.

On April 10, 1944, two Auschwitz escapees named Rudolf Vrba and Alfred Wetzler passed on detailed information to Jewish leaders in Switzerland that Auschwitz was a death camp for Jews. The Swiss Jews informed American diplomats in Berne that 12,000 Jews were being murdered every day at Auschwitz, information that reportedly reached Washington by June 1944.

A crucial question about the aerial reconnaissance pictures of Auschwitz is whether they were ever passed on to Washington by the U.S. Strategic Bombing Survey in Britain and Italy, where the planes were based that took the pictures.

The pictures of Auschwitz were almost an accidental byproduct of photographs taken of an I. G. Farben plant producing synthetic fuels less that five miles away. The plant was repeatedly bombed in the last year of the war by American and British planes.

There is little question that the Auschwitz photographs revealed the existence of a death camp. The question is whether the photo interpreters looking at the pictures recognized it as such and notified their superiors.

"Photo interpreters were unaware of Auschwitz at the time," Brugioni said. "They were looking for details of the Farben plant alongside Auschwitz, nothing else."

He explained that during World War II, photo interpreters were given no historical or social background by which to judge pictures. He said they were usually in a hurry to make judgments and often used shortcuts in making them.

"For instance, there's a picture in the Auschwitz file that shows prisoners being herded toward the camp," Brugioni said. "During the war, any time a line of people were seen in a picture it was labeled, 'mess hall' ".

The pictures turned over to the archives by the CIA have lain in cans of aerial film stored at a Pentagon repository in Suitland, Md., for 30 years. The CIA acquired the film after "Holocaust" raised the Auschwitz issue last year.

The pictures illustrate what have been until now only "eyewitness accounts of the death process at Birkenau," which was the murder section of the Auschwitz camp, according to the CIA report. The pictures of the four gas chambers and crematoria at the camp "appear to be historically unique," the CIA report said.

"As far as we have been able to determine," the report's authors write, "no other photography of these facilities exists. The Birkenau gas chambers were special access facilities, even for most Nazis, and all photography was forbidden. The extermination facilities at the camp were destroyed by the Nazis prior to the camp's being liberated by the Red Army in January 1945."

Situated in a remote area south of Warsaw in Poland, the Auschwitz death camp was first opened in June 1940 to receive Soviet prisoners of war. It later became the main death camp for European Jews. By one count, 2.5 million Jews were killed at Auschwitz.

Mr. LEVIN. Mr. President, another of this Nation's more recent reactions to the holocaust, the investigation and prosecution of suspected Nazi war criminals, further demonstrates this country's ineffective response to this terrible tragedy. Despite congressional direction, the Immigration and Naturalization Service has not seen fit to wholeheartedly investigate and prosecute the hundreds of persons who were involved in the holocaust and who have entered this country illegally since then.

Congress has made it clear that funds are to go to prosecution and investigation of these cases. I find it inconceivable that the INS has been so recalcitrant on this matter.

Mr. President, it is imperative that the funds allocated to the Special Litigation Unit of INS be released immediately by the Justice Department so the Unit can begin to fully prosecute the over 175 credible cases which it is currently working on. Because our time is rapidly running out, we must act aggressively on these cases. The persons involved in these crimes must not be allowed to continue their lives in the United States with the false security they now have.

ORDER OF BUSINESS

Mr. LEVIN. Mr. President, I yield back the remainder of my time to the Senator from West Virginia, and I thank him for his courtesy.

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

The PRESIDING OFFICER. The Senator has 7 minutes remaining.

Mr. ROBERT C. BYRD. I thank the Chair.

VOCATIONAL EDUCATION IS WORKING IN WEST VIRGINIA

Mr. ROBERT C. BYRD. Mr. President, since 1963, the Federal commitment to vocational education has served as a stimulus in the development of the current vocational education system. However, the bulk of that commitment is carried by the States. Federal funding for vocational education programs in 1977–78 amounted to $534 million. These funds were matched by $4.4 billion in State and local funds to provide programs enrolling more than 16 million students. The States have the final word about the shape and implementation—within Federal guidelines—of their vocational education programs.

I support the concept of State responsibility for education because State governments are best able to understand the education needs of their communities. In my own State of West Virginia, vocational education programs have been instituted to help students develop job skills which are applicable to the particular businesses and industries in the State.

Since 1963, the programs have progressed rapidly. In the last 10 years, programs have been expanded, modernized, and made more responsive to emerging job opportunities in the State. In 1968, there were seven vocational education centers in the State, with 66,000 people enrolled. A decade later—during 1977–78—152,995 people participated in vocational education and related jobs programs at over 50 centers throughout the State.

Enrollment continues to increase and additional centers are under construction. While the Federal allocation for vocational education programs was $5.3 millon in fiscal year 1978, West Virginia spent $35 million and the local governments contributed $15 million.

Vocational education in West Virginia has made a significant contribution toward resolution of the problems of unemployment in the State. The unemployment rate for vocational graduates is less than half of what it is for high school graduates in general.

Moreover, vocational education programs in West Virginia are keeping pace with changing manpower needs. Mine training, for example, has been expanding during the last 3 years in order to meet the growing need for coal. In many instances, West Virginia has taken the initiative to implement programs which go a step further than Federal mandates. For example, in 1975 the State mandated 80 hours of orientation and safety training for persons in coal mines, which is in excess of Federal law. Since then, vocational education programs have trained 29,000 persons in mine safety. In 1976, the State mandated that emergency medical technicians be present in every section of every mine at all times. In or-

der to be certified, the State requires that enrollees receive training experience in excess of that required by the national program. During 1977–78, vocational education trained 6,031 persons in this field.

Vocational education programs in mining keep up with advanced technology. For example, a new curriculum to train persons as mine electricians is based on the newer solid state electrical panels being used today. The new solid state controls are much more efficient and economical, but their growing use has created a need for trained technicians to maintain them. It is being met in vocational education courses which teach students how to troubleshoot electronic mine machinery.

In mine mechanics, students get practical experience in shops similar to those in the industry itself. They get instruction in mining laws, 80-hour orientation, and a trip underground. Safety, too, is a major part of the program.

Public service training programs have been growing rapidly in West Virginia to help Federal, State and local agencies meet employment needs and to help West Virginians take advantage of new employment opportunities. There are courses offered in law enforcement, emergency medical technician training, fire science and prevention, and waste water treatment programs.

In 1977–78, vocational education enrolled 1,725 persons in firefighting courses, 388 persons in law enforcement courses and 195 persons in waste water plant operations. Other programs include health, agriculture, business, industry, and home economics.

The major reason people enroll in vocational education programs is to learn a skill that will earn them a living. The main ingredient in each program is to give students the necessary skills to get a job. In West Virginia, vocational education programs are doing this. Nearly everyone who completes a vocational program finds a job. Eighty-seven percent of graduates from high school programs find jobs. Ninety-three percent of graduates from postsecondary programs finds jobs.

I support vocational education in West Virginia, Mr. President, and I commend the West Virginia Department of Education, local education boards, and the many groups and individuals too numerous to name for their efforts and accomplishments in providing vocational education programs which meet the needs of businesses and industries in the State.

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

The ACTING PRESIDENT pro tempore. The Senator has 2 minutes.

THE RETIREMENT OF ROBERT C. HOUGH

Mr. ROBERT C. BYRD. Mr. President, the retirement of Robert C. Hough on February 28, 1979, from his position as Deputy Sergeant at Arms brings to a close a long career of service to the Senate. First appointed as a page by Senator Harry F. Byrd, Sr., Mr. Hough was advanced to Chief Page and then in June 1943 to Assistant in the Radio News Gallery. He held this position until his enlistment in the U.S. Navy on August 28, 1944.

After serving in North Africa and Sicily, Mr. Hough received an honorable discharge from the Navy on August 15, 1946, and resumed his work for the Radio News Gallery. From this time on Bob Hough's dedication to the Senate was unbroken. On January 1, 1957, he was placed in charge of the Radio and Television News Gallery, making arrangements for coverage of the committees, other Senate activities, and the national convention which he attended from 1944 through 1972.

The Senate appointed Mr. Hough Deputy Sergeant at Arms on July 1, 1972. Merely to describe the tasks that were his responsibility—the security of the Senate, arranging for funerals and all other special ceremonies—does not tell the whole story of his man and his work for the Senate.

Robert Hough was one of the first to arrive in the morning and the last to leave at night. He could be observed daily on the Senate floor, his arms folded, his eyes scanning the galleries to make sure all was in order. He always comported himself in the manner best fitting his responsibilities. He was deliberate in attending to his duties, always doing his job with a singlemindedness, a sense of purpose.

Mr. President, I do not think it would be hyperbolic to say that Robert Hough loved the U.S. Senate. From the time of his service as a page through his service as Deputy Sergeant at Arms, Mr. Hough's dedication never waned. I would like to commend him for the exemplary work he has done and for the spirit of willingness which he brought to his duties. I know that he will be missed and that my wishes for a pleasant and fulfilling retirement are shared by all members of the Senate.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 1 hour, with statements therein limited to 5 minutes each.

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

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

The second assistant legislative clerk proceeded to call the roll.

Mr. McCLURE. 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.

IDAHO LEGISLATURE STRONGLY ENDORSES NUCLEAR POWER

Mr. McCLURE. Mr. President, captions such as "Gasoline Rationing," "One Dollar Per Gallon," and "Homes Without Heat" fill the national headlines more frequently with each passing day. When will we realize that our Nation's dependence on unstable, foreign oil supplies is a severe problem and cannot—and will not—be solved by conservation measures alone?

We in the Congress must get busy and place as a top priority making this Nation energy self-reliant. The Idaho State Legislature has the right idea. In a recent joint memorial they represent support for energy conservation and call specifically for the use of nuclear power to be integrated into the electrical power system. They urge the administration and Congress to act now to put an end to Federal restrictions and penalties making it next to impossible to get nuclear powerplants built and on line.

Nuclear power plants are unquestionably one of our major hopes for meeting future energy needs and, indeed, present ones. Nuclear energy offers mankind—throughout the world—the means of coping with an ever increasing need for electricity combined with an ever decreasing supply of fossil fuels. Until such time that fusion, solar energy and other renewable energy sources can assume a major share of the electrical load, nuclear fission can, if given the chance, provide for the increased need.

The Idaho National Engineering Laboratory in Idaho is making an outstanding contribution to the United States with its pioneering and continuing contribution to reactor technology. We should use this valuable research to get the benefit of the taxpayer dollar investment in this abundant source of clean energy. Idahoans live and work daily with nuclear energy and fully endorse its existence and use. Other Americans should follow this example.

I join my State legislature in calling for an immediate reform of unnecessary, bureaucratic restrictions on the nuclear industry. I ask unanimous consent that the Idaho Senate Joint Memorial No. 102 be printed in the RECORD.

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

SENATE JOINT MEMORIAL NO. 102

Whereas, the Senate and the House of Representatives of the State of Idaho support energy conservation whenever sound and economically possible; and

Whereas, the President of the United States has requested everyone to join in an attempt to make our country energy-independent; and

Whereas, the people of Idaho support the full development of all safe, nonpolluting forms of electrical energy; and

Whereas, the use of nuclear power could be integrated into the electrical power system as a source of future energy for Idaho; and

Whereas, the federal government has adopted stringent nuclear safety regulations; and

Whereas, construction of nuclear plants and the provision of adequate energy provides jobs for citizens during and after construction of the plants.

Now, therefore, be it resolved by the members of the First Regular Session of the Forty-fifth Idaho Legislature, the Senate and the House of Representatives concurring therein, that we most respectfully urge the President of the United States and the Congress of the United States to act now to put an end to all administrative delays in order to provide for the earliest possible granting of neces-

sary licensing and construction permits for nuclear power plants.

Be it further resolved that the Secretary of the Senate be, and she is hereby authorized and directed to forward copies of this Memorial to the President of the United States, the President of the Senate, the Speaker of the House of Representatives of Congress, and to the Senators and Representatives representing this State in the Congress of the United States.

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

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

TAIWAN ENABLING ACT

Mr. ROBERT C. BYRD. Mr. President, the 3-day rule on the Taiwan legislation would not expire until the close of today. I have discussed the item with the distinguished Republican leader (Mr. BAKER), and we have reached an understanding that consent will be given to taking up that legislation today, which would thus waive the 3-day rule, with the understanding that the Senate would then go over until Wednesday to resume consideration of the legislation. This would allow Senators to make speeches today on the legislation, and we would also accommodate a considerable number of Senators who are planning to attend the funeral services of our late friend and former colleague Senator Dewey Bartlett.

So, with that understanding, if the distinguished minority leader agrees, I would like to call up the legislation now and recess until, say, 1:30 p.m. today to allow the distinguished Senator from Ohio (Mr. GLENN) to be here to make his opening statement when we resume the session but, in the meantime, I believe Senator CANNON has filed a statement on another matter on which we should call a quorum and accommodate him. Let us go out, say, for 30 minutes and then come back, and it will be only for Senator GLENN making his opening statement then, and other Senators can make statements, and then we will go over until Wednesday.

Mr. BAKER. Mr. President, will the Senator yield

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. I think that is a good arrangement. I told the distinguished majority leader earlier that I thought there were a great number on both sides of the aisle, a great number of our colleagues on both sides of the aisle, who wanted to travel to Oklahoma tomorrow to attend the funeral services for Senator Bartlett. This arrangement would not only accommodate them but would put the Senate on the track toward the orderly consideration of the bill at hand. So altogether I think it is a good practice, that is, to call up the matter now, if the majority leader wishes to, and then the Senate will go over, after we finish statements and the like on the bill today, until Wednesday when we will resume the consideration of the bill at that time.

I would not have any objection if the Senator wishes to call up the resolution.

Mr. ROBERT C. BYRD. Mr. President, I, therefore, ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 14, S. 245.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there objection? The Chair hears none, and without objection morning business is closed.

The clerk will state the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 245) to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

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

That this Act may be cited as the "Taiwan Enabling Act".

TITLE I

SEC. 101. (a) Whenever any law, regulation, or order of the United States refers or relates to a foreign country, nation, state, government, or similar entity, such terms shall include, and such law, regulation, or order shall apply with respect to, the people on Taiwan.

(b) Except as provided in section 205(d) of this Act, the term "people on Taiwan", as used in this Act, shall mean and include the governing authority on Taiwan, recognized by the United States prior to January 1, 1979 as the Republic of China; its agencies, instrumentalities, and political subdivisions; and the people governed by it in the islands of Taiwan and the Pescadores.

SEC. 102. (a) No requirement for maintenance of diplomatic relations with the United States, or for recognition of a government by the United States as a condition of eligibility for participation in programs, transactions, or other relations authorized by or pursuant to United States law, shall apply with respect to the people on Taiwan.

(b) The rights and obligations under the laws of the United States of natural persons on Taiwan and the Pescadores, and of the organizations and other entities formed under the law applied on Taiwan, shall not be affected by the absence of diplomatic relations between the people on Taiwan and the United States or by lack of recognition by the United States.

SEC. 103. The instrumentality referred to in section 109 of this Act and the authorities on Taiwan shall have access to the courts of the United States, provided that the United States and the American Institute in Taiwan have access to the courts on Taiwan. In the case of any action brought in any court of the United States on behalf of or against the people on Taiwan prior to the effective date of this Act, the authorities on Taiwan shall continue to represent the people on Taiwan.

SEC. 104. For all purposes, including actions in all courts in the United States, the Congress approves the continuation in force of all treaties and other international agreements entered into between the United States and the Government recognized as the Republic of China prior to January 1, 1979, and in force until December 31, 1978, unless and until terminated in accordance with law.

SEC. 105. Whenever authorized or required by or pursuant to United States law to conduct or carry out programs, transactions, or other relations with respect to a foreign country, nation, state, government, or similar entity, the President or any department or agency of the United States Government is authorized to conduct and carry out such programs, transactions, and other relations with respect to the people on Taiwan, in accordance with applicable laws of the United States.

SEC. 106. (a) Programs, transactions, and other relations conducted or carried out by the President or any department or agency of the United States Government with respect to the people on Taiwan shall, in the manner and to the extent directed by the President, be conducted and carried out by or through the American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia (hereinafter "the Institute").

(b) To the extent that any law, rule, regulation, or ordinance of the District of Columbia or of any state or political subdivision thereof in which the Institute is incorporated or doing business impedes or otherwise interferes with the performance of the functions of the Institute pursuant to this Act, such law, rule, regulation, or ordinance shall be deemed to be preempted by this Act.

SEC. 107. In carrying out its activities, the Institute shall take all appropriate steps to strengthen and expand the ties between the people of the United States and all the people on Taiwan and to promote full human rights for all the people on Taiwan.

SEC. 108. Whenever the President or any department or agency of the United States Government is authorized or required by or pursuant to United States law to enter into, perform, enforce, or have in force an agreement or arrangement relative to the people on Taiwan, such agreement or arrangement shall be entered into, or performed and enforced, in the manner and to the extent directed by the President, by or through the Institute.

SEC. 109. Whenever the President or any department or agency of the United States Government is authorized or required by or pursuant to the United States law to render or provide to, or to receive or accept from, the people on Taiwan, any performance, communication, assurance, undertaking, or other action, such action shall, in the manner and to the extent directed by the President, be rendered or provided to, or received or accepted from, an instrumentality established by the people on Taiwan.

SEC. 110. Whenever the application of a rule of law of the United States depends upon the law applied on Taiwan or compliance therewith, the law applied on Taiwan shall be considered the applicable law for that purpose.

SEC. 111. (a) For all purposes, including actions in all courts in the United States, recognition of the People's Republic of China shall not affect the ownership of, or other rights or interests in, properties, tangible and intangible, and other things of value, owned or held on December 31, 1978 or thereafter acquired or earned by the people of Taiwan, except, however, diplomatic real properties situated in the United States which were acquired prior to October 1, 1949.

(b) Any contract or property right or interest, obligation or debt of, or with respect to, the people on Taiwan heretofore or hereafter acquired by United States persons, and the capacity of the people on Taiwan to sue or be sued in courts in the United States, shall not be abrogated, infringed, modified, or denied because of the absence of diplomatic relations between the people on Taiwan and the United States or the lack of

recognition of a government by the United States.

SEC. 112. (a) Notwithstanding the $1,000 per capita income restriction in clause (2) of the second undesignated paragraph of section 231 of the Foreign Assistance Act of 1961, the Overseas Private Investment Corporation ("the Corporation") in determining whether to provide any insurance, reinsurance, loans or guaranties for a project, shall not restrict its activities with respect to investment projects in Taiwan.

(b) Except as provided in subsection (a) of this section, in issuing insurance, reinsurance, loans or guaranties with respect to investment projects on Taiwan, the Corporation shall apply the same criteria as those applicable in other parts of the world.

(c) Not later than five years after the date of enactment of this Act, the President shall report in writing to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives concerning the desirability of continuing this section in force in light of economic conditions prevailing on Taiwan on the date of such report.

SEC. 113. The President is authorized and requested, under such terms and conditions he determines, to extend to the instrumentality established by the people on Taiwan and the appropriate members thereof, referred to in section 109, privileges and immunities comparable to those provided to missions of foreign countries, upon the condition that privileges and immunities are extended on a reciprocal basis to the American Institute on Taiwan at not less than the level authorized herein with respect to the instrumentality referred to in section 109.

SEC. 114. (a) It is the policy of the United States—

(1) to maintain extensive, close, and friendly relations with the people on Taiwan;

(2) to make clear that the United States' decision to establish diplomatic relations with the People's Republic of China rests on the expectation that any resolution of the Taiwan issue will be by peaceful means;

(3) to consider any effort to resolve the Taiwan issue by other than peaceful means a threat to the peace and security of the Western Pacific area and of grave concern to the United States; and

(4) to provide the people on Taiwan with arms of a defensive character.

(b) In order to achieve the objectives of this section—

(1) the United States will maintain its capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system of the people of Taiwan;

(2) the United States will assist the people on Taiwan to maintain a sufficient self-defense capability through the provision of arms of a defensive character;

(3) the President is directed to inform the Congress promptly of any threat to the security of Taiwan and any danger to the interests of the United States arising therefrom; and

(4) the United States will act to meet any danger described in paragraph (3) of this subsection in accordance with constitutional processes and procedures established by law.

TITLE II

SEC. 201. Any department or agency of the United States Government is authorized to sell, loan, or lease property, including interests therein, to, and to perform administrative and technical support functions and services for the operations of, the Institute upon such terms and conditions as the President may direct. Reimbursements to departments and agencies under this section shall be credited to the current applicable appropriation of the department or agency concerned.

SEC. 202. Any department or agency of the United States Government is authorized to acquire and accept services from the Institute upon such terms and conditions as the President may direct. Whenever the President determines it to be in furtherance of the purposes of this Act, the procurement services by such departments and agencies from the Institute may be effected without regard to such laws and regulations normally applicable to the acquisition of services by such departments and agencies as the President may specify by Executive order.

SEC. 203. Any department or agency of the United States Government employing alien personnel in Taiwan is authorized to transfer such personnel, with accrued allowances, benefits, and rights, to the Institute without a break in service for purposes of retirement and other benefits, including continued participation in any system established by law or regulation for the retirement of employees, under which such personnel were covered prior to the transfer to the Institute: *Provided*, That employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, shall be currently deposited in the system's fund or depository.

SEC. 204. (a) Under such terms and conditions as the President may direct, any department or agency of the United States Government is authorized to separate from Government service for a specified period any officer or employee of that department or agency who accepts employment with the Institute.

(b) An officer or employee separated under subsection (a) of this section shall be eligible upon termination of such employment with the Institute to reemployment or reinstatement in accordance with existing law with that department or agency or a successor agency in an appropriate position with attendant rights, privileges, and benefits which the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the President may prescribe.

(c) An officer or employee eligible for reemployment or reinstatement rights under subsection (b) of this section shall, while continuously employed by the Institute with no break in continuity of service, continue to be eligible to participate in any benefit program in which such officer or employee was covered prior to employment by the Institute, including programs for compensation for job-related death, injury or illness; for health and life insurance; for annual, sick and other statutory leave; and for retirement under any system established by law or regulation: *Provided*, That employee deductions and employer contributions, as required, in payment for such participation for the period of employment with the Institute, shall be currently deposited in the program's or system's fund or depository. Death or retirement of any such officer or employee during approved service with the Institute and prior to reemployment or reinstatement shall be considered a death in service or retirement from the service for the purposes of any employee or survivor benefits acquired by reason of service with a department or agency of the United States Government.

(d) Any employee of a department or agency of the United States Government who entered into service with the Institute on approved leave of absence without pay prior to the enactment of this Act shall receive the benefits of this title for the period of such service.

SEC. 205. (a) The Institute, its property, and its income are exempt from all taxation now or hereafter imposed by the United States (except to the extent that section 204(c) of this Act requires the imposition of taxes imposed under chapter 21 of the Internal Revenue Code of 1954, relating to the Federal Insurance Contributions Act) or by any State or local taxing authority of the United States.

(b) For purposes of the Internal Revenue Code of 1954, the Institute shall be treated as an organization described in sections 170(b)(1)(A), 170(c), 2055(a), 2106(a)(2)(A), 2522(a), and 2522(b).

(c)(1) For purposes of sections 911 and 913 of the Internal Revenue Code of 1954, amounts paid by the Institute to its employees shall not be treated as earned income. Amounts received by employees of the Institute shall not be included in gross income, and shall be exempt from taxation, to the extent that they are equivalent to amounts received by civilian officers and employees of the Government of the United States as allowances and benefits which are exempt from taxation under section 912 of such Code.

(2) Except to the extent required by section 204(c) of this Act, service performed in the employ of the Institute shall not constitute employment for purposes of chapter 21 of such Code and title II of the Social Security Act.

(d) For the purpose of applying section 102 of this Act to the Internal Revenue Code of 1954, and to any regulation, ruling, decision, or other determination under such Code, the term "people on Taiwan" shall mean the governing authority on Taiwan recognized by the United States prior to January 1, 1979, as the Republic of China and its agencies, instrumentalities, and political subdivisions; except that when such term is used in a geographical sense it shall mean the islands of Taiwan and the Pescadores.

(e) The Institute shall not be an agency or instrumentality of the United States. Employees of the Institute shall not be employees of the United States and, in representing the Institute, shall be exempt from section 207 of title 18, United States Code.

SEC. 206. (a) The Institute may authorize any of its employees in Taiwan—

(1) to administer to or take from any person an oath, affirmation, affidavit, or deposition, and to perform any notarial act which any notary public is required or authorized by law to perform within the United States;

(2) to act as provisional conservator of the personal estates of deceased United States citizens; and

(3) to render assistance to American vessels and seamen.

(b) Acts performed by authorized employees of the Institute under this section shall be valid, and of like force and effect within the United States, as if performed by any other person authorized to perform such acts.

TITLE III

SEC. 301. In addition to funds otherwise available for the provisions of this Act, there are authorized to be appropriated to the Secretary of State for the fiscal year 1980 such funds as may be necessary to carry out such provisions. Such funds are authorized to remain available until expended.

SEC. 302. The Secretary of State is authorized to use funds made available to carry out the provisions of this Act to further the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis. The Secretary may provide such funds to the Institute for expenses directly related to the provisions of this Act, including—

(1) payment of salaries and benefits to Institute employees;

(2) acquisition and maintenance of buildings and facilities necessary to the conduct of Institute business;

(3) maintenance of adequate security for Institute employees and facilities; and

(4) such other expenses as may be necessary for the effective functioning of the Institute.

SEC. 303. Any department or agency of the United States Government making funds available to the Institute in accordance with this Act shall make arrangements with the Institute for the Comptroller General of the United States to have access to the books and records of the Institute and the opportunity to audit the operations of the Institute.

SEC. 304. The President is authorized to prescribe such rules and regulations as he may deem appropriate to carry out the purposes of this Act. Such rules and regulations shall be transmitted promptly to the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives.

TITLE IV

SEC. 401. (a) The Secretary of State shall transmit to the Congress the text of any agreement to which the Institute is a party. However, any such agreement the immediate public disclosure of which would, in the opinion of the President, be prejudicial to the national security of the United States shall not be so transmitted to the Congress but shall be transmitted to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives under an appropriate injunction of secrecy to be removed only upon due notice from the President.

(b) For purposes of subsection (a), the term "agreement" includes—

(1) any agreement entered into between the Institute and the Taiwan authorities or the instrumentality established by the Taiwan authorities; and

(2) any agreement entered into between the Institute and departments and agencies of the United States.

(c) Agreements and transactions made or to be made by or through the Institute shall be subject to the same Congressional notification, review, and approval requirements and procedures as if such agreements were made by or through the department or agency of the United States on behalf of which the Institute is acting.

SEC. 402. During the two-year period beginning on the effective date of this Act, the Secretary of State shall transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate, every six months, a report describing and reviewing economic relations between the United States and the people on Taiwan, noting any interference with normal commercial relations.

TITLE V

SEC. 501. This Act shall have taken effect on January 1, 1979.

SEC. 502. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

ORDER FOR RECESS UNTIL 11 A.M. ON WEDNESDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m. on Wednesday next.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 30 minutes.

There being no objection, at 1:16 p.m., the Senate took a recess for 30 minutes.

The Senate reassembled at 1:46 p.m., when called to order by the Presiding Officer (Mr. EXON).

The PRESIDING OFFICER. The Chair recognizes the Senator from Ohio.

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

Mr. President, S. 245, the bill that has been laid before the Senate regarding the Taiwan enabling legislation, known as the Taiwan Enabling Act, provides for U.S. relations with the people on Taiwan to be conducted through the American Institute in Taiwan, a private organization which is funded by the U.S. Government and whose trustees are appointed by the Secretary of State. This is something new for this country. Although it is a unique approach for the United States, it has worked successfully for Japan since it normalized relations with the People's Republic of China in 1971.

The original bill sent to the Senate—while sound in its basic structure and approach—was deficient in several important respects. The Foreign Relations Committee added a substantial number of amendments to remedy these shortcomings.

Since consideration and debate on this bill will start on Wednesday, I do not intend to describe in detail at this time all the changes we made. Furthermore, the committee report includes a full discussion of the amendments adopted.

That report is out now and available for all Senators to review, along with their staffs, prior to the start of debate on this enabling act on Wednesday.

The Taiwan Enabling Act as amended by the committee is, I believe, a constructive measure that the committee has adopted and one that will continue to be mutually beneficial for the people on Taiwan and the United States.

Mr. President, I will save the remainder of my remarks on this until we open the session on Wednesday. As I understand it, this will be the pending business when the Senate comes into session on Wednesday.

Mr. President, I believe the distinguished Senator from New York (Mr. JAVITS) has some remarks he would like to make today.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York.

Mr. JAVITS. Mr. President, I would like to give the frame of reference in which we will be considering this matter today. Then I, too, will go into a great many of the details when we return on Wednesday.

As to the frame of reference, let me say first, to characterize what is happening, we must not miss the forest for the trees. The People's Republic of China probably has a population of somewhere between 800 million and a billion people and occupies an enormous strategic area on the continent of Asia. It really dominates the continent of Asia. It is, by all rights of culture and heritage as well as population and area, one of the three great entities of government on Earth.

I say that we should not miss the forest for the trees; it is a historic breakthrough that a nation, the central theme of whose propaganda and foreign policy was "hate the United States; hate the running dogs of imperialism; hate the bloodthirsty warmongers in Vietnam and everywhere; hate the suppressors of the people," should now become the friend of the United States, at least in terms of a regularized diplomatic relationship.

As I say, we do not want to make smaller what is a monumental achievement for our country. It shows steadiness and fortitude in our dedication to freedom and; our expression of that freedom in the struggle for human rights for people everywhere. Although we have had our frustrations and our disastrous mistakes, if we stick to it, we are on the right track; and it is others who ultimately will come around and see that if they really want a true and dependable friend, a powerful one, there is only one in the world, and that is the United States.

So I look first in the frame of reference for this historic breakthrough, the normalization of our relations with the People's Republic of China.

I express to Senator GLENN my great pleasure that he will be managing this bill. I think it is very appropriate that a man of his background, who has done so much in his own career both for the security of the Nation and for the adventure of the Nation, should be managing this great adventure in the Senate.

In respect of Taiwan, which is another area of the frame of reference, here are 17 million people who have developed a highly articulated society. It is not the democracy we would like to see—not remotely They have lived under abnormal conditions, and the people who came over from the mainland are still the dominant factors among the authorities of Taiwan. Nevertheless, they have found a way to develop a system of society and of economics and, indeed, of government which is unique to Asia, in the sense that it now has the second highest standard of living in all of Asia, second only to that of Japan and far superior to that of the People's Republic of China, which will take decades to get to the same point.

As to the people whom we admire and whom we cultivated as friends ever since 1949, 30 years, what many of us were deeply concerned about, including myself—I have been to Taiwan and experienced this situation—was that in our desire to do the big thing, which is to normalize relations with the People's Republic of China under conditions we could live with and they could live with, we would open the door to permitting these 17 million to be suppressed, suffocated, overrun, absorbed. We would not

wish to find that what they have created on Taiwan would disappear in the enormous mass which was the People's Republic of China.

So that illustrated to us here in the Foreign Relations Committee, who brought this bill to the floor, another facet of American policy—the need, notwithstanding our recognition of the great desirability of dealing on a normal basis with the People's Republic of China, to preserve and establish at the same time the conditions for preserving this great and responsible and successful entity which is represented by Taiwan. It is my profound conviction—and I shall hope to prove it, together with Senator GLENN and my other colleagues as we debate these issues—that we have contrived that successfully.

Now let me say one further thing which it is important for us all to have in focus. To develop normalization with the People's Republic took a period of time. I was the delegate to the United Nations from the Senate in 1970, and that was the first moment that the United States announced a review of our People's Republic of China policy.

Mr. President, that was Nixon's doing, and I think that should be placed upon the record. He personally felt that the time had come to begin to open that door; and as I was the delegate who was charged with that responsibility, I think it is only fair to state that. Of course, he had a most admirable and most effective Secretary of State to implement that policy, in Henry Kissinger.

So it took well over 8 or years in steps including the establishment of liaison offices to develop the conditions under which this finally was accomplished.

Also, Mr. President, one should not for one moment confuse its accomplishment with any euphoria or illusion by me and other Senators—I have little doubt that Senator GLENN shares this view with me—about the Chinese system, the People's Republic system, that is is anything but completely authoritarian. There are no illusions. Everybody you see who takes you around the People's Republic—my wife and I have been there—has exactly the same mind. Nobody thinks differently—at least, not for the record, or not that any foreigner can hear. There is still plenty of thought control and plenty of people sent out to the country to "cool it off," as it were, in hard labor in the fields.

So we have no illusions that we are dealing with a beneficient society, any more than we have illusions about Taiwan, as I just expressed, which still has a form of autocratic government—to wit, essentially the people who came over from the mainland.

However, Mr. President, these societies are willing to open up. Taiwan has made a success for all the people, a great success, in their development; and it seems to have a very stable and well-satisfied population with respect to its accomplishments.

With respect to the People's Republic, as Vice Premier Teng showed when he came here, they are willing to operate on a far more open basis than Communist states generally are.

I assume that our journalists will be welcome there; they are there already. They may not see and hear everything, but they certainly can poke around. Their journalists will be welcome here. Generally speaking, one will have a better grip on what is happening and how this enormous mass of people are developing and what they are thinking and what their aspirations are—again, without illusion. For example, a few days after Teng left here, the Chinese invaded Vietnam. I am sure we do not like it, nor would we ever like to see any nation with whom we are friendly an aggressor. So I cannot say that it is an open book, that we know all about it; but there is a material improvement, and there promises to be more improvement if we have a normal relationship with them.

This applies, also, in the economic field, in which the People's Republic is now dedicated to modernization. Again, modernization must mean greater enlightenment, greater openness, a greater willingness to cooperate with the world in things which are effective and beneficial to the world; and if I know our people, that is all we want. We are not looking for any special edge or any special thing—just so long as people have a chance to breathe and a chance to develop.

So these are the frames of reference within which we will consider this issue.

On Wednesday, I shall detail for the Senate, as I am sure will Senater GLENN, how this matter was negotiated; how it developed step by step from conditions which the People's Republic set, which were impossible for us to accept; how, finally, our executive department and the President sought to make progress in working out these conditions; to what extent they did or did not satisfy the People's Republic; and then what we in the Foreign Relations Committee felt was our obligation—particularly on the issue of Taiwan but also on the other issues which had to be tested here.

For example, Senator GOLDWATER has instituted a suit challenging the power of the President to terminate the treaty with the Republic of China on Taiwan. We will be discussing that and the legal basis for the American Institute on Taiwan and for the Institute of Taiwan in the United States and the extension of certain privileges and immunities to those who are engaged in those two institutes. All of these problems we will discuss as well as how we handle the danger of the threat of the use of force against Taiwan in order to subdue, subjugate, or suppress it.

Finally, Mr. President, we will deal with the issue of whether or not we are adequately consulted as there is a law on the books that calls for adequate consultation with us and what may or may not have been the shortcomings of the administration in respect of its actual negotiation of these terms.

So as I see it, this is a curtain raiser to a historic debate as well as a very historic event for our country, and I am very pleased that the leadership on both sides has seen fit to call this matter up as promptly as they have. I am very hopeful that we in the Foreign Relations Committee may satisfy the Senate so that perhaps this very week we may pass this bill.

I yield the floor.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Ohio is recognized.

Mr. GLENN. I thank the Chair.

Mr. President, in his usual excellent fashion the Senator from New York, who played such a vital role in this bill in committee and in the formation of the final language that we bring to the Chamber today, has established a frame of reference that I think puts this whole thing in its proper context.

With regard to his reference to mainland Chinese population, I am told by our demographic experts in the Library of Congress that they estimate mainland China surpassed 1 billion people last July. That is about one-fourth of the total human race. And, moreover, it is a nation of largely unexplored and untapped resources, amidst an increasingly resources-hungry world.

I submit, Mr. President, if one drew an axis or an arc from Tokyo to Canberra, Australia, and took a swath of territory across the globe by 500 or 800 miles on each side of that axis. with one-third of the total human race involved and with untold resources along such an axis, then that area would have a profound import in shaping foreign policy for much of the remainder of the world, perhaps for the next couple of decades.

I think it is notable that over the past several years trade with that part of the world has increased tremendously. For the last 6 years, the United States of America has engaged in more trade with the Far East than with our traditional and historical trading partners in Europe, whose lands comprise the heritage of most of our citizens. Sixty billion dollars last year went in trade to the Far East, and that was in prenormalization period. No one can even estimate how much this trade will increase in the years ahead as we move into a more normal relationship with these 1 billion people and as their trade expands.

My home State of Ohio, as an interior State and as the fifth largest trading State in this country, conducts $6.9 billion worth of trade for industrial products. That means that about one out of every eight industrial jobs in Ohio is dependent on the export market, and there are $957 million worth of agricultural product exports.

I cannot say specifically what percent of either one of those figures goes to the Far East, but I am sure a great deal of it does.

We might note that this will be the first time since World War II that we will have had diplomatic relations with both China and Japan. We are truly moving very rapidly into a new era in foreign relations, particularly in the Far East.

The distinguished Senator from New York discussed the rapid change in China, the situation on human rights, and many things that we still do not agree with completely, but I am more concerned around the world with the trends in human rights than I am the absolutes.

I think when we expect the nations that we deal with around the world to affirm our ideas of the Jeffersonian "one-man one-vote, go west, every man an entity unto himself" type democracy, we sometimes expect too much too fast.

I am not saying that the developments that we have observed within the Republic of China mean that they have solved all their problems completely, but we do see some changes; changes that were started back under Chou En-lai in the process of opening up. Perhaps those changes were even viewed as threatening by Chairman Mao and the Red guards that were loosed upon China—with all the infamy that took place during that time period and all the people who were executed as a result of those policies and the attacks by the Red guards across China. Nevertheless, we come back now and find that Chou En-lai's colleague, Vice Premier Teng Hsiao-ping, is continuing policies from the days which had been violently interrupted. Perhaps this is a long-term trend that has little chance of being reversed. I, for one, find it very difficult to believe that we could have had anything but virtual agreement with most of the top leadership in the People's Republic of China in addition to Vice Premier Teng Hsiao-ping to see this drastic change and see the very definite move forward, with the four normalizations that they have spelled out: science and technology, industry, agriculture, and defense. In fact, some of the latest trends in China can now be seen in the form of increased communications: The wall posters all over Peking, not just on Democracy Wall, but on virtually every wall in Peking; changes in dress, a lot of color in the dress in the streets in Peking these days, as we saw when we were there in January; people being encouraged to buy radios so they can listen to the English language broadcasts and improve their language, color TV's in hotel rooms in Peking can now be found with one channel always devoted to the English language instruction in the evening.

These are just little indications that I think are really a significant drastic change, and I hope along with everyone in this country this will be a permanent change.

We are still concerned, of course, about Taiwan. I, for one, was very critical of the President and of the administration for what the distinguished Senator from New York has already mentioned: the secret nature of the negotiations after we had specifically written into legislation last year in the Military Assistance Act a requirement for consultation.

And I failed to see that we were adequately consulted even though there have been sporadic contacts over the last year. Those contacts don't qualify as adequate consultation, as I think the administration was aware.

So I am disappointed at that, and I was disappointed that there was not more effort made to get security guarantees for Taiwan. We have perhaps taken our independent route here in the Senate in expressing our concerns that there will be peaceful resolution of the one China problem across the Straits of Taiwan, one China that both sides admit to, and one China that both sides support. Nevertheless we, in addition to the administration, have expressed—along with this legislation in this Taiwan enabling act that we bring out of committee today—our independent view that we fully expect there to be a peaceful resolution of that situation across the straits.

We will save additional remarks on this, Mr. President, until Wednesday, when we will have an extended debate on this issue. I am sure there will be a number of amendments brought up on Wednesday and we will look forward to a healthy discussion.

I think that what we have brought out of committee is a good bill. We look forward to a full debate, accepting the committee amendments, and resuming the debate on Wednesday since we will not be in session tomorrow in honor of our ex-colleague, Senator Dewey Bartlett.

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

Mr. GLENN. Certainly.

Mr. JAVITS. I think there is one thing we ought to add to our preliminary opening, and I would like to have Senator GLENN be kind enough to comment on it as well.

This is the first time this matter is up in Congress, and as we are taking a greatly increased role in the foreign policy of the Nation, I would like to lay this down as a proposition which others can debate as well as myself.

I would like to reject any concept that we are playing the Chinese card vis-a-vis the Soviet Union. I think it is very important that our good faith in that be complete and that the Soviet Union be made to feel that it has nothing whatever to fear from our normalization of relations with the People's Republic of China. On the contrary, this is auspicious for the peace of the world, and that is the way we mean it. I hope that nothing we do, in the executive department or here in Congress, will give the Soviet Union any substantive cause—now, they may choose a cause, that is their propaganda way—for suspicion that we and the People's Republic are ganging up against them.

We should reject that. We should adjure that in every way that is open to us in the utmost good faith. If they choose to take it that way, they will be the loser, not we, in terms of their own tranquility and their own peace of mind.

For myself, as one Senator in the drafting of this bill, whatever I have contributed I have really had that very much in my mind and, as I say, I am very pleased that the Senator yielded to me, because I think we will both comment on that point.

Mr. GLENN. I certainly appreciate the comments of the distinguished Senator from New York.

I yield the floor.

Mr. HELMS. Mr. President, the concept of the American Institute in Taiwan contains at its heart a fatal flaw which cannot be eradicated. That flaw is, in turn, a reflection of the calculated ambivalence of the new China policy—an ambivalence which can be explained only by fundamental intellectual dishonesty.

The Institute is an attempt to yoke together two logically contradictory propositions under a semantic gloss in order to avoid the inherent consequences of our actions. The new China policy seeks to deny the juridical existence of the sovereignty exercised by the Government of the Republic of China, while at the same time reaping benefits which can be conferred only by recognizing that sovereignty. Moreover, in a move which is even more reprehensible, it pretends to preserve those benefits at the same time that it contemplates the eventual extinction of the liberty and independence which is the moral basis of human dignity. The denial of sovereignty is the denial of the inherent right of self-defense, and is itself a form of immoral coercion.

Seduced by the glittering phantasm of personal triumph, the architects of the new China policy rashly promised the rulers of Peking that our support of the sovereignty of the Republic of China would be withdrawn. Having done so, the same architects want to evade, before the American people, the moral responsibility of handing over 18 million people to "peaceful reunification" with the mainland. It is as though Herod tried to pretend to himself that the head he was offering to the insatiable Salome was made of paper.

Unfortunately, the real head of Taiwan is already on the platter. The Institute is a device to distract the people on Taiwan from that soreness around the neck, and to convince them that everything is just the same. The committee struggled manfully to resolve the logical inconsistencies of the administration bill with the brutal reality of the deed. Although many changes were made on a practical level to warp the structure of the Institute back to the demands of the real world, the fatal flaw remains.

THE FATAL FLAW

That fatal flaw goes back to the announcement of President Carter on December 15, 1978, when he said:

> The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.

The key word in that sentence is "acknowledges." The use of the word "acknowledges" has been described by administration spokesmen as stopping short of "accepts." In other words, the United States takes note that the Government of the People's Republic of China claims to have sovereignty over Taiwan, but the United States takes no position on whether or not the United States agrees with the claim of the People's Republic of China. The implication is that the United States draws back, on the brink, of recognizing the People's Republic of China's claim to sovereignty over Taiwan and the territories actually administered by the Government of the Republic of China. The further implication, essential to the concept of the Institute, is that the Government of the Republic of China retains some residuum of sovereignty, a de facto exercise of sovereignty, if not de jure.

But is that residuum of sovereignty

enough to support the operation of the Institute?

By failing to take a position on the crucial issue, the logic of the new China policy collapses.

If the position of Peking is correct, that is to say, the position that the United States "acknowledges," then Taiwan is juridically part of China and the exercise of sovereignty by the ROC is a rebellion against the legitimate authority of the PRC. If the position of Peking is correct, then the fact of that rebellion is a domestic matter, an internal affair which Peking may resolve as it sees fit. Under international law, Peking would have the perfect right to extinguish the rebellion either by negotiation or, should negotiations fail, by economic or military pressures.

Moreover, if the position of Peking is correct, then the United States has no right under international law to interfere in an internal affair of the PRC. Under international law, the United States cannot have a "people to people" relationship that is not conducted under the authority of the central government of the PRC. We would have no right to object to any economic or diplomatic pressures applied by the PRC to induce "reunification." And, most emphatically, we would not have the right to supply weapons, or go to war, as President Carter claims, to support the purported rebellion against the de jure sovereign authority in Peking.

That this is Peking's view is born out by the press conference of the PRC Prime Minister, Hua Kuo-feng, in Peking on December 16. When asked whether the United States would be permitted to continue providing Taiwan with access to military equipment for defensive purposes, he said:

> During the negotiations the U.S. side mentioned that after normalization it would continue to sell limited amounts of arms to Taiwan for defensive purposes. We made it clear that we resolutely would not agree to this. In all discussions the Chinese side repeatedly made clear its position on this question. We held that after the normalization continued sales of arms to Taiwan by the United States would not conform to the principles of normalization, would be detrimental to the peaceful solution of the Taiwan issue and would exercise an unfavorable influence on the peace and stability in the Asia and Pacific regions. So our two sides had differences on this point.

This attitude was further confirmed by Ambassador Leonard Woodcock, as quoted in an article in the Washington Post by Jay Mathews, datelined Peking, January 1, 1979. The article said:

> Woodcock said he is certain, however, that the Chinese will continue to oppose such arms sales for the record. The first time Washington agrees to a major sales of arms after the mutual security treaty with Taiwan expires in a year, Woodcock said, he expects the Chinese to make an official protest.

It is, therefore, highly significant that the administration later revealed that it had also promised Peking that the United States would sell no defensive armament to Taiwan during 1979. In other words, no arms would be sold during the final year remaining of the Mutual Defense Treaty, a period during which treaty obligations required the United States to defend Taiwan. Left indeterminate was the question of whether we would sell arms after the end of the abrogation period of the treaty. In short, the United States promised that we would supply no arms during the period when we were juridically obliged to supply arms; the only period that the United States left open for the supply of arms to Taiwan was the period which, in the Peking view, it would be illegal for the United States to supply arms under international law.

Clearly, then, the success of "normalization" depends upon both the PRC and the United States exercising restraint in fulfilling the logic of their positions. If the United States insists on preserving the independence and sovereignty of the ROC Government (that is to say, the people on Taiwan) through the supply of arms, then the PRC must decline to insist upon the logic of its view of sovereignty. If the PRC insists on its view of the rights of sovereignty, then the United States must refrain from fulfilling its promises to the people on Taiwan. If the United States "acknowledges" the position of the PRC, then sooner or later one side or the other must concede.

DOES THE UNITED STATES ACCEPT?

But suppose by the term "acknowledges" the United States merely notes, but does not "accept" the PRC view that the PRC has de jure sovereignty over Taiwan and the territories controlled by the Government of the ROC? In that case, then, the logic of the U.S. position would permit the development of another sort of relationship with the governing authorities on Taiwan. If the United States does not accept the PRC claim to sovereignty over Taiwan, then it is appropriate for the United States to continue a relationship with the people on Taiwan, and with the governing authorities there. It would be appropriate to continue our agreements, including cultural, economic, and military relationships.

Moreover, if the United States does not accept the PRC claim to sovereignty over Taiwan, then our attitude toward the PRC should be entirely different. If the Government of the Republic of China retains even a residual de facto sovereignty over the territory it now governs, then the PRC's refusal to foreswear the use of force as the ultimate pressure to induce unification takes on another light entirely. In that case, the ROC is, indeed, a "state," and the PRC's use of force or the threat of force is a violation of international law and the United Nations Charter. Despite the PRC's refusal to rule out the threat of force, the ROC remains an independent state, with all the privileges and immunities of an independent state. If the United States does not "accept" the PRC view, then it is incumbent upon us to state categorically that we do not.

Indeed, the Institute bill, as it emerges from committee, makes a straightforward case that the United States, or at least the Committee on Foreign Relations of the U.S. Senate does not accept the People's Republic of China view. It should be noted that—

First. In section 101(b), the term "people on Taiwan" is defined as including the governing authority on Taiwan recognized by the United States prior to January 1, 1979, as the Republic of China;

Second. In section 102(a), the rights and obligations under the laws of the United States of natural persons on Taiwan and the Pescadores shall not be affected by the absence of diplomatic relations;

Third. In section 103, in the case of any action brought in any court of the United States on behalf of or against the people on Taiwan prior to the date of enactment of the act, the authorities on Taiwan shall continue to represent the people of Taiwan;

Fourth. In section 104, for all purposes, including actions in all courts in the United States, Congress approves the continuation in force or all international treaties and other agreements entered into between the United States and the Government recognized as the Republic of China prior to January 1, 1979;

Fifth. In section 106, programs and other relations conducted by the President or the U.S. Government with respect to the people on Taiwan shall be conducted by the Institute;

Sixth. In section 108, whenever the President or the Government is authorized or required by or pursuant to the U.S. law to enter into any agreement or arrangement relative to the people of Taiwan, such arrangements shall be conducted through the Institute.

Seventh. In section 110, whenever the application of a rule of law of the United States depends upon the law applied on Taiwan, the law on Taiwan shall be considered the applicable law for that purpose;

Eighth. In section 111, for all purposes, recognition of the People's Republic of China shall not affect the ownership of tangible and intangible properties owned by the people on Taiwan on January 1, 1979;

Ninth. In section 12; OPIC guarantees are continued with regard to U.S. private investments in Taiwan;

Tenth. In section 113, the President is authorized to extend diplomatic immunity to the instrumentality established in the United States by the people on Taiwan.

Eleventh. In section 114, Congress states that it is the policy of the United States that the People's Republic will refrain from the use of force in the resolution of the Taiwan issue, and that the United States will provide the people on Taiwan with arms of a defensive character.

All of these provisions demonstrate clearly that the United States intends to consider the governing authorities on Taiwan to be seized of the exercise of sovereign authority over the territories controlled on January 1, 1979, and that the American Institute on Taiwan is tantamount to an official diplomatic mission of the United States. This position is reinforced by the explicit provisions of section 114 regarding defense. The ultimate attribute of sovereignty is self-defense. Indeed, the test of sovereignty is whether a nation pos-

sesses the capability, either alone or in conjunction with allies, of defending itself against aggression from another power. The claim of the United States to provide the people on Taiwan—that is to say, according to section 101(b), a category that includes the Republic of China Government—with weapons of a defensive character even in the absence of a mutual defense treaty after 1980, is tantamount to a declaration by Congress that the Republic of China governing authorities legitimately exercise sovereign authority and power. Indeed, the implicit acknowledgement by the President of the United States that the Mutual Defense Treaty will continue until December 31, 1979, despite the recognition of the People's Republic of China as "sole government of China" on January 1, 1979, is legally tantamount to recognition of Repulbic of China sovereignty.

This view is buttressed by the provisions of title II, which establishes the Institute as a surrogate diplomatic mission under U.S. law, and gives the employees of the Institute rights which are derived from their former status as employees of the U.S. Government, including the diplomatic service. Indeed, although section 205(2)(e) states that "the Institute shall not be an agency or instrumentality of the United States," that section must be read in conjunction with the whole title, which takes pains to establish the Institute as a beneficiary of the President's directives (sections 201 and 202), as an entity which has part with other departments and agencies of the U.S. Government as regards personnel benefits (section 203), as an entity whose personnel may return to other Government agencies as if it were an agency of the United States and continue to participate in contributions towards U.S. Government compensation and pension systems, and accrue time in U.S. Government programs for their terms of service. In short, for all practical purposes, the Institute is treated as a U.S. Government agency, despite the attempt to establish its status otherwise.

Even from a financial point of view, title III establishes clearly that the funding of the Institute comes from U.S. Government appropriations, and the Secretary of State is authorized to use such funds to carry on through the Institute the same functions he would carry on through a diplomatic mission. Indeed, the Institutes' expenditure of such funds is made contingent upon an audit by the Comptroller General of the United States. The fact that the Institute is a creature of Congress is emphasized by section 401(c) which provides that any agreements made by or through the American Institute in Taiwan shall be subject to the same approval as though the agreements were made directly by a department or agency of the United States.

No one can deny, therefore, that, despite disclaimers, the Institute is a veritable agency of the U.S. Government, providing a direct relationship with the people on Taiwan, including, of course, the governing authorities which the United States recognized as the Government of the Republic of China until January 1, 1979. All that is lacking is official recognition of that status.

DOES THE INSTITUTE SUFFICE?

The Institute gives much of the substance of diplomatic relationship without the official recognition of such a status. But is that enough? Will that suffice for our relationship with the Republic of China Government in the long run?

The new China policy places the United States in the moral position of an ambitious man who divorces his first wife to marry a socially prominent and attractive second wife, all the while promising wife No. 1 that they will continue to live together as though nothing had happened. Such an anomaly cannot lead to stability or fulfillment; in fact, it is bound to become a destabilizing element if the expectations of the new partner are not fulfilled.

The whole question of the future security of Taiwan is cast into a deep shade by the failure of the administration to secure commitments and practical arrangements that would guarantee Taiwan's freedom of action. More deeply disturbing is not simply the failure to obtain such guarantees; the most damaging blow is the admission that Taiwan's future was conceded in advance to the will of Peking. The testimony of Ambassador Woodcock before this committee was startling in its revelation f the abject capitulation of the United States before the rulers of Peking:

It had been the American position that we were seeking a guarantee of the nonuse of force in the settlement of the Taiwan question. I personally came to the conclusion—and I am now speaking in personal terms—that to insist upon that would be to run into a roadblock because it was, in essence, the negotiation of sovereignty. It isn't a question of how we look upon the situation. The Chinese in Peking and the Chinese in Taipei both insisted that there was one China. It was a question of trying to negotiate directly a guarantee of the nonuse of force by a sovereign government against what in the mind of that government is its own province.

So central to our negotiations beginning in the period of July, 1978, was our insistence and our expectancy that it would be settled on a peaceful basis, but recognizing the roadblock of the sovereignty issue, which would have led the negotiations nowhere.

I think in a very practical sense, I myself am convinced that we have the best possible assurance in that regard, and I think the statements particularly of Vice Premier Teng Hsiao-ping, beginning in late November of 1978, reiterated forcefully to the Nunn senatorial delegation, of which Senator Glenn was a member, in early January, 1979, that we are getting the most positive response from the Chinese government in this regard.

The CHAIRMAN. At any time during the negotiations over the period that you were in Peking, was the matter of an express commitment by Peking against the use of force in settling the Taiwan question posed?

Ambassador WOODCOCK. Not by me, sir. No.

Keeping in mind that the Ambassador was the sole channel for the negotiations which led to "normalization," we must conclude the following:

First. Peking considers that it has sovereign authority over Taiwan.

Second. The use of force is the ultimate determinate of sovereignty.

Third. Peking's ultimate sovereignty over Taiwan was a nonnegotiable item for Peking.

Fourth. The U.S. view of Peking's sovereignty over Taiwan is irrelevant to Peking's intention to assert that sovereignty.

Fifth. The United States, in refusing even to attempt to negotiate the question, conceded the ultimate disposition of Taiwan to Peking's authority.

Sixth. The United States encourages the incorporation of Taiwan into the People's Republic of China by peaceful means.

Seventh. The United States would be displeased if force were used to bring about unification, but we expect that "unification" by some means would be the "settlement" of the Taiwan question.

A "DECENT INTERVAL" FOR TAIWAN

These conclusions, which flow indisputably from Ambassador Woodcock's testimony, can leave no particle of doubt that the new China policy has already surrendered the legal and moral status of Taiwan to the Communist rulers of Peking. All that is retained is a pragmatic, under-the-table relationship, designed to provide a temporary umbrella, a "decent interval," as it were, to shield the people on Taiwan from an immediate blow, to give time to phase our American capital investment there if necessary, and to bamboozle the American people.

The impact of the new China policy is that both Peking and the United States agree that Taiwan has only one option: To come under Communist hegemony, to use the word that Peking always applies to the Soviet Union. The only question remaining for Taiwan is a question of timing. We are saying that Taiwan has no right to refuse indefinitely. And to help Taiwan to negotiate quickly, both the PRC and the United States hold the ultimate levers: the PRC retaining the right to use force, and the United States retaining the right to supply defensive weapons. Our right to supply weapons conceivably could be continued at such a level as to force the PRC into a better deal for Taiwan and for American investment there; but it could also be withheld if Taiwan were recalcitrant and refused to be absorbed into the Communist system. The execution of the new China policy so far ought to be a warning to the people on Taiwan that the present leadership of the United States is willing to subordinate the human rights and dignity of the people on Taiwan to other considerations.

It is for this reason that I have found widespread concern among my colleagues over the exact nature of the security guarantees to Taiwan. The question turns upon whether the policy of the United States is to support the indefinite autonomy of the people of Taiwan, or whether our security assistance is to support the interests of the new China policy. The information, at first suppressed, that no new weapons would be supplied under the Mutual Defense Treaty during the last year of its existence is further evidence that the architects of the new China policy are seeking to avoid any real test of our true intentions.

The notion that Taiwan's social, eco-

nomic, and political autonomy could be preserved within the sovereignty of the PRC will hardly bear the least examination. The notorious example of Tibet, which concluded a written agreement with Peking guaranteeing its religious, social, and political systems, demonstrates the extent to which Peking will perpetrate cultural genocide. The example of Hong Kong, obstensibly under British rule, but in reality dominated by PRC finance, trade, kickbacks and corruption, survives because it fulfills a special need to which Taiwan would be superfluous. Rather, Taiwan could expect to become the victim of economic and political subversion—pressed from without by restrictions and boycotts, and assaulted from within by seducing business leaders with special deals and economic dependencies. Once political control were established, key leaders and cultural figures would disappear for "reeducation."

Nor should our enthusiasm for China's "four modernizations"—one of which is the modernization of the Chinese military capability—blind us to the fact that no amount of capital expenditure or political pragmatism will bring about modernization without the element which has been found essential wherever substantial economic progress has been made in the world. The essential element is personal freedom.

China is a totalitarian country whose extreme poverty is matched by its poverty of freedom. An authoritarian country can progress if it allows a large measure of economic freedom to its citizens; but a totalitarian country, by definition, is one in which every decision for every citizen is dictated by political considerations. Upward of 65 million Chinese died to establish that political dictatorship; even today reliable estimates say that between 7 and 25 million Chinese are in forced labor camps at the present time.

Such a system is inherently unstable. The purges and counter-purges in the leadership circles have been matched by a continuing history of uprisings and local rebellions. The instability of the present system is evident in the fact that Teng Hsiao-ping, the controlling personality, is not No. 1 in either the heirarchy of the Communist Party or of the state. He himself was purged twice, and rehabilitated three times. His present consolidation of power extends back no more than 18 months. Moreover, his power rests solely upon the strength of the military commanders who sheltered him when he was purged by Mao. The impotence and disarray of the central government is evident when one considers the fact that Mao could not arrest Teng so long as Teng was in the protection of the provincial military commanders.

Nor is there any established mechanism for the transfer of power from a leader who is now 74. Nor is there a legal framework for the protection of human rights. A study by the Library of Congress shows that Chinese laws are not codified, and that the directives of the party or of local personalities are superior to the rule of law. Taiwan could not expect that any written guarantees of the freedom of the people on Taiwan would be carried out.

TWO GOVERNMENTS IN ONE CHINA

The new China policy is predicated upon the expectation that Taiwan will eventually come under the domination of the Communist government in Peking. The Institute provides a restraining mechanism for slowing down that process; if strengthened, it could help thwart that process completely.

Hopefully, the Institute can provide a bridge to a more realistic China policy. The reality is that China has two governments which each effectively control different parts of Chinese territory. A realistic policy would recognize each government as competent in the territory it controls. There is no need to recognize the claim which each makes to the territory controlled by the other, nor is there any need to deny such claims. Above all, the United States should refrain from actions which would tend to coerce "unification."

The new China policy is despicable not because it tries to deal with mainland China, but because its aim is to consign the people on Taiwan to a fate which they would not freely choose. It attempts to retain the substance of sovereignty for Taiwan while conceding the juridical basis for sovereignty to the Communist rulers of Peking. Insofar as the Institute retains the substance of a relationship with a soverign power, the Institute should be encouraged and strengthened. For the decision of the President of the United States is not determinative de jure of the existence of a sovereign state. The Republic of China remains a sovereign state as long as it effectively controls its own territory. As long as a small nation retains the help of allies who will back up its sovereign powers with a defense capability, it can retain its independence. The Institute, for the time being, can perform that function.

Congress must keep a close oversight on the Institute to insure that it is used to preserve Taiwan's independent options, not to destroy them. Congress must avoid complicity in the new China policy.

Had not the actions taken by the President in withdrawing diplomatic representation with the Republic of China been so precipitate, nor the legislation considered by this committee in pursuance of the President's actions so unprecedented, there would be no need to submit these additional views.

However, the President has in fact engaged in actions of an unprecedented nature, and seeks congressional ratification of his actions through legislation, S. 245.

It is worthwhile, therefore, to review the major background issues with regard to S. 245.

THREE MAJOR ISSUES

Three major issues were raised by the President's actions of December 15, 1978.

First, the President derecognized a longtime ally and friend, the Republic of China. This precipitate action not only was unnecessary, it came at the worst possible time. As the world looked to the United States for a demonstration of resolve and fidelity after a period of growing setbacks for American interests, the world saw instead vacillation, weakness and betrayal of friendship in the derecognition of the Republic of China.

It is not up to the Congress to change that action. The President may choose the nations he wishes to recognize, and which he does not. The issue of derecognition may well be a matter to be dealt with in the 1980 Presidential elections. That is a more proper forum for settlement of that issue.

The second issue raised by the President's actions of December 15, 1978, is the termination of a mutual defense treaty with an ally in time of peace.

Needless to say, this unprecedented action has not gone without notice by allies and opponents alike around the world. Despite administration protestations to the contrary, many of our allies rightfully question the value of the United States' mutual security commitments. Newspaper reports that the Ambassador to the United States from one nation bordering the Indian ocean littoral has sought to be moved to Moscow, because "that is where the power is" cannot be brushed aside as reportage of a mere diplomatic aberration. How much the Presidential decision to abandon the people on Taiwan affected the Ambassador's decision one only can speculate; but it is difficult to believe that it had no effect.

The Congress may not be the proper forum to deal with the specific issue of termination of the treaty, per se; although Congress certainly must deal with the broader issue of the defense of the people on Taiwan. Already, a court suit has been undertaken to deal with the particulars of the treaty termination matter. Its outcome will say much about the scope of the President's power to terminate a treaty with an ally, unilaterally and without prior consultation with and approval by the Congress. At a time when the American public is wary of overextension of Executive power, a proper resolution of the issues raised in the suit will do much to define the limits of Executive power.

The final issue raised by the President's actions of December 15, 1978, is the protection of the interests of the people of the United States in Taiwan, and the concurrent protection of the legitimate interests of our friends and allies, the people of the Republic of China on Taiwan.

This, Congress most properly can and must address. Congress begins that process with consideration of S. 245, proposed by the administration to set up an unofficial relationship with the Republic of China, or—as it now is termed—"the people on Taiwan."

The legislation proposes to set up what amounts to a legal fiction: The United States will recognize the Republic of China as a legal, sovereign entity in all matters except those in which the Republic of China or the people of the Republic of China on Taiwan must deal with the United States on an official basis. This borders on being a charade, and is given the legitimacy of law by

S. 245 in order to accommodate the President in his policy of derecognition of the Republic of China. That the Congress is willing to make such an accommodation, this political favor to the President, I cannot understand, especially in view of the questionable nature of basis underlying the legislation proposed by the administration.

In spite of this legislation, there are many issues which need to be addressed by the Congress, so as not to jeopardize our valuable relations with the people on Taiwan. Foremost is the continuing interest of the people of the United States in the security and defense of the people on Taiwan. Nor should the value of Taiwan to legitimate U.S. and allied security interests in the Pacific be overlooked. Close scrutiny should be made of the People's Republic of China, not only in terms of what good can come of the new U.S. relations with that nation, but also what pitfalls exist for U.S. policymakers.

Protection of U.S. interests in Taiwan certainly will require much fine tuning of the legislation now before the Congress. Such is to be expected, given the haste in which the whole matter has been considered.

THE PROCESS OF "NORMALIZATION"

Congress came to deal with the so-called Taiwan issue and the legislative proposal now before us, because of President's Carter's "normalization" of U.S. relations with the People's Republic of China.

It was a hasty action. By early December, the President's much-publicized Camp David initiative was coming to naught. His December 17 deadline for a final peace agreement would come, and pass, with no agreement.

It was at this time, with imminent failure in the Middle East the headlines across America, that the rush began for "normalization."

Although under a congressional mandate to consult with the Congress over any possible termination of the mutual defense treaty with the Republic of China, and under a personal mandate—a campaign pledge—to conduct foreign affairs in the open, the President and his men moved headlong towards full recognition of Peking, on Peking's terms.

Peking's terms became the only terms for recognition, because of the need the President felt to accomplish "normalization" quickly. Thus, it was learned later, the President did not even attempt to seek a pledge from Peking not to use force to "liberate" Taiwan or seek reunification with the island-nation.

Congressional consultation flew out the window. Almost as an afterthought some congressional leaders were invited to the White House a few bare hours before announcement of the President's decision of "normalization" to hear the President's decision. So much for consultation.

The Republic of China was not even accorded that much courtesy. According to U.S. Ambassador Unger's testimony before the committee, the leadership of the Government of the people on Taiwan was awakened at 2 a.m.—in the early hours of the morning—and told of the President's decision.

Thus, no attempt was made to ease the fact of recognition. No contingency plans were able to be made on Taiwan; hence, the popular outbursts of feeling on Taiwan, and resultant violence.

Lacking prior consultation, major issues that could have been addressed jointly by the Congress and President with the Peking Government were left to be handled by Congress alone, with the Executive alternately pleading and threatening lest anything short of the fait accompli it presented to the Congress be adopted.

Nor was it possible for any congressional consideration to be given, nor input, concerning the nature of the U.S. relationship with the Peking government. Events in Vietnam, with the possibility of Soviet intervention, cast a new light on the nature of the regime that the United States is dealing with in Peking, as did the anti-Soviet, belligerent rhetoric of Vice Chairman Teng during his visit.

THE BENEFICIARY OF NORMALIZATION: THE PRC

With whom are we dealing in the PRC?

Like a novice playing poker for the first time, we have placed all of our bets on Vice Premier Teng. Right now, he appears to be holding all of the right cards. And so he did, several years ago, too, when President Ford held discussions with him. "The most powerful man in China," he was represented as being back then. Ninety days later, he was out of power, purged.

There is a naive hope in the administration that such will not happen again; that, somehow, U.S. policy will help Teng shore up his power base and line of succession. Other administrations held similar views of omnipotence. The Kennedy and Johnson years had their Vietnam and the Nixon and Ford administrations had Iran.

But right now, Teng has power, it is believed. Whether Teng's successors will continue his policies—economic, modernization, toward Taiwan, et cetera—is a matter of serious concern.

The China Teng rules has, perhaps, the worst human rights record in the history of modern times. One witness before the committee recited figures—from 50 to 64 million persons killed during the struggle for power that brought to power the elite that now governs China—the magnitude of which boggle the mind. So many deaths are beyond comprehension. Spoken on so large a scale, the story overlooks the human suffering that accompanied those deaths.

If this were only a historical event, there are some who might be willing to excuse it all. But it is not just a fact of past history; the misery continues even today. One need not look just to organizations like Amnesty International for clearly documented charges of gross human rights violations by the current Peking regime; the President, himself, one witness informed the committee, is reported to have had a detailed briefing on the sad state of human rights observance in the PRC more than a year ago. Yet, he proceeded with "normalization, as far as can be determined, without a whisper about China's human rights record.

China has a huge population, the largest nation on Earth, a billion people, give or take a few million. Unfortunately, China is economically backward, with serious questions about its potential for modernization before the end of the century. Nor are the signs good for bringing off an economic miracle such as the one accomplished on Taiwan over the past 30 years. China does not possess the infrastructure to bring about the miracle: It has no free economy or free labor, and very little incentive for the individual. Trade with the people on Taiwan is enormous: Today, the Republic of China is our eighth largest trading partner, surpassing Saudi Arabia and other oil producers who so often are charged with causing such large trade deficits. Trade with Taiwan is two-way trade, and valuable to the United States; it is trade of one industrial power with another. Trade with the PRC, on the other hand, is very small by comparison; the PRC is a backwards nation industrially, offering no real potential for mutually beneficial trade for years to come.

The PRC remains territorially ambitious. One need witness only the recent incursion into Vietnam for an example. PRC imperalism extends to the radical regime in Cambodia, where the PRC finds an acceptable client-state relationship much to its liking. And who forget Tibet, or the Indian border war of past years?

Strategically, the PRC is of questionable importance to the United States. If one is to give credence to the theory that the PRC "ties down a large Soviet force in their common border, the PRC would do so with or without U.S. recognition, no matter the terms. Of greater concern to the United States should be the ability of the PRC to drag the United States into a potential conflict situation with the Soviet Union, or into a surrogate war.

The old Chinese stratagem, playing the near barbarian (the U.S.S.R.) off against the far barbarian (the United States), continues to hold sway in the minds of Peking's strategists.

One need witness only the language of Vice Premier Teng on his U.S. visit to see that stratagem verbalized.

Thus, the question arises, what is the real U.S. interest in the PRC? Is it so great that the United States need accept Peking's terms for recognition?

More importantly, is the interest of the PRC in having a U.S. ally, economic and political, so great that the PRC can accommodate whatever status Taiwan wishes to have short of political control of the mainland?

The PRC needs the United States far more than the United States needs the PRC, a fact completely overlooked by the administration in its negotiations,

so-called, with the PRC concerning the Taiwan issue.

TAIWAN AN ALLY AND LONGSTANDING FRIEND

As America's eighth largest trading partner, the Republic of China remains an important economic asset of the United States. One expert has told me that withdrawal of Taiwan's funds from the banks in New York would precipitate a severe economic situation, forcing some banks to face possible bankruptcy as a result. Thus, many would not want to antagonize Taiwan too harshly.

Strategically, Taiwan serves as an important intelligence resource for the United States off the coast of mainland China. While some may contend that a larger U.S. presence in the PRC will facilitate intelligence gathering and obviate, somewhat, Taiwan's importance, many do not agree with that conclusion. One need only consider the restrictions on movement in the Soviet Union to see how the other major totalitarian state in the region deals with human intelligence gathering. The Taiwan post is important for the United States, and will remain so. Nor should anyone be deluded into believing that such intelligence gathering is unnecessary, now that the United States has opened up full relations with Peking.

We must not forget that Peking views any relationship with the United States as only a matter of necessity—again, playing off the far barbarian against the near one. Peking's relationship with the United States still remains an adversary one over the long haul, as even top China hands in the Carter administration are quick to admit.

With rumored new missile capability under development, with a missile possibly able to reach the United States said to be part of the Chinese strategic nuclear delivery program, the United States has every need to be wary of Peking's long-term intentions. Thus, the need continues for a Taiwan base, not only for intelligence gathering, but as an advance base for U.S. forces in any emergency, either on the mainland, or in Japan or Korea.

Some may have forgotten that the Japanese attack on Pearl Harbor was launched from Taiwan, in part. Strategically, Taiwan sits in an important location, serving as a vital choke point for shipping around the coast of China. This includes not only commercial shipping so vital to U.S. allies Japan and Korea; but also Soviet naval ships bound for action in the Southern Pacific or Indian Ocean.

Thus, the United States continues to have important economic and strategic interests in Taiwan.

TAIWAN'S SECURITY NEEDS

The committee has attempted to provide the people on Taiwan with some security assurances in section 114 of S. 245, the legislation it has reported to deal with the Taiwan issue.

While the section gives some hope to the people on Taiwan, it is an insufficient guarantee of their security. What is needed is a forthright statement by the Congress that the proper security needs of the people on Taiwan will be met.

What are those needs? All are based on the supply of advanced U.S. defensive weaponry to the people on Taiwan. Basic to the needs of the people on Taiwan is an all-weather fighter. Mentioned prominently are the F5–G and the F–16 or F–4, all of which have an all-weather capability. With such a fighter, the people on Taiwan could protect their airspace from foreign incursions well into the 1980's.

Second, the people on Taiwan need sufficient antiship weaponry, including antisubmarine warfare (ASW) weapons. This is critical to the credibility of any deterrence of an amphibious assault on Taiwan, or an attempted blockade of shipping to the island. Mentioned prominently here are such weapons as the Sea-Sparrow and the Harpoon antiship missiles, as well as ASW helicopters.

Other types of defensive weaponry supplied in such amounts as to give the people on Taiwan a credible deterrent capability are necessary if Taiwan is to have the security it feels it needs. Without such security, there can be no basis from which to begin talks from "reunification"—which appears to be the goal of the Carter administration in its dealings with the people on Taiwan. Nor can the United States be assured that Taiwan will not take some sort of desperate action lacking such supply and commitment from the United States.

Faced with U.S. acquiescence in the eventual "reunification" with the mainland and concommitant withholding of needed U.S. defensive weaponry, Taiwan well could seek allies elsewhere, or go nuclear.

Is there anyone in Congress who wants to force Taiwan into the Soviet camp, or the nuclear club?

But both eventualities could take place.

A desperate nation often takes desperate measures. Taiwan in the nuclear club would be subject to economic blackmail by other nations desiring nuclear weapons. Who can say that, perhaps, Saudi Arabia or Libya, might seek to trade oil so badly needed by the people on Taiwan for Taiwan's nuclear technology. Without a firm U.S. commitment to Taiwan's defense and security, with a steady supply of defensive weaponry as proof of that commitment, Taiwan well could fall prey to such economic blackmail. Similar blackmail could come from South Africa, perhaps, which supplies Taiwan with large amounts of uranium needed by Taiwan for its electricity-generating nuclear reactors. The potential is there, and dangerous it is.

Or, Taiwan might decide that the Soviet Union well could be a partner of convenience, much like Peking finds the United States at present.

These are unpleasant scenarios, but well within the realm of possibility for the people of Taiwan if they feel abandoned by their longtime ally, the United States.

President Carter has stated that the United States could go to war to protect the people on Taiwan. There is no need for such useless flag-waving, for committing American soldiers where such commitment is not necessary. And it should be unnecessary for the United States to commit one American soldier to the defense of Taiwan and its people, if the United States merely supplies the people on Taiwan with the weaponry they need to defend themselves.

Congress can commit that weaponry in the legislation now before it, or by other legislative means. Congress can, and should, make a commitment to the security of the people on Taiwan, a commitment of such strength and force as to leave no doubt in Taipei or Peking as to what the people of the United States feel about the security of the people on Taiwan.

The public supports such a commitment; a recent survey finds that a large majority of Americans feel that the United States should continue to supply the people on Taiwan with the defensive weaponry they need.

Thus, any commitment, both in words and action in supplying weaponry to the people on Taiwan not only is consistent with U.S. interests in Taiwan and the Pacific, but also meets with the approval of the public.

Certainly, it fulfills a moral obligation of the people of the United States to the people on Taiwan.

Mr. MCGOVERN. First of all, I commend Senator GLENN and Senator JAVITS for their leadership on the Taiwan Enabling Act, and I express my appreciation not only for what they have said on the floor today but the leadership they provided in our Committee on Foreign Relations.

APPOINTMENTS BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. PRYOR). The Chair, on behalf of the Vice President, pursuant to section 1024 of title 15, United States Code, appoints the Senator from Maryland (Mr. SARBANES) to fill the vacancy of the majority party membership on the Joint Economic Committee.

The Chair, on behalf of the Vice President, pursuant to Public Law 94–304, appoints the Senator from South Dakota (Mr. MCGOVERN) to the Commission on Security and Cooperation in Europe, in lieu of the Senator from Iowa, Mr. Clark, retired.

The Chair, on behalf of the Vice President, pursuant to Public Law 86–420, appoints the Senator from Texas (Mr. BENTSEN) as chairman of the Senate delegation to the Mexico-United States Interparliamentary Conference, to be held in Mexico in May 1979.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President of the Senate pro tempore, pursuant to Public Law 93–618, and upon the recommendation of the chairman of the Committee on Finance, appoints the following Senators as Official Advisers to the U.S. dele-

gation to negotiations relating to trade agreements: Senators LONG, TALMADGE, RIBICOFF, DOLE, and ROTH; and as alternate Official Advisers to the above negotiations: Senators BYRD of Virginia, NELSON, GRAVEL, BENTSEN, MATSUNAGA, MOYNIHAN, BAUCUS, BOREN, BRADLEY, PACKWOOD, DANFORTH, CHAFEE, HEINZ, WALLOP, and DURENBERGER.

ORDER WAIVING PASTORE RULE AND LIMITING SESSION TO NO LATER THAN 5 P.M.

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

Mr. McGOVERN. I do not have the floor.

Mr. ROBERT C. BYRD. Mr. President, I ask that the Senator seek recognition and that he then yield to me.

Mr. McGOVERN. Mr. President, I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the remainder of the day Senators may speak out of order for the remainder of the 3 hours under the Pastore rule—that Senators may speak out of order—and I ask unanimous consent that the session go no later than 5 p.m. today, at which time it stand in recess under the order over until 11 a.m. on Wednesday.

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

Mr. ROBERT C. BYRD. With this understanding, Mr. President, Senators may speak out of order until the Pastore rule has expired, if they so desire, and following that time they may speak on the Taiwan legislation or other subjects, and that at no later than the hour of 5 p.m. today the Senate will recess over until Wednesday. There will be no rollcall votes today.

I thank the Chair and I thank the distinguished Senator.

PRIVILEGE OF THE FLOOR

Mr. McGOVERN. Mr. President, I yield now to the Senator from Oregon.

Mr. HATFIELD. Mr. President, I ask unanimous consent that Jack Robertson and Rick Rolf of my staff be accorded the privileges of the floor during the discussion of the SALT II question.

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

ARMS CONTROL OR ARMS RACE—PRESIDENT CARTER MUST CHOOSE

Mr. McGOVERN. Mr. President, I join in expressing strong concern, that is shared by Senator HATFIELD, of Oregon and Senator PROXMIRE, of Wisconsin, relative to SALT treaty and the accompanying terms that are being suggested with reference to the approval of that treaty.

I find it a sad obligation to contemplate a negative vote on the SALT II treaty which reportedly is now in the final stages of negotiation. But that may be the only recourse left to those of us who believe the objective of real arms control is more important than the illusion this treaty presents.

No one can seriously dispute the view that SALT II is a piddling accomplishment when measured against the mammoth nuclear arsenals of both the United States and the Soviet Union. The most persuasive argument for it is that it is the middle stage in a logical arms control progression: SALT I was supposed to freeze the quantitative race; now SALT II establishes the principle of "equal aggregates"; SALT III, we are told, will get on with the business of phasing down these ominous stockpiles of weapons.

That is a nice, neat description. Unfortunately, something entirely different has been happening and seems to be in the offing. SALT has not controlled the arms race. Instead, it has only channeled the race in new directions. We have not yet had a President who had the commitment nor the courage to instruct his subordinates that arms control, as opposed to arms competition, would be the clear and undisputed policy of his administration.

At the outset, when President Carter was talking about "banishing nuclear weapons from the face of the Earth," I thought it might be different. But now I see an administration that seems ready to move ahead on even the most outlandish arms production schemes, because of the risk that some Senators who oppose arms control will not support SALT II.

The administration actually seems anxious to throw out the arms control baby, if only it will be permitted to keep this tepid bathwater of a treaty. It might be understandable if it was just aggressive, well-planned salesmanship. But I think that is clearly not the case.

I think both the content of our arms planning and our approach in the negotiations have been infected by a yearning to disarm the hardliners—by embracing their cause.

The design of this treaty is not to achieve the best arms control framework; rather, our diplomats have been told to negotiate around and protect the Pentagon's wish list for a whole new crop of strategic weapons.

The M–X missile is a glaring case in point. It might have been possible to deal with the supposed threat to our ICBM's in the SALT III negotiations. We could propose, for example, that both sides make parallel deep cuts in their newer ICBM's, moving toward land-based missile disarmament. Failing in that, we could have restructured our retaliatory forces to defeat any such threat, perhaps with a mobile Minuteman. Instead, the administration has requested nearly $1 billion in new money for a silo-busting M–X system which would complete our own first strike threat against the Soviet ICBM's which constitute three-fourths of all of their strategic forces.

Of all the possible options, the administration has chosen the one best suited to poison the atmosphere and raise grave complications for SALT II, and for any real hope of arms control and reduction. On several occasions in recent weeks I have asked administration spokesmen why, if our objective is simply to overcome the potential vulnerability of our ICBM's, we are designing a system which will have the accuracy and the throwweight and will be built in sufficient numbers to threaten the entire Soviet ICBM force with a first strike. I have yet to hear a sensible answer to that question.

What will we do with this new capability? Are we planning a wholesale surprise attack? That is the one, lunatic scenario in which such a counterforce system might conceivably be useful. For if we are planning it as a retaliatory weapon, the Soviet ICBM's it is designed to kill will be long gone when it arrives. And we have abundant capability for flexibility targeting, including retaliation against military and command targets, in the existing force structure.

I sometimes wonder if the President is even aware that he has proposed such a system, masquerading as a moderate and prudent answer to anticipated Soviet programs. It is a measure of how far we have come that just a decade ago, President Nixon was giving the Congress explicit assurance that our MIRV warheads, which were just then moving into production, would not have enough accuracy to kill hardened targets altogether, those assurance helped avoid an amendment by former Senator Brooke which would have limited our MIRV's to less than a hard-target kill capability.

Now those assurances from the Nixon administration are out the window, and President Carter is asking and I am sure he is sincere, for a new missile whose very purpose is to knock out hardened silos. And that new departure in the arms race is presented just when we are expecting a new arms control treaty.

I hope the President will not abandon his comment to arms control. It would be a curious time to do so, when the latest polls are showing that 81 percent of the American people support it. I hope he will begin thinking seriously about SALT III and the postures we need to take now, which will be necessary if it is to succeed.

But in any case, I cannot fit the SALT II treaty, the M–X missile, and some of these other systems in the same package. I cannot support a strategy which would sacrifice our long-term hopes for comprehensive arms control in order to win a few hardliners' votes for a very modest interim step which has significant merit only if a comprehensive agreement comes next.

The President must deal with the conflicting pressures in his administration and decide whether he is for or against genuine arms control. My ultimate decision on the SALT II agreement will depend on that choice.

Mr. President, I yield to the Senator from Oregon (Mr. HATFIELD), who has taken the lead in this expression of concern on behalf of the three Senators who are now discussing this subject.

SALT II AND THE ARMS RACE

Mr. HATFIELD. Mr. President, I am pleased to join with my distinguished colleagues, Mr. PROXMIRE and Mr. McGOVERN, today to raise a number of questions which are critical to the future survival of this Nation and the strategic

stability of the world. More specifically, the questions we will raise are necessary to the education of an American public which has been besieged for over 30 years with esoteric arguments against the need for arms control, deliberately made more complex than they need be, and cloaked in terms like "stability," "survival," and "strength," all designed to make Americans feel unpatriotic should they dare to question the motives these slogans embody. I have stated publicly that my position on the upcoming SALT II treaty is continually moving toward a "no" vote. This has caused some of my well-intentioned friends in the arms control community to wonder why. Their concerns are quite legitimate and I have the utmost respect for this view.

They say that even if the SALT II treaty does represent a failure of serious arms restraint, it must be passed to preserve the SALT process, the importance of which at this point in time is to foster cooperation and understanding between the United States and the U.S.S.R. on a more general level, I stand here today asking "whatever happened to arms control?"

It was not long ago when my colleagues and I came to this Chamber to vote on the SALT I treaty. We were told then, as we are being told now, that our support was necessary for an inadequate agreement that allowed an array of "bargaining chips," new weapons systems born as a result of U.S. technological superiority. These weapons, we were told, would set the stage for a tougher bargaining posture intended to persuade the Soviet Union to adopt a more conciliatory policy. This scenario would, in turn, eventually lead to a meaningful SALT II agreement actually reducing the level of mutual terror.

Having no other alternative, the so-called doves joined ranks with the so-called hawks who were placing their bets on the hope that these weapons would be developed. As history clearly shows, those who advocated MIRV and other qualitative advances, foresaw, correctly, that the result would be more weapons systems.

Under SALT I the United States boosted its stockpile of strategic warheads from 4,600 in 1972 to 9,000 today. The number of Soviet warheads also roughly doubled in the same period of time from 2,100 to 4,000. Under SALT II U.S. warheads are projected to increase to some 10,154 plus from between 2,000 to 3,600 cruise missiles. The Soviet arsenal will be more than doubled to 8,124 warheads.

The fact that this quantum growth in strategic warheads has occurred under a process known as strategic arms limitation is more than just a bit ironic. It adds considerably to the notion that the treaties may in fact only institutionalize the arms race while not presuming to effectively control qualitative and quantitative improvements.

I refuse to stand passively by, once again, and vote for a treaty on the ground that it is the "only game in town." It seems that as long as we call something a Strategic Arms Limitation Treaty enough times, people begin to believe that it must be true.

I am convinced that we face an even more critical juncture now than we did 7 years ago when the SALT I agreement was to be ratified. Because today, Americans faced a paradoxical situation, uncomfortably reminiscent of George Orwell's "double speak." We have a President who pledged, and I think sincerely, that he would take steps toward the elimination of nuclear weapons from the face of the Earth by the end of the century. This same President stated in an address 2 weeks ago that—

> The SALT agreement will also permit us and our allies to pursue all the defense programs we believe we may eventually need—the MX missile; the Trident submarine and missiles; air, ground and sea launched cruise missile carrier aircraft; and a new penetrating bomber.

The proposed development of a new generation of nuclear weapons, unwarranted as it may be, lends only a superficial glimpse of the misguided course we pursue. These weapons being developed by both sides are the result of a new dimension of strategic policy. They are "hard target, prompt, counterforce weapons" to be used against enemy silos; the manifestation of a new thrust of Pentagon thinking that, above and beyond "mutual assured destruction," we need the capacity to fight and win nuclear wars.

From this point of view the primary advantages of a counterforce option are said to be that it serves as a deterrent to attacks on the cities of the United States and its allies, and that it provides a means of retaliating in ways other than massive attack against cities, thus enhancing the credibility of our deterrent force. Defense strategists have come to believe that it seemed less than credible to our NATO allies that a Soviet attack on one or more of them without a direct attack on the United States would necessarily be followed by a U.S. strike against Soviet cities, thus subjecting our own cities to destruction by a Communist second strike.

It is also argued by military planners that in the event of a Soviet nuclear attack, an American President might find himself unable to order large-scale destruction of another nation's society. A "counterforce" strategy, it is argued, would thus provide for a flexible and controlled strategic response to nuclear provocation or limited attacks without the total destruction of a "countervalue" strategic response. This development of hard target counterforce weaponry threatens to not only destroy the single concrete success of the SALT process—the ability to verify the location and number of nuclear warheads, but to destroy the fragile measure of stability we now enjoy by giving both nations great incentive to launch a preemptive nuclear attack against one another in times of world crisis.

The American people and the Congress are being led to believe that the array of new weapons programs allowed under SALT will contribute to the President's ability to respond to a nuclear attack in a way that would avert the total destruction of society by increasing the number of less destructive options he has with which to retaliate. This is deceptive logic for a number of reasons. Such thinking is partially based on the grounds that the Soviet Union can launch a limited nuclear attack on this Nation's land-based ICBM's without a significant number of civilian casualties. First, the assumption that a limited nuclear war is possible with negligible civilian casualties is a dangerous gamble at best and suicidal pact at worst. The number of civilian deaths resulting from an attack on our land-based ICBM's is likely to be in the range of tens or twenties of millions. The Soviets know this and they also know that just two of our relatively invulnerable Poseidon submarines can destroy every large and medium sized city in the Soviet Union.

These assumptions imply that the United States does not already have the capacity for "flexible response." The truth is that U.S. strategic forces have for years had the capability—both in weapons and in planning—for a retaliatory response that can be suitably measured depending on the level and evolution of enemy provocation. Indeed, our present forces exceed the requirements for attacking a broad range of targets at all levels of intensity, and could retain this capacity with reductions in the arsenal.

William H. Kincaid, executive director of the Arms Control Association, and an expert in strategic studies, points to other myths in a candid analysis of the fallibility of the "vulnerability" alarmists. He states that—

> The total Minuteman force is only hypothetically vulnerable to what is termed a "disarming" attack, because to destroy it would require a technically perfect attack which involves simultaneously placing and bursting two re-entry vehicles at the optimum height and proximity above each hardened silo without creating the "fratricide effect" (one detonation prevents or reduces the effect of another).

In view of the fact that no one has ever tested a perfectly orchestrated nuclear attack involving some 2,000 separate reentry vehicles, the probability of failure is very high and its consequences immeasurably grave for the attacker. Furthermore, whatever American policy may be. Soviet planners can never discount the possibility that U.S. missiles will be launched in time to leave only empty silos over which Soviet reentry vehicles would detonate uselessly.

The enormous uncertainty of achieving a perfect, very large-scale nuclear attack on ICBM's on the first try, the prospect of failure and the promise of devastating retaliation no matter what the outcome of the ICBM attack is more than enough to dissuade an adversary from attempting such an insane feat. Prudent military planners, whether Soviet or American, do not stake their careers, their parties, or their nation's futures on a single cosmic throw of the dice. This is especially true when even a perfect throw would only trigger penalties of the most destructive kind.

If missile accuracy improves, as is the consuming preoccupation of both sides at present, Minuteman silos will continue to be theoretically vulnerable to a virtually perfect attack, even if Soviet missile

numbers and sizes are reduced. Hence, arms control can make a positive contribution to removing any lingering doubts about Minuteman survivability by mutually restraining accuracy improvements through test limits and other qualitative constraints. Such controls are cost free, would quiet first-strike tensions and would help to stabilize the nuclear balance, a prerequisite to obtaining significant reductions in missile size and numbers. However, priority in the strategic arms limitation talks must be given to these controls on accuracy improvements. Once deployed, these improvements will not be foregone because, unlike limits on size and numbers, their elimination could not be verified.

The administration has yet to spell out one political goal that exists today or that could exist in the future that would be worth the risk of a surprise nuclear first strike. And yet, no one challenges Defense Secretary James Schlesinger's 1975 statement that—

> Under no circumstances could we disavow the first use of nuclear weapons. . . . If one accepts the no first use doctrine, one is accepting a self-denying ordinance that weakens deterrence.

Critics of SALT II continually point to the dangers of a Soviet first strike against the U.S. ICBM force. Confronted with this perception, these critics then advocate a variety of highly expensive weapons systems which horrendously complexify arms control and verification efforts. What these critics either cannot or choose not to confront is the Soviet perception of our developing first-strike capabilities.

As has been explained, U.S. defense planners see these new missiles as providing a "counterforce" option in the event of a Soviet decision to only use some of their missiles against elective targets in a surprise first strike. The Soviet planners on the other hand, must take into account that the increased U.S. accuracy with MARV, MX (and ultimately Trident II) vastly increases the U.S. capability to theoretically destroy Soviet land-based missiles. Since Soviet ICBM's carry 80 percent of their nuclear arsenal, as opposed to the some 50 percent carried by U.S. ICBM's, Soviet planners must be at least as anxious as we over the intent of these new programs. But the Soviet planners cannot limit their concern simply to the survivability of their land-based missiles. As a result of major U.S. breakthroughs in submarine detection and monitoring, the United States has developed a capability of tracking and destroying Soviet submarines.

To the Soviet planner the $5 billion U.S. antisubmarine warfare program (ASW) able to chart operational movements of the noisy Soviet subs through the sound surveillance system (SOSUS), poses an immediate threat to the sea-based leg of the Soviet triad. There is no similar Soviet threat against U.S. submarines. Those submarines in port, a Soviet planner might hypothesize, might well be destroyed in the event of a "counterforce" U.S. first strike. Those 10 to 15 submarines always at sea, the Soviets might hypothesize, might be tracked and destroyed by the U.S. ASW program.

A Soviet planner must perceive a great danger, indeed, in U.S. advances in related systems capable of helping coordinate and launch a U.S. first strike. More complex computer and other software breakthroughs allow for better U.S. control over the timing of the imagined U.S. ICBM and SLBM attack. The "fratricide" effect is kept minimal through heightened computer control. The overcentralized Soviet monitoring system is, as the Soviet planner knows, far too susceptible to "blinding" by U.S. antisatellite systems. This may heighten insecurity and increase the chances of a launch on warning—or force the Soviets to move into development of ballistic missile defense systems. This in turn would negate controls under SALT I and void the fundamental concept of "mutual assured destruction."

Into this scenario, a Soviet planner like our own must also take into account a renewed U.S. civil defense program, and new developments in the area of space warfare. In addition, thousands of tactical nuclear weapons in Europe might also be brought to bear against residual Soviet targets in the event of a limited or total U.S. attack.

But, it will be argued, such a scenario is nonsense. The United States has no intention of ever initiating a nuclear war.

This is correct, but irrelevant. Just as our planners must use the theoretical possibility of a Soviet attack against our own missile force as reason to demand new weapons systems and technological responses, so too must we expect that an equal or greater threat facing Soviet planners might produce new complexity in their military systems.

I am becoming increasingly convinced that the course we will legitimize by signing a SALT II treaty threatens to destabilize and increase the complexity of the arms race to such an extent that any meaningful SALT III agreement, one that is finally aimed at a reduction in our nuclear arsenals, will be impossible to negotiate.

Both the Soviet Union and the United States were the recipients of devastating surprise attacks during World War II. This seems to have created among defense planners what former Secretary of Defense James Schlesinger has termed "surprise attack fixation." This is the tendency to direct an inordinate amount of focus on what the Soviets might do. It is not difficult to dream up thousands of alarmist scenarios. The problem is that such daydreaming is invariably transmitted into official policy as what the Soviets will do. Any analysis of Soviet military thinking reveals a similar morbid preoccupation with an unexpected attack.

After more than 2 years in office, the Carter administration has failed to produce a program that departs from the contradictory mindset we have been locked into since the beginning of the SALT process. The simultaneous pursuit of arms control and counterforce improvements moves us at a mind boggling pace toward a total breakdown of deterrence. This may lead eventually to the inescapable conclusion that initiating an unwanted nuclear first strike may be the lesser of two evils.

Instead of charting a course which reconciles these two contradictions, both sides negotiate a movable parity, ridding the mutual arsenals of technologically obsolete weapons while allowing ourselves to be held hostage by the technological imperative of weapons development. Under the current doctrine of "force matching," proposed weapons which would be rejected upon objective analysis are instead placed in the bargaining reservoir to avoid creating an impression of "weakened will" or "lost resolve" through perceived imbalance. Counterforce is clearly destabilizing when held by one nation. When two nations strive to possess this capability, they have chosen to flirt with the dangerous illusion of fighting and winning nuclear wars.

When this illusion finds life under the label of strategic arms limitation, we invite a future of increased tension and international danger.

The PRESIDING OFFICER. The Senator from Wisconsin.

SALT II—TOO HIGH A PRICE

Mr. PROXMIRE. Mr. President, I congratulate the distinguished Senator from South Dakota and the distinguished Senator from Oregon on their statements.

The Senator from Oregon obviously has laryngitis. He came out of a sickbed because he felt strongly about his speech. And he is so right. There is no issue which confronts the Congress and the country which is more important than stopping the arms race.

It is not just a matter of economics. That is the least of it. The important issue, of course, is survival, and survival is unquestionably at stake, whether or not we can achieve an agreement with the Soviet Union overwhelmingly in the interest of both countries. And yet if we achieve an agreement, as the Senator from Oregon has pointed out so ably, an agreement which is a myth, which gives the appearance of some kind of limitation and there is no limitation—as a matter of fact, it is a tremendous expansion of our arms—obviously, the effect of that kind of an agreement is completely negative.

Mr. President, the cost of SALT II may be too high. How can one measure "too high"? The answer comes in several categories.

First is the financial cost.

MX

One of the great ironies of the SALT II agreement, as presently known, is that it will make the world safe for the MX. SALT will be the vehicle for justifying, rationalizing the MX program. Consider that the MX, in the deployment pattern favored by the Air Force, will consist of 200 new missiles secretly pirated among 4,000 widely separated new silos requiring at least 4,500 3-acre plots of land with the appropriate road and electronic connections. Total cost—at least $30 billion

for the land-based mode, perhaps $40 billion for the air-based deployment.

Recently, experts from the American Enterprise Institute, a conservative organization and an organization very concerned with our military strength, and the Brookings Institute testified before the Senate Budget Committee that our military deterrent would not be significantly undermined if the MX were delayed or even eliminated. This represents a broad spectrum of informed opinion critical of the MX.

CONTINENTAL AIR DEFENSE

SALT II will also encourage pressures for a new continental air defense system comprised of an advanced interceptor such as the F–15, a new radar and ground control intercept system, plus a ground-to-air missile system along the lines of Patriot. We may also see the AWACS incorporated into this system. The cost of this development could well be the $15 billion range or even higher. The justification for this continental air defense system will be the allowance in SALT II of continuing production of the Backfire bomber. There is also undocumented talk at the Pentagon of an advanced Soviet bomber. Both events will spur interest in and pressure for a regeneration of the air defense system first built in the 1950's and then phased out during the missile age.

NEW BOMBERS

The Air Force is also pushing for a new manned penetrating bomber. No sooner than the ink was dry on the President's decision to cancel the B–1 the Air Force started an internal campaign for resurrecting a new strategic bomber. The Secretary of the Air Force has testified that there are funds in the fiscal year 1980 budget to "provide the option for a new modern bomber for the 1980's" and to "define a new strategic bomber." The interim plan is to modify a number of FB–111's to the FB–111B design while proceeding with active consideration of a second generation supersonic bomber for the 1990's. Not only will both programs be allowed under SALT II but they will be encouraged as part of the modernization package in the post-SALT environment. The cost of the FB–111B program will be in the area of $7 billion. The cost of a new manned penetrating bomber is almost impossible to estimate now but could well run as high as $30 billion.

NO SALT DIVIDEND

In addition, there will be no SALT dividend from the new agreement.

Many people argue that one of the persuasive reasons to adopt SALT is that it would ease the arms race, ease the burden of defense spending, and reduce the inflationary pressures, which is the No. 1 problem of this country now. But defense budgets are projected to rise by 3 percent in constant dollar terms throughout the 5-year program—with or without SALT.

We have concentrated heavily on what is going to happen in 1980, with a 3-percent increase in real terms for defense spending. What is foreseen by the administration is a 3-percent increase every year for 5 years in real terms. In nominal terms, that means 10 percent, or probably, unfortunately, more.

It may be argued that without SALT there will be an additional $1 to $2 billion annually in strategic programs. But what cannot be argued is that SALT will reduce the military budget obligation on our taxpayers. It will not.

During a recent speech, the President stated "the Soviet Union will be required to reduce their overall number of strategic arms. Over 250 Soviet missiles or bombers—10 percent of their strategic forces—will have to be destroyed or dismantled. At the same time, because we are now well below the agreed ceiling, we could substantially increase our own operational strategic forces."

In other words, while the Soviets destroy or dismantle some older, useless ICBM's or bombers, the United States continues on its way with every major offensive and defensive program on the books. Even the restrictions on the cruise missile and mobile missile are defined in such a way as to not interfere with our research programs. That is all we plan for the cruise anyway.

NO SUBSTITUTE FOR REDUCTIONS

Nor do I argue here for unliteral restraint. I argue for bilateral cutbacks—actual meaningful reductions in the awesome firepower of both nations' arsenals.

The way to meet the threat of land-based missile vulnerability is to reduce the number of accurate land-based missiles on both sides; to place restrictions on the number of land-based MIRV-ed systems on both sides; to cut back to 500 ICBM's. Then there will be little or no threat to each nation's missile silos. The cruise missiles are not an effective first strike weapon system. Submarine-launched ballistic missiles are not accurate enough to threaten land-based missiles. We would restore a sense of sanity to the arms race.

Instead of meaningful restrictions, however, what we have is a rechanneling of the arms race, a redirection, a change in emphasis where each side will end up employing deceptive techniques that pose omnious challenges to any future arms control agreements.

It is not SALT, it is not a strategic arms limitation treaty, it is a strategic arms rechanneling treaty. SART, I guess, would be a better acronym.

The basis of SALT I and SALT II is the unilateral capability of each side to identify the number and types of offensive strategic weapons of the adversary. It has been important to each party not to employ devices which would blur that capability to calculate the threat. Now, however, we are faced with an MX basing mode that would deliberately introduce deception into the nuclear calculus. If the U.S.S.R. were to counter with deceptive plans of its own, our military expert undoubtedly would call for massive increases in defense spending in view of the possibility of cheating. Maybe they do not have only 200 missiles shuttling back and forth underground or from one silo to the next—perhaps there are missiles in each silo. Are there more stored underground waiting for emplacement during a crisis? The variations are endless and each is threatening.

Under these circumstances, Mr. President, I find it difficult, if not impossible, to support the proposed SALT II treaty. Clearly, we must negotiate actual reductions before the legitimate fears over the arms race can be dissipated.

Mr. President, I ask unanimous consent that the joint letter to the President, the statement of principle, articles from the New York Times and Washington Post, and a press release from the Senate Budget Committee be printed in the RECORD at this point.

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

U.S. SENATE,
Washington, D.C., March 2, 1979.

The Honorable JIMMY CARTER,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: After considerable thought we have concluded that the proposed SALT II treaty is very difficult, if not impossible, for us to support. Your recent argument that it constrains the momentum of Soviet programs while allowing the United States to build up does not give us confidence that the treaty embodies a true step toward arms reductions. It appears simply to redirect the arms race into new arenas of technological exploitation.

We have agreed on the attached statement of principle, which will guide our future disposition on this matter.

We hope you and your advisors will give some consideration to our concerns about the MX and the absence of a "SALT dividend."

Sincerely,

GEORGE MCGOVERN,
U.S. Senator.
MARK HATFIELD,
U.S. Senator.
WILLIAM PROXMIRE,
U.S. Senator.

U.S. SENATE,
COMMITTEE OF APPROPRIATIONS,
Washington, D.C.

We are concerned that the price of SALT II may be too high.

If the acquiescence of the Joint Chiefs in support of SALT II requires the commitment to the MX missile system, a manned penetrating bomber, a nationwide air defense system and increasing defense budgets in succeeding years, then we believe that SALT is as much a form of arms diversion as arms control.

The military establishments on both sides exert strong institutional pressures for increasing military spending with or without arms control treaties. Agreements which encourage the redirection of arms races rather than curtailing them are at best transitory and at worst a dangerous illusion of security.

We reserve the right to vote against any SALT proposal that does not fundamentally curb the arms race.

[From the Washington Post, Mar. 5, 1977]

THREE LIBERALS ASSAIL CONCESSIONS TO SALT CRITICS

(By Fred Barbash)

Three liberal senators—Mark Hatfield (R-Ore.), George McGovern (D-S.D.) and William Proxmire (D-Wis.)—announced yesterday that they now find it "very difficult, if not impossible," to support ratification of the strategic arms limitation treaty (SALT II) now being worked out with the Soviets.

Reminding President Carter that the margin of victory when the Senate votes on ratification "could be" three votes, the sena-

tors said they believed the treaty, coupled with administration plans to proceed with the development of several new weapons systems, may represent "a redirection of the arms race rather than" a curtailment.

The statement, in effect, formally notified Carter that he risks the loss of liberal support for the treaty should he go too far in reassuring conservative senators.

The three indicated that Carter already may have stepped over the line in his Feb. 20 foreign policy speech at Georgia Tech when he said SALT II will allow the United States to "pursue all the defense programs we believe we may eventually need," including the MX missile.

In a letter to the president, the three senators said that "your recent argument that it [the treaty] constrains the momentum of Soviet programs while allowing the United States to build up does not give us confidence that the treaty embodies a true step toward arms reductions."

Hatfield called the president's posture "contradictory at best and deceptive at worst."

McGovern said "it appears as if the Carter administration is ready to sacrifice our long-term hopes for comprehensive arms control in order to win a few hardliners' votes for a very modest interim step in the SALT II agreement.

"The design of this treaty," he said, "is not to achieve the best arms control framework; rather, our diplomats have been told to negotiate around and protect the Pentagon's wish list for a whole new crop of strategic weapons."

A two-thirds vote of the Senate will be required for approval of SALT II. Getting those votes is a major preoccupation of the Carter administration in this session of Congress.

Much of the White House's effort has been spent in trying to convince critics—in the Pentagon as well as outside the government—that the treaty will not handicap the United States in its strategic relationship with the Soviets. The promise of the MX missile—a new weapon designed to be moved from one location to another to prevent destruction—has been a primary administration argument in dealing with these critics.

The MX is also at the heart of the Proxmire-Hatfield-McGovern warning. "The price of SALT II may be too high," Proxmire said. "One of the great ironies of the proposed agreement is that it will make the world safe for the MX. SALT will be the vehicle for justifying the MX program, which will cost at least $30 billion for the land-based mode and perhaps $40 billion for the air-based version.

"What we need," Proxmire continued, "are real reductions in the land-based missiles on both sides."

Administration sources suggested that such pressure from the liberal flank may be useful to them by creating a counterforce to the heavy conservative lobbying underway against SALT II.

Ultimately, according to this view, liberals such as McGovern, Hatfield and Proxmire will vote in favor of ratification despite their specific objections.

LIBERAL SENATORS SAY ARMS PACT WOULD NOT CURB WEAPONS RACE

(By Richard Burt)

WASHINGTON.—Three liberal senators criticized the projected new Soviet-American treaty on strategic arms today, saying that the accord did not go far enough to limit nuclear arsenals.

In a letter to President Carter last week, Senators George S. McGovern, Democrat of South Dakota, Mark O. Hatfield, Republican of Oregon, and William Proxmire, Democrat of Wisconsin, said: "After considerable thought, we have concluded that the proposed SALT II treaty is very difficult, if not impossible, for us to support."

The letter was made public today along with a joint statement in which the senators complained that the White House was prepared to "pay too high a price" by planning new weapons to get the support of Senate conservatives for the accord, known as the strategic arms limitation treaty.

"We reserve the right to vote against any SALT proposal that does not fundamentally curb the arms race," the statement said.

TREATY COULD BE COMPLETED SOON

Administration officials have reported that a treaty limiting Soviet and American missiles and bombers through 1985 could be completed during the next few weeks. The White House has defended the proposed agreement from attacks by conservatives who have argued that the accord would give too many advantages to Moscow and would lack checks to prevent Soviet cheating.

White House aides said that they fear that in trying to satisfy conservative critics of the accord by sponsoring new weapons projects, Mr. Carter has risked alienating liberal supporters of arms control in the Senate. The liberal senators "think we have taken them for granted," said an aide.

Mr. Carter has promised that he would not sign any treaty that woud weaken American security. In a speech last month at the Georgia Institute of Technology, Mr. Carter stressed that under the projected agreement, the United States could still pursue new arms initiatives.

Referring to Mr. Carter's remarks in Georgia, Senators McGovern, Hatfield and Proxmire questioned whether the treaty would slow the arms race. "Your recent argument, that it constrains the momentum of Soviet programs while allowing the United States to build up, does not give us confidence that the treaty embodies a true step toward arms reductions," the senators told Mr. Carter.

"REDIRECT ARMS RACE"

They said that the accord "appears simply to redirect the arms race into new arenas of technological exploitation."

In separate statements also made public today, each of the senators voiced strong criticism of the Administration's defense program.

Meanwhile, Administration aides ackowledged that in recent days, both Washington and Moscow had made concessions to make the projected treaty all but complete. The aides said that last week, Moscow moved closer to accepting Washington's definition of how much each side would be allowed to modernize existing types of missiles.

The aides also said that the two sides were close to agreeing on two other technical issues: whether cruise missiles could be fitted with multiple warheads, and how unarmed pilotless aircraft would be limited by the treaty.

The officials said that Washington had recently agreed to a request by Moscow that the United States be prohibited from employing cruise missiles equipped with multiple warheads. But they said that the Administration was resisting range or numercial limits on unarmed pilotless weapons, and that Moscow was likely to permit deployment of these drones under the treaty as long as they are tested without bombs.

BROOKINGS AND AEI DEFENSE EXPERTS AGREE THAT MX MISSILE IS DISPENSABLE

WASHINGTON.—The chief foreign policy experts for the American Enterprise Institute (AEI) and the Brookings Institution joined in advising the Senate Budget Committee today that our military deterrent would not be significantly undermined if the controversial MX mobile missile system were delayed or possibly even eliminated.

Although John Steinbruner of Brookings and Dr. Robert Pranger of AEI were presenting their own views, and not necessarily those of their institutions, Brookings is considered to be a center of liberal thought while AEI is a focal point for conservatives. Each man directs foreign policy studies at his respective institution.

When asked where they would cut defense budget if a cut were necessary, both men focused on strategic forces. Pranger testified that the MX system is not necessary for a sound U.S. strategic policy, while Steinbruner emphasized that existing land-based missiles are not as vulnerable as the Administration claims.

Pranger argued that termination of the MX project would have $12.9 billion in fiscal years 1980 through 1984, with even larger savings beyond 1984.

Although both witnesses noted the steady improvement of Soviet forces, both emphasized that American military capabilities remain at a very high level. Steinbruner insisted that it is "an absurd proposition" to suggest that the Soviet have gone far beyond American military capabilities.

The Brookings expert argued that "real military strength depends on a great deal more" than increases in defense spending. Strategic choices and alternative allocations of funds are far more important, he said; and perceptions are among the most crucial factors.

Arguing that excessive American "hand-wringing" regarding our strategic position in the world is communicating unfortunate messages abroad. Steinbruner stated that world opinion about American power is largely a reflection of our own self-confidence or lack of it. "They believe of us what we believe of ourselves," he said.

In a similar thrust, Pranger testified that "we should project self-confidence" and take the conceptual jolt which would be required to establish key changes in tactical and strategic thinking as opposed to increases or decreases in spending. If we can communicate the impression that "we are creative and we are imaginative in our leadership, that might be more impressive than simply increasing the defense budget," Pranger said.

If the defense budget must be cut in order to meet national economic and fiscal needs, Pranger said, the MX is not the only piece of the budget which could safely be factored out. Progress in the Mutual and Balanced Force Reduction (MBFR) talks would justify cut-backs in NATO upgrading, and such upgrading should be delayed pending results of those talks, Pranger said. That delay could save $4 billion.

Pranger also advised that the termination of F–14 procurement, a faster withdrawal of U.S. forces from Korea, and studies of cost-overruns and service duplication could bring about further substantial savings.

Mr. PROXMIRE. Mr. President, I am happy to yield to my friend from Oregon.

Mr. HATFIELD. Mr. President, I commend the Senator from Wisconsin for a very potent statement and I associate myself with those comments which he has brought before the Senate.

I think it is very important to make an observation on this morning's press coverage of the SALT debate, in which some unknown White House source indicated that he felt that the position set forth by the Senator from Wisconsin, the Senator from South Dakota, and myself was perhaps a strategy move to try to strengthen the SALT II agreement when it once comes to the Hill; that, after all, they expected all three of us to be in a camp of supporters of the SALT II agree-

ment. I wonder if the Senator would care to comment on that interpretation, the reasons the three of us raise these questions, and the seriousness with which we address this issue.

Mr. PROXMIRE. I thank my friend from Oregon. My response is that I feel that I can only support a strategic arms limitation treaty that is a limitation treaty. It has to be a limitation treaty. It has to do what it says it is supposed to do, not be a treaty which coincides with an explosion of arms spending, the greatest increase in arms spending that we have had, in my memory, in peacetime.

After all, it seems to me that that is a circumstance that makes it impossible for me to support the arms treaty. I say that with great reluctance, because, as I started out to say, there is no more important problem, no more important issue, no more urgent action on the part of this country than to achieve an arms control agreement with the Soviet Union because, absent that, the arms race continues. If the arms race is going to continue with such a treaty, I do not think we should deceive ourselves or the American people.

Mr. HATFIELD. Would the Senator not also agree that we are raising these questions not only with a seriousness of purpose, to address the issues, but also from the standpoint of signaling to the White House that they cannot take our votes for granted in support of the treaty if it survives; and that this is not an exercise that we are engaging in merely for staging or for setting up props to the drama of arms limitation. We are very serious about raising these questions at this time.

Mr. PROXMIRE. I could not agree with the distinguished Senator from Oregon more. We are extremely serious in this. We have sent to the White House our statement of principle, which I have just put into the RECORD. We stand by that.

I feel very strongly, as the Senator from Oregon has expressed the opinion, that the only way I can support a strategic arms limitation treaty is if it does what it says it is supposed to do: limit arms.

Mr. HATFIELD. I know the Senator has no doubt had similar communications from our colleagues in the area of political thinking that has been seeking arms limitation, that if, somehow, we do not buy this agreement, there is nothing else as an alternative. I have responded to this basically by saying that it seems to me that this is the time to call for SALT III and to move on with a very serious challenge to the Soviet Union for a mutual diminution of arms, rather than continuing this process of providing for higher ceilings to institutionalize the arms race.

Mr. PROXMIRE. I would agree with the Senator.

I say that I was very impressed by the statistics he gave us pointing out SALT I has not restrained it. Quite the contrary. Under SALT I, we have a tremendous increase in strategic arms in this country and in the Soviet Union.

What has it done? It was supposed to be a treaty limiting arms. Now I suppose we will be told, "Well, SALT II will not do it, but wait for SALT III."

It seems to me we cannot continue to buy that kind of philosophy.

The Senator from Oregon, I think, has made a devastating case on SALT II, that perhaps we can stand for the first one, but that is it.

We want a limitation treaty that limits, not explodes, rechannels, or redirects, our military technology.

Mr. HATFIELD. As I understand the Senator, there is, in effect, a possibility of going back to the drafting boards. We do not have to buy a product merely because it is here. But to say, in effect, "Go back to the drafting board and come up with a better product, one that really is a limitation, not one extending or expanding the arms race," and that has happened before in the political institutions of this country and every country.

I do not think we have always had to buy the first product that has come out of any shop of effort.

Would the Senator agree to that?

Mr. PROXMIRE. I agree wholeheartedly.

Mr. HATFIELD. I would also like to speak to the Senator's comments that stimulated my thinking on this point.

It seems to me we have to demilitarize our relationship with the Soviet Union in order to understand the real political issues that exist between us.

I was very moved by an article written by Richard Barnett in which he calls for a 3-year moratorium on all arms by the Soviet Union and the United States, during which time we should seek to demilitarize our relationships and analyze what the political goals of both countries really are.

When one begins to analyze those goals even today, and look at the routine, one can see the Soviet Union has, of course, the integrity of its homeland as its No. 1 concern, this is followed by the desire to dominate eastern Europe and the eastern Asian area, and of course it has a global perspective.

But if we look at that global record of their political impact or influence, we can see the Soviet Union has not really had a great deal of success, particularly as they have been excluded in the Middle East and Africa.

It seems to me, before we can really enjoy what it is all about in terms of arms limitation, we have to begin a fundamental assessment of the political relationships and goals of these two superpowers. I am always amazed by reports of increasing Soviet arms that so many Americans have cranked up in their thinking. Inevitably, they say that all of the increase must be aimed at us, forgetting the Soviet attitude toward China that almost reaches the point of total paranoia.

Therefore, it seems to me, to get a meaningful arms control program, we will have to get a clear understanding of these political objectives.

Mr. PROXMIRE. I would like to have an opportunity to read that Barnett article—I do not want to give the impression I have thrown in the sponge, I am sure the Senator from Oregon has not, either, on SALT II—and I hope very much it is possible to do so.

But I think what the Senator from Oregon and the Senator from South Dakota and the Senator from Wisconsin are saying today is that we cannot vote for a treaty which is a sham. We cannot take a position which gives the deceptive notion we are holding down the arms race when we are doing nothing about that.

At the same time, I think there is hope the administration will agree to a SALT treaty that means business and then we will not follow policies like the MX, and another manned penetrating bomber, that will enormously burden the American people.

It is questionable as to whether or not it would improve our security, but destabilize the situation and create a future race with the Soviet Union that will also be very burdensome and with far less security on both sides.

Mr. HATFIELD. I thank the Senator from Wisconsin.

WISCONSINITE RECEIVES JACK ANDERSON HALL OF HEROES AWARD

Mr. PROXMIRE. Mr. President, Jack Anderson's column from the Washington Post on Friday, March 2, contains an article extolling the bravery of a 35-year-old Government scientist for his courageous exploit in extricating three Australians and all their scientific gear from the brink of an Antarctic crevasse, Mr. Anderson has named David Schneider, a Government map expert and a native of Wisconsin, as his first nominee to a modern day Hall of Heroes. This exploit was not Mr. Schneider's only act of courage; 3 months afterward, he was responsible for the survival of himself and four companions caught in a 12-day-long Antarctic blizzard, 120 miles from base camp.

Mr. President, Mr. Schneider represents the kind of courageous and rugged individual who built this country. Competent in his field and resourceful under stress, he is also the kind of individual which our country needs to survive and move forward.

I second Mr. Anderson's nomination and congratulate him for his efforts to shine a spotlight of praise on those among us of whom we can all be most proud. I ask unanimous consent that the Jack Anderson article be printed in the RECORD.

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

U.S. SCIENTIST IS UNSUNG HERO OF ANTARTIC

(By Jack Anderson)

In the frozen hell of Antarctica, three Australians trapped in a snow-going tractor were teetering on the brink of icy death. A young scientist, David Schneider, inched his way across 10 agonizing feet of treacherous ice to their rescue. One misstep could have sent them all plunging to the bottom of a glacial abyss.

In subzero temperature, the 35-year-old government map expert extricated the three Australians from the cab of their vehicle,

which was tilted over a 60-foot-deep crevasse. Painstakingly, he hauled them to safety. For his courageous exploit, Schneider is our first nominee to a modern-day Hall of Heroes, which we are establishing to honor those whose unselfish acts of valor might otherwise go unrecognized.

Schneider's challenge came on May 18, 1974. With three fellow scientists, he had set up a remote encampment on the South Pole icecap to conduct ice-drilling experiments. That day their routine was disrupted by a barely audible bleep of distress on their radio.

The faint SOS came from a three-man Australian crew out of Casey Station base camp. Their snow caterpillar had skidded and toppled across a deep crevasse, wedging the men inside the vehicle. Without hesitation, Schneider and an Australian colleague raced to their own snow cat and set off to the rescue.

A native of Wisconsin, Schneider is no stranger to snow. But the conditions that day were almost unimaginable—a "whiteout" in which all depth perception is lost and the eye can see only a few feet ahead. The thermometer read 20 below zero.

"We found them with a lot of luck," Schneider recalled. "We weren't even sure we were headed in the right direction until we came across their tracks."

On the scene, Schneider ventured on foot to the trapped Australians. They were staring from their vehicle into the frozen pit beneath them, almost afraid to breathe. The ice-glazed surface concealed other treacherous cravasses, and Schneider had to find bridges of solid snow to reach the helpless men, "you get so you can tell from the sound whether it's safe or not," Schneider explained. "If there's a hollow crunch, you figure there's a crevasse."

The slender American finally reached the disabled vehicle, canted at a 70-degree angle over the ravine. He pulled himself to a rear door, pried it open with an ice axe and threw a rope to the occupants so he could haul them out.

Schneider wasn't finished yet. The Australians' caterpillar contained $50,000 worth of scientific equipment, so he and the others scaled down the sides of the crevasse to lash the tractor securely until heavy rescue equipment could arrive.

Only then did Schneider take the three men he had rescued back to Casey Station. Asked what they did to celebrate, the laconic Schneider told us: "There wasn't much to celebrate with. There was no liquor allowed at Casey Station, and we were alloted only six cans of beer a month."

Now working at the government's mapmaking center in Rolla, Mo., Schneider is reticent about his Antarctic experiences. In fact, when we first sought him out, he neglected to mention a later heroic exploit during his months at the South Pole. We learned of it from one of the three Australians he saved, Paul Varma, who headed the polar party at Casey Station.

In August 1974, the middle of Antarctica's winter, Varma assigned Schneider to lead a trek inland toward the South Pole. The expedition was caught in a punishing blizzard 120 miles out and was snowbound for 12 days.

The stranded party lost radio contact with the base camp. It was restored only after Schneider devised a way to radio another station nearly 1,000 miles away. Varma highly praised Schneider for maintaining the morale and well-being of his four companions "during this period of extreme anxiety and isolation."

When we prodded his memory on the August escapade, Schneider finally volunteered some information. "That was even scarier than the other," he told our associate Sam Fogg. "The wind was so great, we couldn't see more than six feet, and could move from one tent to another only by hanging onto guide ropes."

A friend of Schneider's told us that the modest government scientist does have an Achilles heel. As a surveyor in the Louisiana bayou country years ago, he had a really bad time. Our nominee for the Hall of Heroes is afraid of snakes.

Footnote: In this age of the cynical antihero, self-sacrifice is supposedly out of fashion. But we're convinced there are many Americans who risk their lives to help their fellow man. We're looking for stories of these unsung heroes. If you know of one, write to The Hall of Heroes, P.O. Box 2300, Washington, D.C. 20013.

SENATE RESOLUTION 59—SMALL SAVERS EQUITY RESOLUTION OF 1979

Mr. PROXMIRE. Mr. President, on February 6, I introduced Senate Resolution 59, the Small Savers Equity Resolution of 1979. Senate Resolution 59 has for its purpose the elimination of discrimination against the small saver in the issuance by financial institutions of money market certificates of deposit now available in minimum denominations of over $10,000 only.

In my statement I set forth the case in support of Senate Resolution 59. Since then I have received a number of letters from savings and loan associations in opposition to Senate Resolution 59. I am sure other Senators have been sent such letters.

For the enlightenment of my colleagues, I ask unanimous consent to have printed in the RECORD a letter which I received from one financial institution supporting Senate Resolution 59 and enclosing a bulletin from the savings and loan industry trade association which is responsible for this seemingly "grassroots" opposition to Senate Resolution 59 by savings and loan associations.

The fact is that even the savings and loan industry admits that the current regulation authorizing money market certificates of deposit is discriminating against the small saver. The public interest is not well served by discriminatory regulations which impact largely on the elderly, the less affluent and the young. Senate Resolution 59 will encourage the regulators to do their homework when they issue regulations in the future.

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

CASCO BANK & TRUST CO.
Portland, Maine, February 16, 1979.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR PROXMIRE: It was very pleasing to learn that you had introduced "Sense of the Senate" resolution 59 to reduce the minimum denomination for Money Market CD's from $10,000 to $1,000. This is great news for literally hundreds of thousands of smaller savers who cannot come up with the $10,000 current minimum and who are therefore eclipsed from the benefits of higher rates.

You might be interested in the enclosed analysis of our own savings accounts which we prepared last year at the time the new Money Market Certificates were authorized. As you can see, out of 18,819 customers of this bank, only 1,212 have sufficient balances to qualify for the $10,000 minimum. Adoption of your proposed $1,000 minimum would expand the number eligible to seven times this number. I suspect that these statistics are representative of the entire banking industry.

It is hard to imagine that your efforts on behalf of these thousands of people, who are now "left out" by the existing regulations, would not succeed; yet I know that the organized interests will be fighting you. The enclosed copy of a communication by the Federal Savings League of New England, just brought to my attention, makes that clear. Unfortunately, the smaller savers are not organized to counter such activity.

Nevertheless, please know that at least one banker (I'm sure there are others) applauds your efforts and hopes for your success. If there is anything at all I can do to abet those efforts, please call upon me.

Very truly yours,

JOHN M. DAIGLE,
President.

CASCO BANK & TRUST CO. STATEMENT SAVINGS & 90-DAY NOTICE ACCOUNTS, ANALYSIS BY SIZE OF ACCOUNT, JULY 1978

Size of account	Number of accounts	Percent of total	Balances (thousands)	Percent of total
$100 to $999	10,082	54	$3,949	7
$1,000 to $2,499	3,897	21	6,144	11
$2,500 to $4,999	2,079	11	7,345	14
$5,000 to $9,999	1,549	8	10,727	20
Total under $10,000	17,607	94	28,165	52
$10,000 and up	1,212	6	26,168	48
Grand total	18,819	100	54,333	100

FEDERAL SAVINGS LEAGUE
OF NEW ENGLAND, INC.,
Boston, Mass., February 7, 1979.

IMMEDIATE ACTION

TO MEMBERS: The following "hot line" was received today from the United States League:

"Senate Bank Chairman Proxmire has introduced 'Sense of the Senate' resolution 59 to reduce minimum denomination in Money Market CD's from $10,000 to $1,000. Proxmire also plans legislation to gradually raise all "Q" ceilings. U.S. League will oppose both. All member mailing being sent with details and request for constituent response to senators."

The ramifications of this need no explanation. It is absolutely essential that every member communicate immediately with his two United States Senators and Senate Bank Chairman Proxmire. It is also appropriate

to send similar communications to your Congressman. You must also communicate vociferously to the Federal Home Loan Bank Board.

This is an obvious attempt to eliminate alleged discrimination against the small saver. A concerted, grass roots effort is mandatory.

This is a very real threat and your immediate action is required.

Sincerely,

PETER S. MORTON,
President.

AUSCHWITZ: A NEED FOR THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, last Friday there was a front-page feature article in the Washington Post on some newly discovered allied aerial reconnaissance photographs of Auschwitz Prison Camp. The first photographs were taken in April 1944, more than a year before the end of the war. They clearly show several gas chambers and crematoriums. The photographs also show prisoners on the way to the gas chambers.

Mr. President, 2.5 million Jews are reported to have been killed at Auschwitz; 12,000 each day. While aerial photographs were being taken, nearly 1 million Hungarian Jews were being transported in boxcars to Auschwitz. By June 1944, Washington knew all about Auschwitz, yet the rail line leading to the camp, as well as the gas chambers, were never bombed. Why is this? Why did we overlook the wholesale murder of millions of Jews?

Thirty-five years later, Auschwitz is history. But for some, the memory of Auschwitz—the memory of having witnessed genocide—is terrifyingly vivid.

The Auschwitz photographs are a painful reminder not only of the danger and destruction of genocide, but of our responsibility to ourselves and, moreover, to humanity.

We must act now to ratify the only international treaty which deals with the prevention and punishment of mass-murder—the Genocide Convention.

I ask unanimous consent that the text of the February 23 Washington Post article be printed in the RECORD.

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

'44 PHOTOS SHOWED AUSCHWITZ CAMP

(By Thomas O'Toole)

Allied aerial reconnaissance photographs revealed the existence of the Nazi death camp at Auschwitz more than a year before the end of World War II, which raises anew the question of why the Allies never bombed the camp or the rail line that took victims to the camp.

Aerial photos taken of Auschwitz by American and British reconnaissance planes from April 4, 1944, to Jan. 14, 1945, clearly show the camp's gas chambers and crematoria where victims' bodies were burned. Several photos show prisoners undergoing disinfection and standing in line to be tattooed. One photo shows a line of 1,500 prisoners being led into the camp from 85 railroad boxcars parked at the end of the rail line just outside the camp gate.

The photographs, along with a scholarly treatise titled "Holocaust Revisited," have just been turned over to the National Archives by the Central Intelligence Agency, which also passed the photographs on to the White House. It is understood that after seeing the photographs, President Carter sent them to Elie Wiesel, chairman of the Holocaust Commission and a survivor of Auschwitz.

Just why the CIA passed the pictures on to the archives is not clear. The authors of the CIA report accompanying the pictures said they were moved to research and write the report after seeing the television serial, "The Holocaust."

"My hope is that we stimulate the interest of historians in the use of photographs taken through aerial reconnaissance," Dino A. Brugioni, one of the authors of the CIA report, said yesterday. "It is an untapped source of history."

The immediate reaction to release and publication of the photographs may be primarily one of anger. Jewish scholars have long asked why the Allies did not bomb Auschwitz or the rail line leading to it, a question that is sure to be brought up again with the release of the pictures.

"A recurring question since World War II has been why the United States rejected requests to bomb the gas chambers and crematoria at Auschwitz or the railroads leading to Auschwitz," University of Massachusetts historian David S. Wyman wrote in Commentary magazine last May. "Such requests began to be numerous in the spring of 1944."

Proponents of such an attack recognized that it would have killed many of the inmates, but the Germans were going to kill them anyway and destroying the camp might have saved other intended victims.

Destruction of the rail line would have hampered the transport of nearly 1 million Hungarian Jews, who were being moved to Auschwitz at the time.

On April 10, 1944, two Auschwitz escapees named Rudolf Vrba and Alfred Wetzler passed on detailed information to Jewish leaders in Switzerland that Auschwitz was a death camp for Jews. The Swiss Jews informed American diplomats in Berne that 12,000 Jews were being murdered every day at Auschwitz, information that reportedly reached Washington by June 1944.

A crucial question about the aerial reconnaissance pictures of Auschwitz is whether they were ever passed on to Washington by the U.S. Strategic Bombing Survey in Britain and Italy, where the planes were based that took the pictures.

The pictures of Auschwitz were almost an accidental byproduct of photographs taken of an I. G. Farben plant producing synthetic fuels less than five miles away. The plant was repeatedly bombed in the last year of the war by American and British planes.

There is little question that the Auschwitz photographs revealed the existence of a death camp. The question is whether the photo interpreters looking at the pictures recognized it as such and notified their superiors.

"Photo interpreters were unaware of Auschwitz at the time," Brugioni said. "They were looking for details of the Farben plant alongside Auschwitz, nothing else."

He explained that during World War II, photo interpreters were given no historical or social background by which to judge pictures. He said they were usually in a hurry to make judgments and often used shortcuts in making them.

"For instance, there's a picture in the Auschwitz file that shows prisoners being herded toward the camp," Brugioni said. "During the war, any time a line of people were seen in a picture it was labeled, 'mess hall'."

The pictures turned over to the archives by the CIA have lain in cans of aerial films stored at a Pentagon repository in Suitland, Md., for 30 years. The CIA acquired the film after "Holocaust" raised the Auschwitz issue last year.

The pictures illustrate what have been until now only "eyewitness accounts of the death process at Birkenau," which was the murder section of the Auschwitz camp, according to the CIA report. The pictures of the four gas chambers and crematoria at the camp "appear to be historically unique," the CIA report said.

"As far as we have been able to determine," the report's authors write, "no other photography of these facilities exists. The Birkenau gas chambers were special access facilities, even for most Nazis, and all photography was forbidden. The extermination facilities at the camp were destroyed by the Nazis prior to the camp's being liberated by the Red Army in January 1945."

Situated in a remote area south of Warsaw in Poland, the Auschwitz death camp was first opened in June 1940 to receive Soviet prisoners of war. It later became the main death camp for European Jews. By one count 2.5 million Jews were killed at Auschwitz.

QUORUM CALL

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

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

THE DRINKING-DRIVER PROBLEM

Mr. PELL. Mr. President, I invite the attention of my colleagues to a recently released General Accounting Office report entitled, "The Drinking-Driver Problem—What Can Be Done About It?" This report carries a very disturbing message: Based on presently available information, there is no evidence that Federal, State, and local efforts to stem the drinking driver are having any impact on the number of alcohol-related traffic fatalities.

The General Accounting Office assessed the major Federal initiative in this area, the National Traffic Safety Administration's alcohol safety action project (ASAP). The GAO found that there is no evidence of a significant reduction in the number of drinking-driver accidents and fatalities in the areas where ASAP programs were conducted. Atlhough Federal, State, and local governments are spending over $100 million each year on various drinking-driver programs, the GAO concluded that alcohol continued to be the largest single factor leading to fatalities, resulting in about 25,000 alcohol-related traffic deaths annually at an estimated economic cost of over $5 billion.

I very much hope that grim picture contained in the GAO report will serve as the foundation for new Federal initiatives aimed at the drinking driver. On February 9, I introduced a bill which would require the States, as a condition of receiving Federal highway safety funds, to adopt stricter laws dealing with those convicted for driving while intoxicated. I am convinced that strong deterrent Federal legislation of the kind contained in my bill is needed if we are serious about this problem.

The need for deterrent legislation is borne out by the GAO's conclusion that social acceptance of drinking and driving is the primary obstacle to solving the drinking-driver problem. The GAO noted a general public attitude of indifference toward the problem and a belief that drinking and driving is unacceptable only when it results in an accident which affects a friend or relative. The report calls for a massive effort at public education to start changing social attitudes about drinking and driving, and I could not agree more that this should be done. I believe, however, that the Federal Government should go beyond spending more money on public education programs and begin to take a hard look at a Federal statute that will produce uniform stiff sanctions in all the States. Unfortunately, this is a problem where past experience has taught us that public education and rehabilitation programs for drinking drivers are not enough. Stronger criminal statutes are needed to reverse the public indifference and present acceptance of drinking and driving. I commend the GAO for reminding us again of the need for stronger Federal involvement in the area of alcohol and highway safety.

RETIREMENT OF COACH DAVID R. GAVITT

Mr. PELL. Mr. President, one of America's premier college basketball coaches and a distinguished Rhode Islander has just completed his last season as head coach at Providence College. David R. Gavitt, who has retired from coaching to devote full time to his duties as Athletic Director at this fine Dominican institution, compiled an incredible 209–85 record in his 10 years as coach of the Friars.

Over the last decade, he led Providence College to the heights of college basketball. Coach Gavitt's teams enjoyed eight consecutive 20-win seasons, and appeared in eight consecutive post season tournaments. These included participation in the NCAA Final Four in 1972 and 1973, the coveted dream of every coach, and the NIT finals in 1974 and 1975. During his tenure, Providence was rated in the national top 20 polls on numerous occasions and defeated no less than 23 teams that were nationally ranked when the Friars played them.

Dave is widely recognized by his peers as an outstanding coach and teacher. He is a director of the National Association of Basketball Coaches; a director of the Amateur Basketball Association-USA, which coordinates international competition for U.S. collegians; he has been selected an unprecedented five terms as the New England Coach of the Year, and—in 1973—Eastern Coach of the Year.

He is also highly respected for his work with young people. He has conducted clinics throughout the world and Nation for the U.S. Armed Forces, the NCAA and others. Although he has helped produce four All-American players at Providence, his greatest joy as a coach takes place on the practice floor with his teams and in clinics. He conducts clinics each summer throughout Rhode Island in conjunction with municipal recreation departments.

But Dave's greatest challenge as a coach is yet to come. All Rhode Islanders are deeply honored that Dave Gavitt has been selected to coach the U.S. Olympic basketball team in the 1980 Moscow Games. This is truly the highest honor a coach can achieve and we wish him well in this difficult task.

I am pleased to recognize the unique abilities and achievements of Dave Gavitt. I wish him, his wife, Julie, and their sons, Danny and Corey, the best of success.

ROUTINE MORNING BUSINESS

MESSAGES FROM THE PRESIDENT RECEIVED DURING THE RECESS

Under authority of the order of the Senate of March 1, 1979, the Secretary of the Senate, on February 2, 1979, received messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received on March 2, 1979, are printed at the end of the Senate proceedings.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Chirdon, one of his secretaries.

EXECUTIVE 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.)

MESSAGE FROM THE HOUSE

At 2:03 p.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1147. An act to extend temporarily the authority of the Secretary of the Treasury to waive the imposition of countervailing duties.

HOUSE BILL REFERRED

The following bill was read twice by title and referred as indicated:

H.R. 1147. An act to extend temporarily the authority of the Secretary of the Treasury to waive the imposition of countervailing duties; to the Committee on Finance.

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. BENTSEN (for himself and Mr. WALLOP):

S. 531. A bill to amend the Federal Meat Inspection Act to allow the interstate movement of all meat food products which are processed by federally inspected establishments and which are derived from meat has been slaughtered or processed at certain State-inspected establishments; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. PRYOR:

S. 532. A bill to continue the work of the President's Commission on Pension Policy to develop a national retirement income policy in the United States, and for other purposes; to the Committee on Governmental Affairs.

By Mr. HEINZ (for himself, Mr. BAYH, and Mr. HATCH):

S. 533. A bill to establish a reasonable and fair preference for domestic products and materials in Government procurement and in procurement with Federal funds, and to establish procedures to insure that, if purchased, only fairly traded foreign products and materials are procured by the Government or with Federal funds; to the Committee on Governmental Affairs.

By Mr. McCLURE:

S. 534. A bill to provide that the lake referred to as the Ririe Lake on Willow Creek, in Bonneville County, Idaho, shall hereafter be known as Oscar Johnson Lake; to the Committee on Energy and Natural Resources.

By Mr. SCHMITT (for himself, Mr. CANNON, Mr. FORD, Mr. PRESSLER, and Mr. THURMOND):

S. 535. A bill to regulate commerce by providing for the safe transportation of nuclear waste and radioactive nuclear reactor fuel, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BAYH:

S. 536. A bill to discourage the use of painful devices in the trapping of mammals and birds; to the Committee on Environment and Public Works.

By Mr. DURENBERGER:

S. 537. A bill to authorize construction of a project for flood control and other purposes on the South Fork Zumbro River at Rochester, Minn.; to the Committee on Environment and Public Works.

By Mr. HEINZ (for himself and Mr. MOYNIHAN):

S. 538. A bill to amend the Tariff Act of 1930 with respect to the imposition of countervailing duties, and for other purposes; to the Committee on Finance.

By Mr. DOMENICI:

S. 539. A bill to authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States; to the Committee on Energy and Natural Resources.

By Mr. McCLURE (for himself, Mr. RANDOLPH, Mr. DOMENICI, Mr. GRAVEL, and Mr. STAFFORD):

S. 540. A bill to amend the Act of August 8, 1972 (Public Law 92-367) to provide Federal assistance to the States for the development and implementation of effective dam safety programs, in order to protect human life and property; to the Committee on Environment and Public Works.

By Mr. BAKER (for himself and Mr. SASSER):

S. 541. A bill to amend the Internal Revenue Code of 1954 relating to estate taxes to provide that the election to use the alternate valuation date may be made on a return that is filed late; to the Committee on Finance.

By Mr. CULVER (for himself, Mr. NELSON, Mr. MCGOVERN, Mr. RIEGLE, Mr. HEINZ, Mr. HELMS, Mr. PERCY, and Mr. SCHMITT):

S. 542. A bill to amend the Internal Revenue Code of 1954 to provide for a deduction paid into a reserve for product liability losses and expenses, to provide a deduction for certain amounts paid to captive insurers, and for other purposes; to the Committee on Finance.

By Mr. WEICKER:

S. 543. A bill to establish a program to improve the commercial fisheries of the United States; to the Committee on Commerce, Science, and Transportation.

By Mr. KENNEDY (for himself, Mr. SCHWEIKER, Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. CRANSTON, Mr. RIEGLE, and Mr. JAVITS):

S. 544. A bill to amend titles XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development; to the Committee on Human Resources.

By Mr. CHAFEE:

S. 545. A bill to amend the Internal Revenue Code of 1954 to increase the amount of the deduction for depreciation allowed with respect to certain small business property; to the Committee on Finance.

By Mr. JAVITS (for himself and Mr. MOYNIHAN):

S. 546. A bill for the relief of Beatrice Braude; to the Committee on the Judiciary.

By Mr. GARN:

S. 547. A bill for the relief of Tso Tung Tang; to the Committee on the Judiciary.

By Mr. McCLURE:

S. 548. A bill for the relief of Luis Sandoval-Miramontes; to the Committee on the Judiciary.

S. 549. A bill for the relief of Kenjie Okuma; to the Committee on the Judiciary.

S. 550. A bill for the relief of Frank Norman Addeman; to the Committee on the Judiciary.

By Mr. GARN:

S. 551. A bill for the relief of Fred W. Sloat of Salt Lake City, Utah; to the Committee on the Judiciary.

By Mrs. KASSEBAUM:

S. 552. A bill for the relief of Diego Rodriguez, M.D. and Elisa Rodriguez, husband and wife; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BENTSEN (for himself and Mr. WALLOP):

S. 531. A bill to amend the Federal Meat Inspection Act to allow the interstate movement of all meat food products which are processed by federally inspected establishments and which are derived from meat which has been slaughtered or processed at certain State-inspected establishments; to the Committee on Agriculture, Nutrition, and Forestry.

HELP FOR SMALL BUSINESS MEATPACKERS

Mr. BENTSEN. Mr. President, I am today introducing a bill which I feel is instrumental in protecting the small businessman's right to free trade. The small businessman has a time-honored position in this Nation's history books, yet his existence is often threatened as much by Government overregulation as by competition from larger businesses.

The overtightening grip of Government regulations must not be allowed to strangle the small businessman. The small businessman does not ask for unfair advantages. He does not ask for artificial constraints on his larger competitors, and neither do I. But I do believe that one of our highest priorities should be the freeing of the small businessman from the shackles of Government regulations which bar him from competing fairly in an open market.

One such inequity is glaringly apparent in the meatpacking industry. This industry consists of firms ranging in size from 5 or 10 animals per week to firms that process thousands of animals per day. All of these firms serve a need. The smaller firms, which can offer a personalized and often unique service to both producer and consumer, are a vital part of the industry. There are thousands of such firms throughout this country, but in the last few years many of them have been forced to close. They have not closed because of poor management or lack of need for their services. Rather, these small, usually State-inspected meat plants have found the artificial barrier of a Federal law limiting the market for their products. State-inspected meatpacking plants may sell their product to a local wholesaler, a local retailer, or another State-inspected plant. They cannot legally sell anything to a federally inspected plant for fear that it might become mixed with the Federal products.

Mr. President, the goal of that law is to insure the wholesomeness of meat moving in interstate commerce. That goal is a worthy one. However, the law as it now stands is completely unjust, because many of the State inspection systems are just as rigorous as the Federal system and many of these small, State-inspected plants are certified by the U.S. Department of Agriculture as having standards as good as the Federal plants. It is for this reason that I am bringing this vital matter to the attention of the Senate. The Congress needs to strike down these needless barriers to free competition and cease this unwarranted discrimination against the small businessman.

If passed, this bill would allow State-inspected meatpacking plants, in States that have been certified as having inspection requirements that are "at least equal to" Federal requirements, to sell their product to federally-inspected plants. This will allow the smaller plants to sell partially processed meat to the big plants for further processing. It will also provide the small plants with new outlets for meat byproducts, and it will give the large plants a new source of supply. This will increase both competition and efficiency throughout the industry, and it will help put an end to the destruction of the smaller plants.

This is important not only to the affected businessman, but to the industry as a whole. By limiting the markets of the smaller, State-inspected plants, we are reducing their economic efficiency and thus contributing to their demise. This, in turn, increases the concentration of a few large packing plants and results in less competition. Many cattlemen are concerned about this situation, and, we in Congress should be concerned also.

Mr. President, the loss of our smaller packing plants is a very real problem. It is also a reality that Government regulation is contributing to the loss of these plants. We must act now to improve this situation. Consumer, cattlemen, and packer alike will benefit from the increased competition.

That would be of great assistance to the small businessmen of this country and I urge my colleagues to take a look at this bill that I am introducing today, along with Mr. WALLOP, of Wyoming, and urge their support for it.

By Mr. PRYOR:

S. 532. A bill to continue the work of the President's Commission on Pension Policy to develop a national retirement income policy in the United States, and for other purposes; to the Committee on Governmental Affairs.

PENSION POLICY COMMISSION ACT

Mr. PRYOR. Mr. President, today, at the request of the administration, I am introducing a bill to continue the work of the President's Commission on Pension Policy.

The President's Commission on Pension Policy was established by Executive Order 12071 (July 12, 1978) as amended by Executive Order 12100 (November 17, 1978). The purpose of the Commission is to conduct a comprehensive review of the Nation's Federal, State, and local retirement, survivor, and disability systems and to develop a coordinated national policy for future growth of retirement systems that can be used as a guide by public and private programs.

Mr. BENTSEN. Will the Senator yield on that for just a moment?

Mr. PRYOR. I am more than happy to yield to the distinguished Senator from Texas.

Mr. BENTSEN. I say to my good friend that I have a very deep interest in that particular subject, chairing that Subcommittee on Finance. One of the concerns I see at the present time and that we ought to try to head off is that we see various groups who say those pension funds ought to be used to achieve certain objectives for the membership at the present time. That means objectives that do not necessarily coincide with the safety of the fund or to obtain the highest yield commensurate with safety that can be. It seems to me that the primary obligation is a fiduciary responsibility on the part of the people administering those funds to try to be certain that when the people retire, those savings are returned to them and that they do return to them the realization of financial security that they were anticipating; that they not be used and diverted for some objective of the moment of the membership who are contributing to the fund at that time.

This is a very major point and it is going to be a point of great contention before Congress before this session is over.

Mr. PRYOR. If the Senator will allow me, I think the Senator is absolutely correct. The Senator has pinpointed some of the most pressing problems within our

pension system. I think that we can point with some pride to the fact that the President has been able to gather together a commission of the caliber that he has to continue this work for the next 2 years of looking at our pension programs throughout this country.

The purpose of this legislation is to provide a statutory basis for the Commission and to continue the work of the Commission for a 2-year period. The Commission was established on September 21, 1978, and has already begun to seek the advice of experts and organizations in the pension field and to assess the conditions of existing programs. The President has appointed Mr. Peter McColough, chairman of the board and chief executive officer of Xerox Corporation, as the Chairman of the 11-member Commission, whom I had the pleasure of meeting just last week. He gave me some ideas about the progress he hopes to obtain within this commission and their activities in the coming 2 years.

Mr. President, I believe that the work of the Commission is of paramount importance to the Nation and to the American people. In recent years the significance of public and private pensions in our lives has increased at a dramatic rate. As the number of people over 65 has grown, the effect of pension programs on the Nation's economy has expanded. Today, over 27 percent of the Federal budget is used to pay retirement and disability benefits and almost 20 percent of the population receive pension benefits.

I think it is entirely appropriate that this Commission now have statutory authority, that it be allowed to proceed for the next 2 years, continuing its much needed study.

In order to give the Commission the necessary authority and support to devise a national retirement policy, I am introducing legislation, at the request of the administration, to provide a 2-year statutory basis for the Commission. During this 2-year period, the Commission will make periodic reports to the Congress, identify needed reforms to meet both present and future national policy goals, and devise a national retirement policy that can help guide all programs.

Once again, I thank the distinguished Senator from Texas for allowing me this time and I thank him for his very appropriate remarks on this subject.

Mr. President, I ask unanimous consent that the text of the bill, together with the letter of transmittal to the President from the Director of the Office of Management and Budget, James T. McIntyre, Jr., be printed in the RECORD.

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

S. 532

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 "Pension Policy Commission Act."

SEC. 2. (a) The President's Commission on Pension Policy, established by Executive Order No. 12071, hereinafter referred to as the "Commission", is hereby authorized to continue in operation for two years following the enactment of this Act. During this time the Commission shall issue reports on problems facing the Nation's retirement systems and formulate recommendations for a national retirement income policy.

(b) The Commission shall submit its final report, including its recommendations and findings, to the President and the Congress. The Commission shall cease to exist 90 days after submission of its final report. All reports and papers of the Commission shall be delivered to the Administrator of General Services for deposit in the Archives of the United States.

SEC. 3. (a) (1) The terms of office of the 11 persons first appointed by the President as members of the Commission, including the chairman, are for the duration of the Commission, and a vacancy in the membership shall be filled in the manner in which the original appointment was made.

(2) A quorum of the Commission shall consist of six members, except that the Commission may establish a lower number as a quorum for the purpose of taking testimony The Commission is authorized to establish committees, and to delegate authority to them, when necessary to carry out its functions.

(3) Members of the Commission who are full-time officers or employees of the United States shall serve without additional compensation, but shall continue to receive the salary of their regular positions when engaged in the performance of duties of the Commission.

(4) When engaged in the performance of duties of the Commission, members of the Commission who are not full-time officers or employees of the United States may be compensated at the maximum daily rate for GS–18 of the General Schedule.

(5) All members of the Commission who are not otherwise employed by the Federal Government shall be reimbursed for travel expenses, including per diem in lieu of subsistence incurred in the performance of duties of the Commission, as authorized by section 5703, title 5, United States Code, for persons in Government service employed intermittently.

(6) All members of the Commission who are not otherwise employed by the Federal Government will be covered by the Federal Employees' Compensation Act (title 5, United States Code, 8101 *et seq.*).

(b) Subject to such rules as may be adopted by the Commission, the Chairman, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and to the Senior Executive Service, and without regard to the provisions of chapter 51, subchapters III and VIII of chapter 53, section 4507 of chapter 45, and chapter 54 of that title, relating to classification and pay, is authorized to:

(1) appoint an Executive Director who shall be compensated at a rate not to exceed the rate in effect for Level V of the Executive Schedule set forth in section 5316, title 5, United States Code;

(2) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this Act, except that in no case shall employees be compensated at a rate in excess of the rate provided for employees in GS–17 of the General Schedule; and

(3) procure such temporary and intermittent services of experts and consultants as are necessary, as authorized by section 3109, title 5, United States Code.

(c) The Executive Director and all members of the staff of the Commission will be covered by the Federal Employees' Compensation Act (title 5, United States Code, 8101 *et seq.*).

(d) The Commission is authorized to accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703, title 5, United States Code, but such personnel shall not be deemed Federal employees except for injury compensation under chapter 81 of title 5, and for tort claims under title 28, United States Code.

(e) Upon request of the Commission, the head of any executive department, agency or independent establishment of the United States is authorized to detail on a nonreimbursable basis any of the personnel of such agencies to the Commission to assist it in carrying out its duties under this Act.

(f) Financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement, from funds of the Commission, in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services.

SEC. 4. (a) Upon the request of the Commission, the head of each executive department, agency or independent establishment of the United States that has an interest in or a responsibility with respect to the areas of the Commission's work shall appoint a liaison officer who shall work closely with the Commission and its staff in matters pertaining to this Act.

(b) In carrying out its duties, the Commission may seek the advice of individuals and groups interested in retirement, survivor, and disability policies including, but not limited to, State and local governments, public and private organizations working in the retirement, survivor, and disability areas.

(c) (1) The Commission or, on authorization of the Commission, any committee of two or more members, may hold hearings and sit and act at such times and places as the Commission or such authorized committee may find advisable, and the provisions of section 1321, title 28, United States Code, shall apply to witnesses invited to appear at hearings, and per diem and mileage allowances to witnesses shall be paid from funds appropriated to the Commission.

(2) The Commission is authorized to secure from any executive department, agency or independent establishment of the United States, information necessary to carry out its functions. Upon request of the Commission, the head of any executive department, agency or independent establishment shall furnish such information to the extent provided by law.

(d) The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(e) The Commission is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the conduct of research and surveys, the preparation of reports, and other activities necessary to the discharge of its duties and responsibilities.

SEC. 4. There is authorized to be appropriated the sum of $2,000,000 to carry out the provisions of this Act, to be available until expended.

EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., February 13, 1979.

Hon WALTER F. MONDALE,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for consideration by the Congress is a draft bill, "To continue the work of the President's Commission on Pension Policy to develop a national retirement income policy in the United States, and for other purposes."

The purpose of this bill is to provide a stat-

utory basis for the President's Commission on Pension Policy, which was established by Executive Order No. 12071 on July 12, 1978. The purpose of the Commission is to conduct a comprehensive review of retirement income programs in the United States, and develop national policies for these programs that can be used as guidelines by the public and private sectors. The Commission can make an important contribution in addressing the gaps and overlaps that exist among the private, Federal, State and local retirement systems. Moreover, there is a growing concern that many of these systems are not adequately planned or funded, given the projected demographic changes and resource constraints the United States will face in the future.

The recent growth in social security and State and local retirement benefits and the effects of the Employee Retirement Income Security Act (ERISA) have focused national attention on the impact of retirement programs on the economy. Outlays for retirement and disability programs account for almost 30% of the Federal budget and an increasingly large share of the GNP. Payroll taxes and contributions to pension systems are an increasing burden on the income of our work force. Over the long run the ratio of retired people to working people in America is rising significantly, increasing the burden on the labor force of financing retirement benefits. These and other changes require that a careful evaluation be made of private, Federal, State and local retirement programs in the United States, and their interrelationships.

The Commission on Military Compensation reported its recommendations concerning the military retirement system last year. A number of other studies and Commissions are also authorized or underway to look at particular retirement programs, such as the Advisory Council on Social Security, the Study of Universal Coverage for Social Security, and the National Commission on Social Security recently established by Congress. In addition, there are a number of groups both in and outside the Government that conduct research on specific retirement problems such as the congressional study of State and local retirement systems mandated under ERISA, and the Department of Labor's research on private pension programs. The objective of the President's Commission on Pension Policy is to build on these individual studies to provide a comprehensive analysis of the retirement income systems of the U.S.

This comprehensive analysis should not preclude consideration and adoption of proposals for immediate changes related to retirement systems. It will be at least two to three years before the Pension Commission's recommendations could be considered; therefore, the work of the Commission should not delay specific legislation to correct obvious defects or inequities in present laws concerning retirement systems.

The work of the Commission as set forth in the enclosed legislation will be neither expensive nor demand a large staff. The Commission is composed of eleven members appointed by the President of the United States, one of whom is the chairman. The members will be served by a staff of approximately 15, including an executive director. The bill provides an appropriation authorization of $2 million for the Commission, to be available until expended. The budget transmitted to the Congress on January 22, 1979 requests a $2 million supplemental appropriation for fiscal year 1979 for this purpose.

The Commission is working closely with Federal agencies and experts in the retirement field. Agencies undertaking retirement-related research have been asked to notify the Commission, so that it can coordinate its activities with other ongoing studies and thus avoid duplication of effort. The Commission will also keep the interested congressional committees regularly informed of its work.

The Commission would have two years to submit its final report from the date of enactment of the bill. The Commission's interim and final reports will address, but not be restricted to, the following areas of concern:

(1) present overlaps and gaps among the private, Federal, State and local sectors in providing income to retired, surviving, and disabled persons;

(2) the financial ability of present private, Federal, State and local retirement income systems to meet their future obligations;

(3) appropriate retirement ages, the relationship of the annuity levels to past earnings and contributions, and the role of retirement programs in private capital formation and economic growth;

(4) the implications of the recommended national policies for the financing and benefit structures of the retirement income programs in the public and private sectors; and

(5) the specific reforms and organizational changes in the present systems that may be required to meet the goals of the national policies.

These reports will provide the Administration and the Congress with a comprehensive inventory of information on the retirement income systems in the U.S., and an agenda of needed reforms for both the public and private pension systems.

I urge the Congress to give prompt and favorable consideration to this proposal.

Sincerely,

JAMES T. McINTYRE, Jr.,
Director.

By Mr. HEINZ (for himself, Mr. BAYH, and Mr. HATCH):

S. 533. A bill to establish a reasonable and fair preference for domestic products and materials in Government procurement and in procurement with Federal funds, and to establish procedures to insure that, if purchased, only fairly traded foreign products and materials are procured by the Government or with Federal funds; to the Committee on Governmental Affairs.

BUY AMERICAN ACT OF 1979

Mr. HEINZ. Mr. President, last year I chaired 4 days of hearings on the Buy American Act before the Governmental Affairs Subcommittee on Federal Spending Practices and Open Government. At that time I was concerned that despite this congressional mandate, significant purchses of foreign goods are made with Federal funds. My concerns were not unfounded. Witnesses told us of numerous cases of Federal dollars going to foreign firms including:

The Minnesota Highway Department which let a $3.75 million contract for a bridge using Japanese steel where the next lowest bidder, who would use American steel, was only $30,000 higher, thanks to a Buy American Act which does not cover this 90-percent federally funded project.

Bethlehem Steel which lost 45 jobs because it lost a bid by $34,000 (less than 3 percent) to a firm which used Japanese steel to make rails for the Massachusetts Bay Transportation Authority under an UMTA grant.

A French manufacturer who boasted of selling to the U.S. Government below its cost of production.

This inquiry into the Buy American Act also revealed the significant benefits of that law to the U.S. economy and to Federal, State and local tax treasuries. A study I commissioned from the Congressional Research Service concluded that a $1,000 procurement placed with an American rather than a foreign firm yields $1,700 in gross economic activity and $552 in new tax receipts for Federal, State, and local treasuries.

Based on the record of these hearings, then, it is clear that a preference in procurement for domestic goods is an important element of our fiscal policy. Such a preference stimulates economic activity and employment. This is the nature and purpose of the Buy American Act passed in 1933.

But to some extent, that act has failed in its purpose. The cases of foreign goods purchased with Federal funds is gross evidence of that failure.

The Buy American Act was passed in 1933 when world trade was virtually at a standstill. Its loosely worded provisions provide only minimal guidance as to its ultimate meaning and significant latitude for interpretation. The law then has taken on far different meanings over the years to the point that present interpretation tends to circumvent congressional intent. For example, Federal grants to States and localities are not covered under present interpretation of the Buy American Act though nothing in the law precludes their coverage. Another example is the definition of "domestic good." Today, up to 49.9 percent of a good purchased by the Federal Government can be foreign in origin and still be considered American even though the law states that a good, to be considered domestic, must be made from components "substantially all" mined, produced, or manufactured in the United States.

These hearings also explored the relationship between the Buy American Act and international trade. We found that free and fair trade does not exist in Government procurement. This is especially evidenced by restrictive buy-national policies and other nontariff barriers imposed by other nations which tend to completely exclude competition from American firms. Such practices include closed bidding systems, bureaucratic prejudice and outright exclusion. A witness at our hearings told us how one Italian Government-owned company told him that if they ever needed to go outside Italy for their needs they would let him know. Another company trying to break into the Japanese market was completely rebuffed. It is quite obvious that our own Buy American Act is minor compared to other nation's policies. The effect is that Federal funds are used to purchase foreign products whereas domestic producers of similar products are excluded from competing abroad.

Evidence of other unfair trading practices was also presented at the hearings. It is probable, for example, that firms in other countries are dumping their products on the U.S. Government. Between June 1976 and October 1977, four fed-

erally funded bridges were built with Japanese steel at bids of up to 37 percent below domestic bids. It is inconceivable that Japanese producers are not dumping this steel at such predatory prices. In another case concerning a bid to supply electrical equipment to the Massachusetts Transportation Authority, one Japanese company accused another of dumping. The firm accused of dumping had bid 23 percent lower than any of the other three companies who were all within 5 percent of each other.

We also have evidence that foreign government subsidized products are being purchased with Federal funds. Breda, an Italian manufacturer, is supplying subway cars to the Greater Cleveland Rapid Transit Authority. Breda is also owned by EFIM, an Italian state owned holding company. As a member of EFIM, Breda therefore enjoys the following privileges: Lower risk due to its backing by the state, easier access to money markets because of state loan guarantees, and reduced corporate taxes. Similarly the French Government offers 14 tax and 8 nontax incentives to exporters which place American firms at a severe disadvantage in their own market.

Now the United States has laws on the books to protect domestic firms against such unfair trade practices. However, the U.S. Government presently has no way of insuring that Federal funds are not used to purchase unfairly traded goods. Because of the peculiarities of Government procurement, these unfair trade laws do not protect domestic firms against unfair foreign competition for Government contracts. Foreign firms can use almost any weapon in their arsenal to compete for Federal dollars and our own American firms can do little to defend themselves against predatory competition.

The nature of Government procurement is such that each bid is an independent event. A foreign firm is free to quote any price on a Government contract and remain almost immune from a dumping investigation because of the near impossibility of proving a history of selling below cost. In fact, our procurement practices encourage the quoting of dumped prices because of the emphasis on sealed bids. While the Federal Government should purchase at the lowest possible cost, it is grossly inconsistent with our trade policies to allow the purchase of dumped goods.

On the basis of these hearings, therefore, Senator BAYH, myself and others introduced S. 3284, the Free and Fair Trade in Procurement Act of 1978. In addition to clearing up ambiguities arising from the present law, that bill, if passed, would have done two things which directly attack the fundamental problems with the Buy American Act identified in the hearings.

First, the bill established a minimum price preference for domestic goods. It would have provided American suppliers a basic edge over foreign suppliers which is needed to insure that American economic activity and employment will be stimulated by Federal procurement instead of unemployment and economic dislocation.

That bill also would have given the Federal Government mechanisms which might have insured that it does not purchase unfairly traded goods.

Today, Senators BAYH, HATCH, and I are introducing a similar measure. Some changes have been made, but the objectives of this bill are the same as those of S. 3284. The Buy American Act of 1979 reaffirms the policy that domestic firms should be preferred suppliers on Government contracts. This preference is consistent with the economic benefits of purchases from American, rather than foreign firms.

But far more importantly, this bill gives the Federal Government mechanisms which, I believe, will insure that it does not purchase unfairly traded goods. Under the provisions of this bill, a domestic firm is authorized to bring an action under our fair trade laws if he suspects a foreign firm is violating such laws in bidding on a Government contract. No contract can be awarded until the action is resolved; and if the foreign bid is found to be unfair, the foreign firm cannot be awarded the proposed contract.

It is about time that our unfair trade laws apply to Government procurement. These mechanisms will do that.

Opponents of the Buy American Act, and previous efforts to strengthen that law, will probably also oppose this bill. They will cite the many benefits of international trade and the role of the Buy American Act as a barrier to those benefits. They will argue that domestic preference should be reduced rather than strengthened.

They will certainly point to the multilateral trade negotiation package which is expected to include an International Government Procurement Code. This Code is supposed to open up the procurement of signatory governments to worldwide competition through the mutual reduction of domestic preference statutes and practices. In effect, this means the reduction in scope of our Buy American Act in return for open procurement systems in other countries.

Proponents of this Code assert that the United States has far more to gain from this Code than it has to lose. They argue that since other nations' domestic preferences are more onerous than our Buy American Act, a mutual reduction of these preferences will open up more procurement worldwide to competition from U.S. firms than these firms will have to give up because of the removal of the Buy American Act.

While I can agree with the ultimate objectives of this Code, Mr. President, I am skeptical. I am skeptical that the Code will succeed. First, we are negotiating from a position of weakness. Because we have so much to gain by opening up other nations' procurement systems, it follows that these nations have so much to lose. Some firms in some of these countries already have a market with the U.S. Government. Through this Code they only stand to lose their own national government's procurement; and not gain what they already have; ours.

We are negotiating from a position of weakness, as well because we are negotiating away overt rules while other nations are negotiating away behavior, customs, or cultural biases. The Buy American Act is a law, a rule of the game, that is known by all prospective bidders, and is uniformly administered without prejudice. Other countries, buy national practices are, by their nature, prejudiced and covertly discriminatory. They are rooted in intangibles. As in the old adage, our Buy American Act is a rule of law; other nations' practices are rules of men. I am skeptical that we can change the latter to our economic benefit.

The proponents of the code will point to this Buy American Act of 1979 and say, as they said about S. 3284, that it is untimely in view of the soon-to-be-presented Procurement Code. They will say that Congress should not consider this legislation because it directly contravenes the objectives of the code. They will say that Congress would be premature to consider this legislation until they consider the pros and cons of the code.

Mr. President, what code are we talking about? By the time we get an International Government Procurement Code, it will be too late. Under the Trade Code, it can do only one thing with it—vote it up or down. But we would not exactly have that luxury either, because we can only consider it as part of the whole MTN package. If the Congress decides that this code is inconsistent with the fiscal purposes of Federal procurement policy, it cannot vote it down without negating any benefits the rest of the package may contain.

Therefore, rather than being untimely, this legislation is precisely timely. It is timely because it presents an alternative for consideration by the Congress. It is timely because legislation to implement the provisions of the code is presently being drafted.

I am concerned about that legislation. I am concerned about the domestic preferences in procurement that may not be covered by the code. If these preferences amount to no more than those contained in the Buy American Act, our hearings are proof that that is inadequate. I am also concerned that, if the code is accepted by the Congress, firms will still be able to use all the weapons in their trade arsenal to subvert the code. If firms in other countries are allowed to dump their products on U.S. Government procurement, or continue to use Government subsidies as an unfair economic advantage, any benefits which the code may afford American companies will be completely negated.

This is an important and timely issue which goes to the foundation of Government economic policy. I urge its serious consideration as an alternative and a supplement to the International Government Procurement Code.

I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 533

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 "Buy American Act of 1979".

FINDINGS; PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the United States is committed to fair international trade;

(2) consistent with national fiscal policies, this policy should be applied to all procurement with Federal funds;

(3) fair trade does not exist in international government procurement because of restrictive buy-national policies and other non-tariff trade barriers over and above reasonable preferences consistent with national fiscal policies;

(4) the United States Government has no procedures to ensure that when it does so, it purchases only fairly traded foreign goods;

(5) purchases of foreign goods with Federal funds, in the absence of fair trade, has contributed to unemployment in this country which results in significant social costs;

(6) Government procurement is consistent with fiscal policy if one of its purposes is to stimulate economic growth; and

(7) Government procurement results in significant returns in Federal, State, and local taxes which far outweigh the short-term increase in costs which may accompany a domestic preference in procurement. (b) The purposes of this Act are—

(1) to provide a reasonable and fair minimum preference in Government procurement and procurement with Federal funds to domestic materials and articles; and

(2) to establish procedures to ensure that when purchased, only fairly traded foreign materials and articles are procured by the Government or procured with Federal funds.

PREFERENCE FOR DOMESTIC MATERIALS AND ARTICLES

SEC. 3. (a) Except as provided in section 5, in the procurement of materials and articles by Federal agencies or with Federal funds, only domestic materials and domestic articles shall be procured, unless—

(1) domestic materials or domestic articles of satisfactory quality are not available in sufficient quantity, as determined under regulations prescribed by the Administrator; or

(2) the cost of the domestic material or domestic article is excessive in comparison to the cost of similar foreign materials or foreign articles, as determined under section 6.

(b) Except as provided in section 5, every contract entered into by any Federal agency, or by any person or government if Federal funds are to be paid under the contract, for the construction of any public building or public work, shall require that only domestic materials and domestic articles shall be used in such construction, unless—

(1) domestic materials or domestic articles of satisfactory quality are not available in sufficient quantity, as determined under regulations prescribed by the Administrator; or

(2) the cost of the domestic material or domestic article is excessive in comparison to the cost of similar foreign materials or foreign articles, as determined under section 6.

(c) For purposes of subsection (a), materials or articles shall be considered to be procured with Federal funds only if 50 percent or more of all sums paid for such materials or articles are derived, directly or indirectly, from Federal funds. For purposes of subsection (b), Federal funds shall be considered to be paid under a contract only if 50 percent or more of all sums to be paid under such contract are derived, directly or indirectly, from Federal funds.

SUBCONTRACTS

SEC. 4. (a) Except as provided in section 5, each contract entered into for the procurement of any material or article by any Federal agency or with Federal funds (within the meaning of section 3(c)) shall specify that any subcontract thereunder for any materials or articles which accounts for 10 percent or more of the final delivered price of the procured material or article shall be subject to the requirements of section 3(a) and the restrictions of section 9.

(b) Except as provided in section 5, each contract entered into by a Federal agency, or by any person or government if Federal funds are to be paid under such contract (within the meaning of section 3 (c)), for the construction of any public building or public work shall specify that any subcontract thereunder for any materials or articles which acounts for 10 percent or more of the total construction price shall be subject to the requirements of section 4(b).

EXCEPTIONS

SEC. 5. Sections 3, and 4 shall not apply to—

(1) contracts for the procurement of materials and articles for use outside the United States, contracts for the construction of public buildings or public works outside the United States, or subcontracts under such contracts; or

(2) any contract or subcontract if the procurement or use of domestic materials or domestic articles under such contract or subcontract is determined to be inconsistent with the public interest, under regulations prescribed by the Administrator, by the head of the Federal agency concerned or, if there is no Federal agency concerned, by the person specified by regulations prescribed by the Administrator.

DETERMINATION OF EXCESSIVE COST

SEC. 6. (a) The Administrator shall issue regulations which provide that, for purposes of section 3, the cost of any domestic material or domestic article shall not be considered to be excessive if such cost does not exceed the sum of (1) the cost of similar foreign materials or foreign articles (including any applicable duty) and (2) the differential determined under subsection (b).

(b) The differential referred to in subsection (a) is an amount (as determined by the Administrator) which is a percent of the cost of the domestic material or domestic article.

(c) In determining the differential under subsection (b) the Administrator shall consider the economic effects (including the tax benefits) of purchasing domestic materials or domestic articles.

(d) In determining the differential under subsection (b) the Administrator is further authorized to establish one differential to be applied to all domestic materials or domestic articles, separate differentials for each class of domestic materials or domestic articles, or higher differentials to be applied to domestic materials or domestic articles which are procured from small business concerns or concerns located in labor surplus areas.

CERTIFICATIONS BY CONTRACTORS SUPPLYING FOREIGN MATERIALS AND ARTICLES

SEC. 7. (a) No contract or subcontract for the procurement of foreign materials or foreign articles may be entered into under authority of section 3(a)(2), and no contract or subcontract for the construction of a public building or public work in which foreign materials or foreign articles will be used may be entered into under authority of section 3(b)(2), unless the contractor or subcontractor, as the case may be, certifies that he has been assured in writing by the foreign supplier of such materials or articles that (1) such materials or articles are not being supplied at below their cost of production and (2) such foreign supplier is not in violation of the antitrust laws of the United States.

(b) If the Administrator determines, after notice and hearing, that a person has falsely certified under subsection (a), such person shall, in addition to any other penalty, not be eligible to be awarded any contract or subcontract entered into under authority of section 3 (a)(2) or (b)(2) for a period of three years from the date on which such determination becomes final. The provisions of chapters 5 and 7 of title 5, United States Code, shall apply to proceedings under this subsection.

AWARDING OF CONTRACTS FOR PROCUREMENT OR USE OF FOREIGN MATERIALS AND ARTICLES

SEC. 8. (a) No competitive bid contract or subcontract to which section 3(a) applies may be awarded for the procurement of foreign materials or foreign articles unless the provisions of this section have been complied with. No competitive bid contract or subcontract to which section 3(b) applies may be awarded in which foreign materials or articles are to be used unless the provisions of this section have been complied with.

(b) If under one or more qualified bids on a contract or subcontract to which section 3 applies foreign materials or foreign articles would be procured or used and such bid or bids (hereinafter referred to as the "low foreign bid or bids"), after the application of such section and section 6, are lower than the qualified low bid under which domestic materials or domestic articles would be procured or used (hereinafter referred to as the "low domestic bid"), the contracting officer shall notify the person making the low domestic bid of the identity of the person or persons making the low foreign bid or bids, and the details of such bid or bids.

(c)(1) If the person making the low domestic bid believes that the foreign materials or foreign articles which have been or will be imported to fulfill the low foreign bid or bids involve or will involve a violation of any section listed in paragraph (2), or that with respect to similar domestic materials or domestic articles the foreign country or instrumentality of origin of such foreign materials or foreign articles is engaging in any acts or practices described in section 301(a) (1), (2), or (4) of the Trade Act of 1974, he may commence a proceeding or proceedings under any of such sections. If such person decides to commence such a proceeding with respect to the low foreign bid, or with respect to each low foreign bid if there are two or more, and notifies the contracting officer of such decision within 5 days after he receives notice under subsection (b), the contract or subcontract shall not be awarded pending the commencement of such proceeding or proceedings. If such person commences such proceeding or proceedings and notifies the contracting officer of such commencement within 30 days after giving notice under the preceding sentence, the contract or subcontract shall not be awarded until a final decision has been rendered in such proceeding or proceedings.

(2) The sections referred to in paragraph (1) are—

(A) section 201 of the Antidumping Act, 1921,

(B) section 303 of the Tariff Act of 1930,

(C) section 337 of the Tariff Act of 1930, and

(D) section 301(a)(3) of the Trade Act of 1974.

(d)(1) If there is only one low foreign bid and in a proceeding commenced under subsection (c)(1) with respect to such bid there is found to be a violation of a section referred to in subsection (c)(2), or of sections 301(a) (1), (2), or (4) of the

Trade Act of 1974, the contract or subcontract shall, notwithstanding any other provision of law, be awarded to the person making the low domestic bid. If no such violation is found, such contract or subcontract may be awarded to the person making the low foreign bid.

(2) If there are two or more low foreign bids and in each proceeding commenced under subsection (c)(1) with respect to such bids, there is found to be a violation of a section referred to in subsection (c)(2), or of section 301(a) (1), (2), or (4) of the Trade Act, the contract or subcontract shall, notwithstanding any other provision of law, be awarded to the person making the low domestic bid. If such a violation is not found in each such proceeding, the contract or subcontract may be awarded to the person making the lowest low foreign bid with respect to which no violation is found.

DEFINITIONS

SEC. 9. For purposes of this Act—

(1) The term "Administrator" means the Administrator for Federal Procurement Policy.

(2) The term "construction" includes alteration and repair.

(3) The term "domestic material" means any unmanufactured article or material produced or mined in the United States.

(4) The term "domestic article" means any manufactured article at least 75 percent or substantially all of the delivered price of which is attributable to—

(A) domestic materials,

(B) component items manufactured in the United States, and

(C) the cost of manufacture (including assembly, packaging, and delivery) in the United States. For purposes of this paragraph, any material which is not produced or mined in the United States in sufficient quantity or of satisfactory quality and any component item which is not manufactured in the United States in sufficient quantity or of satisfactory quality, as determined under regulations prescribed by the Administrator, shall not be taken into account.

(5) The term "foreign material" means any unmanufactured article or material produced or mined outside the United States.

(6) The term "foreign article" means any article which is not a domestic article.

(7) The term "Federal agency" means any instrumentality of the Government of the United States (including the National Railroad Passenger Corporation and the Consolidated Rail Corporation), the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any possession of the United States.

(8) The term "Federal funds" means funds appropriated out of the Treasury of the United States.

(9) The term "United States", when used in a graphical sense, includes any Commonwealth, possession, or other territory subject to the jurisdiction of the Government of United States.

REGULATIONS

SEC. 10. The Administrator is authorized to issue such regulations as he determines necessary to carry out this Act.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this Act.

EFFECTIVE DATE

SEC. 12. The provisions of this Act shall take effect on the date of its enactment, but sections 3 through 9 shall apply only with respect to contracts and subcontracts under such contracts entered into more than one year after the date of the enactment of this Act.

SECTION BY SECTION ANALYSIS

Section 2. Findings and Purpose: The Governmental Affairs Subcommittee on Federal Spending Practices and Open Government held three days of hearings in March and April, 1978, on the Buy American Act and its implementation. The testimony given at these hearings led to three major findings. The first was that federal procurement serves purposes other than merely to purchase the goods and services the government needs to operate. It also serves a fiscal purpose to stimulate employment and economic growth.

The second major finding was that where significant purchases of foreign goods are made with federal funds, there is strong evidence that those foreign goods may be unfairly traded. Possibly the goods are being dumped (i.e., traded at less than fair market value) in the United States, government subsidized, or that other countries discriminate against American producers.

The third major finding is related to the second. The Federal Government has no way of protecting itself against purchasing unfairly traded goods. Due to the peculiarities of government procurement, our fair trade laws do not apply to procurement.

Therefore, the purposes of this bill are two:

(1) To provide a minimal preference for domestic goods to account for the fiscal purpose of government procurement, and

(2) To provide the Federal Government a mechanism for ensuring that, when purchased, only fairly traded goods are purchased with federal funds.

Section 3. Preference for Domestic Materials and Articles: Section 3(a) establishes the policy that, with certain strictly defined exceptions, only American made products may be purchased with federal funds. Section 3(b) extends this policy to construction contracts for public works projects.

Section 3 also has the effect of establishing a domestic preference policy to any purchase by states and localities with at least 50 percent federal funding. That is, any purchase by a state or locality 50% of the cost of which is funded with federal dollars, must be made from American producers.

This preference does not apply, however, if the product cannot be obtained domestically in sufficient quantity or quality, or if the cost of the domestic product is considered excessive.

Section 4. Subcontracts: This section extends the preference for domestic goods to subcontracts which form 10 percent or more of the total delivered price of the end product. There are certain products which are used in goods purchased with federal funds but which are never purchased by governments directly. The cost of such components are often less than 25 percent of the final delivered price. Therefore, under the definition of domestic article, these goods could always be purchased from foreign sources, whether or not they are fairly traded, with no preference for domestic suppliers.

This section, then, attempts to provide these kinds of suppliers with the same protections against unfair foreign competition in government procurement as prime contractors.

Section 5. Exceptions: Purchases for the procurement of goods to be used outside the United States and purchases inconsistent with the public interest are excepted from the provisions of the bill.

Section 6. Determination of Excessive Cost: As under the present Buy American Act, foreign goods may be purchased if the cost of similar domestic goods is excessive. However, unlike the Buy American Act, this section provides some guidance as to how to determine whether the cost of the domestic goods is excessive.

Under the provisions of this section a determination must be made on every contract on which foreign firms have bid. The domestic bids will be considered excessive if they are higher than the sum of the lowest foreign bid plus a differential.

The differential is defined as an amount which is a percentage of the lowest domestic bid. The Administrator for Federal Procurement Policy will issue regulations to specify the percentages to be used in agency determinations. In establishing these percentages, the Administrator must consider the economic effects, including the tax benefits, of federal procurement. This requirement is founded in the numerous studies which indicate that federal procurement from domestic, rather than foreign, firms yield significant tax receipts.

The Administrator is further authorized to establish either one percentage for all products, or different percentages for different products or classes of products. Also, the Administrator may consider establishing higher percentages for procurement from small businesses or firms located in areas of high unemployment.

Section 7. Certifications by Contractors Supplying Foreign Materials and Articles: A contractor will be required to certify that he is not supplying goods to the Federal Government at below their cost of production (i.e., that he is not dumping) and that he is not in violation of the antitrust laws of the United States. Any contractor who falsely certifies to that effect shall be debarred for a period of three years from any government procurement where federal funds are spent.

Section 8. Awarding of Contracts for Procurement on Use of Foreign Materials and Articles: This section establishes procedures which will ensure that, if federal funds are used to purchase foreign products, only fairly traded foreign goods are purchased. Under the provisions of this section, any domestic firm is authorized to bring an action under the fair trade laws if he suspects a foreign firm is violating such laws in bidding on any contract.

Section 9. Definitions: This section details the definitions of various terms used throughout the bill. Of particular importance are the definitions of domestic article and federal agency.

A domestic article is defined to mean any final good delivered to the government 75% of the total delivered cost of which can be directly attributed to United States sources. The 75% definition includes the costs of components, assembly, transportation and delivery.

The definition, however, specifies that those components of a good supplied to the government which cannot be produced in the U.S. in sufficient quantity or quality are not to be considered in determining whether the good is foreign or domestic. Therefore, less than 75% of the cost of a government purchased product may actually be attributable to domestic sources (due to components which cannot be obtained in the U.S.). However, it is the policy embodied in this definition that substantially all of the cost of products purchased with federal funds must be derived from U.S. sources if the product is to be considered domestic for purposes of this legislation.

Federal agency includes not only any instrumentality of the Federal Government (as defined in the U.S. Code) but also specifically includes AMTRAK and Conrail which are not presently covered by the Buy American Act.

Section 10. Regulations: The Administrator for Federal Procurement Policy is authorized to administer the provisions of this bill.

● Mr. BAYH. Mr. President, today I am joining with Senator HEINZ in sponsoring the Buy American Act of 1979. This legislation is a further refinement of nearly 2 years of study and work aimed at nationalizing and improving domestic

preferences in government procurement policies. The introduction of this legislation is particularly timely since our own Government is now in the conclusive phases of nailing down an International Government Procurement Code which will, hopefully, provide some equity and reciprocity in gaining access to foreign government procurements for U.S. manufacturers. While the bill we introduce today does not make explicit reference to those negotiations, it will be helpful in providing future leverage in dealing with those governments who are not yet willing to open their own government procurement process in those areas where our own firms can be competitive. In the event that Code is not as satisfactory as it should be, this bill also represents a vehicle to assure that we will retain discretion to strengthen the "Buy American" laws applicable to those entities such as the transportation sector which may be exempted from coverage under the Code.

The need for such an upgrading of domestic preference statutes is apparent. First of all, Federal procurement serves purposes other than merely to purchase the goods and services the Government needs to operate. It also serves a fiscal purpose to stimulate employment and economic growth. The tax receipts generated from productive expenditure of public funds in this country are significant. A Congressional Research Service study concluded that for every $1,000 the Federal Government procures from the private sector, about $552 eventually comes back in the form of tax revenues

The advent of widespread predatory pricing and illegal "dumping" from foreign suppliers has also mandated improvement of the present laws. As the hearings on the "Buy American Act" held by the Governmental Affairs Subcommittee on Federal Spending Practices and Open Government showed last year, there is storng evidence that foreign goods purchased directly or indirectly by the U.S. Government may be unfairly traded. Think of it a moment: the U.S. Government may actually be abetting the practice of dumping.

I have joined earlier this year in sponsoring the Fair Trade Act of 1979 to speed up and improve our antidumping laws and the process of collection of dumping duties by the U.S. Customs Service. However, I feel very strongly that it is high time we recognized this very serious problem and moved to correct it by reforming our fair trade laws and the Federal procurement process.

Finally, in order to accomplish a rectification of the present situation, we have to make sure the Federal Government can protect itself against purchasing unfairly traded goods. The Buy American Act of 1979 does this by providing the lowest domestic bidder with the specific avenue of redress if it is believed that a foreign bid is an unfair one. A summary of how this is to be done is provided in a section-by-section analysis of the bill.

This Nation's own commitment to fair trade and access to the markets of our trading partners on a reciprocal basis is served by the Buy American Act of 1979 because for the first time we are recognizing the realities of the international marketplace and how our procurement policies should relate to them. Those realities have compelled U.S. manufacturers to compete against not just the firms of countries such as Japan or France, but their governments as well. The domestic preferences provided in this act will help to offset that inherent and unfair disadvantage and put greater weight in our efforts to negotiate further reductions of nontariff barriers which have deprived U.S. businessmen an opportunity to compete for foreign government contracts where they can do so effectively.

Mr. President, I would only add that this effort today is by no means a "protectionist" measure aimed at excluding totally the opportunity for foreign suppliers to service some U.S. Government procurement markets. What we will insist upon, however, is that such trade is fair and that we do not overlook the fact that government procurement is meant to serve the fact that government procurement is meant to serve the broad economic interests of our Nation and the American people.●

By Mr. McCLURE:

S. 534. A bill to provide that the lake referred to as the Ririe Lake on Willow Creek, in Bonneville County, Idaho, shall hereafter be known as Oscar Johnson Lake; to the Committee on Energy and Natural Resources.

OSCAR JOHNSON LAKE

● Mr. McCLURE. Mr. President, I am introducing this bill to name the reservoir behind Ririe Dam, Oscar Johnson Lake in honor of Mr. Oscar Johnson, an Idaho pioneer whose ranch was inundated by the waters of Ririe Dam. The Corps of Engineers newly constructed Ririe Dam is located in Bonneville County, Idaho, and was the Johnson home for over 65 years. Being an advocate of flood control and irrigation projects, he graciously conceded his cattle ranch so that Ririe Dam might be built for the public benefit.

Much of the land owned by Oscar Johnson was homesteaded by his family and other Idaho pioneers. When Oscar Johnson was 16 his father passed away leaving Oscar to support the family. He then began ranching by purchasing 35 acres and eventually other homesteads to form the 5,000-acre Willow Creek Ranch that the reservoir has taken. Members of the Johnson family still make their home in eastern Idaho today.

Oscar Johnson is a fine example of the strong and honest character that settled this part of Idaho. He was progressive in his thinking, hard-working, and well respected citizen of the community. It was with his single efforts alone that the downtown section of Idaho Falls was saved from a flood in 1962. He spent several nights on a small wooden bridge pushing ice blocks under the bridge so that a build-up would not occur and wash out another downstream bridge causing considerable damage to the Idaho Falls business center.

He had dedication to land and water resource conservation as well as a love for the outdoors and its wildlife. It is fitting that part of his ranch that rests on the edges of the reservoir now houses wildlife under the management of the Fish and Wildlife Service.

It should also be noted that Ririe Dam is named after another Idaho pioneering family whose ranch was located below and where the dam now stands. It is only just that both families be represented by name on this water project for even though it affected dramatically their way of life, they both supported it for its many benefits to their Idaho neighbors.

The mayor of Idaho Falls, Idaho, and other prominent area residents endorse this proposal.

I would hope the Senate would take into account the Idaho pioneering history involved and consider this legislation to make the Ririe Dam reservoir the Oscar Johnson Lake.

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

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

S. 534

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in honor of the late Oscar Johnson of Idaho, whose ranch formed much of Ririe Lake, the lake referred to as the Ririe Lake on Willow Creek, Bonneville County, Idaho, shall hereafter be known and designated as the "Oscar Johnson Lake". Any law, regulation, map, or record of the United States in which such lake is referred to shall be held and considered to refer to such lake by the name of the "Oscar Johnson Lake".●

By Mr. SCHMITT (for himself, Mr. CANNON, Mr. FORD, Mr. PRESSLER, and Mr. THURMOND):

S. 535. A bill to regulate commerce by providing for the safe transportation of nuclear waste and radioactive nuclear reactor fuel, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NUCLEAR WASTE TRANSPORTATION SAFETY ACT OF 1979

● Mr. SCHMITT. Mr. President, the safe management of nuclear waste is one of the most difficult and emotional policy issues that face our Nation. In some ways, the waste management problem is unlike other public policy decisions. People who are elected to office for a few years are being asked to make judgments on highly technical matters whose consequences may stretch out for generations.

Congress has not ignored the waste management problem. During the 95th Congress, 12 different House and Senate committees held a total of 45 days of hearings on nuclear waste related issues.

At my initiative, the Science, Technology, and Space Subcommittee of the Senate Committee on Commerce, Science, and Transportation held 4 days of hearings and received testimony from 43 witnesses on waste management issues. One day of our hearings concentrated on the transportation aspects of waste management. This hearing clearly showed a lack of adequate activity that has been devoted to the transportation issues and the need for a coordinated ef-

fort between the Federal Government and State and local governments.

Once we establish a comprehensive nuclear waste management plan, transportation will be the link in the waste management chain that will have the highest public visibility.

Of the 32,000 hazardous material incident reports submitted to the Department of Transportation during the 5-year period between 1971 and 1975, only 144 of these involved radioactive materials and only 36 of those showed a potential public exposure to radiation. This record is encouraging, but we must be prepared for the higher volume of shipments that will result from the implementation of the President's or any other spent fuel policy and the establishment of one or more long-term storage facilities.

The interim, above-ground storage of commercial spent fuel rods must be guaranteed by the Federal Government while at the same time waste reprocessing technology is developed that can economically and safely recycle this valuable resource. Above-ground storage of these rods is a safe, proven technology and is a practically and economically more attractive alternative than below-ground semipermanent disposal.

Mr. President, last week the administration sent Congress its legislation intended to implement the announced Spent Fuel Policy of October 1977. Whereas this is a constructive step toward solving our nuclear waste problems, the administration's bill does not address the transportation aspect of fuel management. I am taking the opportunity today to fill a gap in the administration's waste management plan by introducing the Nuclear Waste Transportation Act of 1979.

These areas of deficiency came to light during the Commerce Committee's waste transportation hearing.

ABSENCE OF A LEAD AGENCY

First, there is no agency which has the ultimate responsibility for regulating the transportation of nuclear materials. The Department of Transportation and the Nuclear Regulatory Commission have overlapping regulatory jurisdiction. At present, this confusing jurisdictional overlap is resolved through a memorandum of understanding between the two agencies. It is questionable that this arrangement will be able to work under the pressure of future increases in volume of transportation of wastes and increases in public concern over the safety of shipments.

EMERGENCY RESPONSE PLAN

The past safety record for the shipment of radioactive materials is probably the best of all hazardous materials. Nevertheless, serious accidents involving other materials, such as chlorine and propane, have caused concern that we do not have an adequate emergency response capability for hazardous materials in general. The formulation of an emergency response capability for dealing with radioactive shipments would go far to alleviate public anxiety and ease the mounting pressure to place State and local restrictions on radioactive shipments. It also may form the basis for a more comprehensive hazardous waste transportation policy in the future.

INAEDQUATE INVENTORY OF SHIPPING CASKS

The number of shippings casks available today is sufficient to transport only one-third of the spent fuel produced each year by our operating power plants. There is no "technical shortage" of shipping capacity today because in the absence of a national waste management plan we have to deal with the shortage of safe shipping casks for spent fuel and accommodate the long lead times necessary to design, build and license new casks.

NUCLEAR WASTE TRANSPORTATION SAFETY ACT

Mr. President, today I am introducing on behalf of Senators CANNON, FORD, PRESSLER, THURMOND, and myself the "Nuclear Waste Transportation Safety Act of 1979." This act represents a necessary step toward resolving some of the transportation problems associated with the shipments of nuclear wastes and spent fuel.

First of all, the act removes the confusing jurisdictional overlap between the Department of Transportation (DOT) and the Nuclear Regulatory Commission (NRC) by designating the DOT to be the lead agency for overseeing transportation safety. The NRC will retain its responsibility for certifying the safety of shipping casks and packages.

Next the act charges the Secretary of Transportation with the responsibility of formulating a plan to react to shipping accidents or malevolent acts directed toward the transportation of nuclear materials. The Secretary is also instructed to prepare an annual report which includes a compilation of radioactive materials transportation data that will be useful in making changes in package designs and shipping procedures which could improve safety. The annual report will include an up-to-date assessment of the inventory of shipping packages and the Secretary's projection of future needs for such packages.

The act authorizes State grants which would provide funds for the governments of impacted States to prepare an independent analysis of the transportation aspects of any plan to develop a spent fuel or nuclear waste repository.

Finally, the act requires prior notification and assurances that any spent fuel or nuclear waste which is imported into the United States will be transported in packages and using procedures that are consistent with those used for domestic shipments.

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. 535

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 Transportation Safety Act of 1979".

SEC. 2. In order to enhance the safety and simplify the regulation of the transportation of nuclear waste and radioactive commercial spent fuel, it is declared to be the policy of Congress that the Department of Transportation has the principal responsibility for regulating, monitoring, and ensuring the safety and security of such transportation. The Congress further declares that the efforts of the Department of Transportation in fulfilling this responsibility may be best be conducted by appropriate consultation with the Nuclear Regulatory Commission.

SEC. 3. Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. 1802) is amended to read as follows:

"DEFINITIONS

"SEC. 103. As used in this title, the term—

"(1) 'commerce' means trade, traffic, commerce, or transportation, within the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

"(2) 'commercial spent fuel' means any reactor fuel which has become radioactive as a result of its use and irradiation in an operating commercial nuclear reactor;

"(3) 'emergency situation' means any situation involving the shipment of nuclear waste or commercial spent fuel which could lead to dangerous exposure of the public or property to radiation or an attempt to divert or interfere with a shipment of nuclear waste or commercial spent fuel;

"(4) 'hazardous material' means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

"(5) 'nuclear waste' means any radioactive material, or combination of materials, other than commercial spent fuel, which is deemed to have no immediate commercial value or application;

"(6) 'radioactive material' means any material or combination of materials which spontaneously emits ionizing radiation and has an estimated specific activity greater than 2 nanocuries per gram of material;

"(7) 'Secretary' means the Secretary of Transportation, or his delegate;

"(8) 'serious harm' means death, serious illness, or severe personal injury;

"(9) 'shipment' means any movement of nuclear waste, commercial spent fuel, or radioactive materials by any mode and any loading, unloading, or temporary storage incidental thereto, excluding the receipt, possession, use, and transfer of nuclear waste, commercial spent fuel or radioactive materials within the boundaries of a facility licensed by the Nuclear Regulatory Commission;

"(10) 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

"(11) 'transports' or 'transportation' means any movement of property by any mode, and any loading, unloading, or storage incidental thereto;

"(12) 'transuranic waste' means any nuclear waste which is measured or assumed to contain a concentration of chemical elements with an atomic number higher than 92 and a specific activity greater than 10 nanocuries per gram; and

"(13) 'United States' means all of the States.".

SEC. 4. Section 104 of the Hazardous Materials Transportation Act (49 U.S.C. 1803) is amended by adding immediately after the first sentence thereof the following new sentence: "The materials so designated shall include commercial spent fuel and transuranic waste in quantities greater than 1 kilogram.".

SEC. 5. The Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.), as amended, is further amended by—

(1) redesignating section 115 thereof as section 118; and

(2) inserting immediately after section 114 thereof the following new sections:

"NUCLEAR MATERIALS TRANSPORTATION

"SEC. 115. (a) RESPONSIBILITIES.—The Secretary shall have the primary responsibility for the safety, regulation, and logistical aspects of the shipment of nuclear waste and commercial spent fuel, except that the primary responsibility for regulating and certifying the safety of shipping casks and packages shall remain with the Nuclear Regulatory Commission.

"(b) EMERGENCY RESPONSE PLAN.—(1) Within 18 months after the date of enactment of the Nuclear Waste Transportation Safety Act of 1979, the Secretary shall formulate and send to the Congress a national emergency response plan to deal with emergency situations that may occur during the shipment of nuclear waste, commercial spent fuel, or other radioactive material. Such plan shall include provisions for a program of educating State and local officials with respect to the possible hazards associated with such shipments, and the steps that should be taken in case of an accident or emergency situation which occurs during any such shipment. The emergency response plan shall define clearly the role of Federal, State, and local governments in responding to an emergency situation. Such plan shall include estimates of the cost of the equipment and the training of emergency reponse personnel that the Secretary determines necessary in order to prepare local officials to deal promptly with the immediate problems associated with an emergency situation. The Secretary shall make recommendations to the Congress concerning funding or other assistance which the Federal Government might supply to local governments in order to improve their ability to respond to an emergency situation.

"(2) In developing the emergency response plan, the Secretary shall consult with those State and local governments which he believes will be significantly affected by shipments of nuclear waste, commercial spent fuel, or other radioactive material.

"SHIPMENTS WITHIN STATES; STATE GRANTS

"SEC. 116. (a) NOTIFICATION.—Any person, or Federal, State, or local government entity proposing to develop a long-term storage or disposal facility, including a test disposal facility, which would result in nuclear waste or commercial spent fuel being transported within a State, shall notify the Secretary within 60 days of selection of a site for such a facility. Such notification shall list the States within which nuclear wastes or commercial spent fuel will be shipped during transport to the facility. The Secretary shall notify the Governors of the States within which the nuclear waste or commercial spent fuel is proposed to be shipped within 10 days after the Secretary has received such notification.

"(b) APPLICATION BY STATES.—Upon receipt of notification pursuant to subsection (a) of this section, a State may apply to the Secretary, in such form as the Secretary may by regulation prescribe, for a grant which shall be issued in accordance with the provisions of subsection (c) of this section.

"(c) AUTHORITY.—The Secretary is authorized to provide grants to any State to assist it in conducting an independent State review of the safety and logistics of shipment associated with any proposal to develop a long-term storage or disposal facility, including a test disposal facility, which would result in nuclear waste or commercial spent fuel being shipped within that State.

"(d) ADMINISTRATION OF GRANTS.—Within 6 months after the date of enactment of the Nuclear Waste Transportation Act of 1979, the Secretary shall promulgate regulations for the issuance of grants under this section. Such regulations shall include provisions governing the amount of any such grants, except that no single grant approved pursuant to this section may exceed $50,000. Such regulations shall take into consideration the proposed level of State review and the continued development of the proposed facility. Any sums received by the State in excess of its actual cost shall be returned to the Department for further distribution for other grants provided pursuant to this section.

"FOREIGN SHIPMENTS

"SEC. 117. (a) NOTIFICATION.—Any person, or Federal, State, or local government which proposes to accept nuclear wastes or commercial spent fuel from any source outside of the United States shall be required to notify the Secretary, at least 90 days before arrival of the nuclear waste or commercial spent fuel, of—

"(1) the amount, form and quantity of nuclear wastes or commercial spent fuel that will be imported into the United States;

"(2) the mode of shipment, the routing, and destination of the shipment; and

"(3) a deailed technical description of the safety and other characteristics of the proposed shipping containers.

"(b) REPORTS.—The Secretary is directed to analyze and report to the Congress within 45 days of any notification made pursuant to subsection (a) of this section on the adequacy of the safety and logistical considerations involved in the shipment of such nuclear waste or commercial spent fuel from any source outside of the United States.

"(c) SAFETY.—The Secretary is directed to ensure that any foreign nuclear waste or commercial spent fuel that is shipped to the United States from a source outside of the United States is packaged in containers that are licensed or certified by the Secretary to be safe for shipment within the United States. The Secretary shall also ensure that the shipment procedures for any such containers are consistent with those for such shipments within the United States.".

SEC. 6. Section 109(e) of the Hazardous Materials Transportation Act (49 U.S.C. 1808 (e)) is amended by—

(1) striking "and" at the end of paragraph (5) thereof;

(2) redesignating paragraph (6) as paragraph (10) thereof and inserting after paragraph (5) thereof the following new paragraphs:

"(6) a review of the safety requirements associated with the shipment of nuclear wastes, commercial spent fuel, and other radioactive materials, and recommended action for any safety-related research or changes in shipping mode or procedure which might significantly enhance the safety and security of such shipments;

"(7) a compilation of shipment data (including number of accidents, number and volume of nuclear waste, commercial spent fuel, and other radioactive material shipments), and other information that can aid risk assessment, can be used for improved container and vehicle design, or can indicate changes in procedures and practices which would make significant improvements in the safety of shipments;

"(8) recommendations for Federal routing guidelines or requirements which might alleviate the need for State and local governments to place additional restrictions on shipments of nuclear waste, commercial spent fuel, or radioactive materials;

"(9) an assessment of the Nation's inventory of containers, packages, and vehicles that are suitable for the shipment of nuclear waste or commercial spent fuel and a comparison of this inventory with the projection of future shipment requirements; and".

SEC. 7. Section 118 of the Hazardous Materials Transportation Act, as redesignated by section 5 of this Act, is amended by—

(1) inserting "(a)" immediately before the first sentence thereof; and

(2) adding at the end thereof the following new subsections:

"(b) There are authorized to be appropriated to the Secretary not to exceed $3,500,000 for each of the fiscal years 1980, 1981, and 1982 for the purposes of sections 115 and 117 of this title.

"(c) There are authorized to be appropriated to the Secretary not to exceed $2,500,000 for each of the fiscal years 1980, 1981, and 1982, for the purposes of section 116 of this title.".●

By Mr. BAYH:

S. 536. A bill to discourage the use of painful devices in the trapping of mammals and birds; to the Committee on Environment and Public Works.

● Mr. BAYH. Mr. President, today I am introducing a bill to discourage the use of painful trapping devices. This legislation is identical to S. 2223 which I introduced in the 95th Congress and represents my continued concern about the unnecessary pain inflicted upon trapped animals. I am hopeful the Members of the 96th Congress will realize the great lessening of pain which this bill could provide the thousands of animals intentionally or accidently caught in traps annually and that this legislation will receive favorable consideration.

A perceptive editorial on the horrors of trapping appeared in the February 13, 1979, New York Times. Written by Mr. John B. Oakes, former senior editor of the New York Times, the editorial observes that most purchasers of fur coats are ignorant of the circumstances surrounding the procurement of animal pelts. Most are unaware that these furs are evidence of the many hours or even days of pain and suffering inflicted upon the animals. Mr. Oakes stresses that ridicule of the "do-gooders" does not disguise the fact that much unnecessary and extremely intense pain is inflicted upon these animals. I agree with his thesis that the vanity of the consumer does not justify this intense cruelty.

The controversy surrounding trapping should not be perceived as a rural issue. Trapping occurs in heavily populated areas as well as sparse areas of the country. Recently traps were illegally set in Glover-Archibold Park, a popular recreational area in Washington, D.C. utilized by persons of all ages and numerous domesticated animals. In one recent instance a woman was walking her dog on a well-traveled path in this park when the dog was caught in a steel jaw leghold trap. Although unable to free him herself, she was able to get help within minutes. Not all animals are so fortunate.

The steel jaw leghold trap is the device that causes the most concern for me and others worried about the mistreatment of animals. This device, the most widely used trap in the United States, was developed in the 1820's and is designed to capture and hold an animal until the trapper arrives to kill it.

Two factors make leg-hold traps work. First, the jaws of the trap close quickly in order to prevent the animal from removing its foot and escaping. Second, the traps must have sufficient resistance to prying so the animal cannot spread the jaws and free itself.

In time the leg of the animal caught

in a steel jaw trap may become numb from loss of blood circulation. When first captured, however, the animal is subject to intense agony. Even after the blood circulation has been slowed, there will be intermittent periods of pain and numbness as long as the trap remains locked around the animal's leg.

As painful as the leg-hold trap is in its clamping and holding action, its greatest cruelty lies in the fact that the trapped animal is held fast for hours, perhaps even days, before being killed or released, or dying slowly on its own.

The animal's initial reaction to trapping often will be repeated attempts to bite or pull the affected limb free, resulting in torn ligaments and flesh, broken teeth, and other injuries. In many instances, animals will chew off their legs in order to escape. Known as "wringoffs" the wounded escapees are easy prey for other animals. Those that avoid predators face a slow death from gangrene, shock, loss of blood, and infection.

The suffering of trapped animals is not confined to furbearers; the steel jaw does not discriminate. Dogs, cats, birds, deer, domestic stock, and even endangered species are being caught and killed in these devices. The Canadian Government has reported that the number of unwanted birds and mammals "accidently" caught in leg-hold traps is twice the catch of target animals.

Trapping is primarily conducted by amateurs who are interested in recreation or a source of supplemental income. According to Argus Archives, a publication on humane issues, the single greatest portion of trappers in the United States consists of high school students. Only 1 percent of all trappers can be classified as experienced profsesionals. Thus, for the most part trapping is a hobby, for weekend sportsmen whose traps are left unattended during much of the week, and for children who are unlikely to check their lines during the inclement weather which usually accompanies trapping seasons.

It is recognized that a market for wild animal pelts does exist, and that it would not be possible for the United States to ban leg-hold traps unless inexpensive, alternative traps are available. There are commercially available traps capable of less painfully capturing or instantaneously killing animals. For instance, the Conibear series of traps is competitive with leg-hold and other traps, but their purpose and design are radically different from those of the leg-hold; the Conibear is designed to kill an animal instantly by breaking its back or neck.

Several years ago the Department of Interior decided that the use of steel jaw leg hold traps to capture bears was inhumane and ordered all field people to switch to a leg snare trap, which is relatively more humane. I applauded this action at that time and do not understand why the use of the snare has not been extended to smaller animals such as the coyote. One cannot help but wonder why the steel jaw trap is inhumane to bears, but is not inhumane to coyotes, foxes, and so forth. The Interior Department conducted research and claims that the leg snare is not effective in catching the smaller animals as the leg hold trap. However, it is my feeling that necessity is the mother of invention. If it was announced that the Department would no longer be using the steel jaw trap, I am sure the Department and/or private industry would produce an effective leg snare immediately. There are several companies selling leg snares at the present time which they claim are as effective as the steel jaw, although the Department does not agree. Until an incentive exists to encourage the use of a more humane trap, the antiquated steel jaw will continue to be used and animals will continue to suffer needlessly.

The feasibility of banning leghold traps is already well established. The States of Florida and Hawaii have taken such action and in New Jersey and Alabama the use of leghold traps is so restricted as to require an almost total dependence on instant kill and humane capture devices. In addition, several other States have considered similar legislation in recent years.

While there has not been enough experience to fully evaluate the impact of such laws in the United States, other countries provide us with ample evidence that wildlife management programs will not be significantly retarded by passage of this legislation. Eleven countries prohibit the use of leg-hold traps, including England, West Germany, Chile, and Denmark.

More humane trapping methods can and must be adopted. For too long government and wildlife management agencies have ignored and evaded the question of humane trapping. It is time to begin to promote the development and use of painless, selective methods of wildlife control and leave behind the antiquated methods of the past.

In the 92d and 93d Congresses I introduced legislation to discourage the use of painful trapping devices. I was pleased that on November 17 and 18, 1975, the Subcommittee on Fisheries, Wildlife Conservation, and the Environment of the Committee on Merchant Marine and Fisheries held hearings on the 12 bills pending on the subject in the 94th Congress. These are the only hearings ever held in either House of Congress on trapping. I submitted testimony along with 75 other interested people. Because of the many facts brought up during those hearings, the bill I introduced in the 95th Congress and the bill I am introducing today is a modified, much improved, bill than the legislation introduced during the 92d and 93d Congresses.

I believe that the bill will not harm the trapping industry but at the same time will insure that only the most humane methods of trapping will be used.

I want to emphasize that the bill will not inhibit predator control programs of farmers. The bill itself states in its findings that—

It is the policy of Congress to prevent this unnecessary suffering through discouraging the use of such traps and devices, but in a manner which shall not prejudice the right of private landowners to protect private property of domestic animals against damage and depradation.

The legislation I am introducing today is very similar to H.R. 953 introduced by Congressman GLENN ANDERSON and 63 of his colleagues.

It would establish an advisory commission of seven members appointed by the Chairman of the Council on Environmental Quality to advise the Secretary of Interior with respect to regulations promulgated under this act. Such regulations shall prescribe acceptable methods of trapping and shall designate the specific traps designed to capture in the most humane manner possible.

In addition to establishing national trapping standards, the bill has several other provisions:

First, only acceptable means of trapping as prescribed by the Secretary and the Advisory Board would be allowed on Federal lands.

Second, the bill would prohibit the interstate commerce of unapproved traps.

Third, it would prohibit the interstate commerce of products taken from animals captured with unapproved traps.

Fourth, this legislation would require that a trap must be checked once every 24 hours and that identification markings appear on each one. I include the visitation provision because my own State of Indiana and 21 other States require it. Also 27 States require the name, address, and phone number of the trapper to be clearly indicated on the trapping device.

I ask unanimous consent that the bill and a copy of Mr. Oakes editorial be printed at this point in the RECORD.

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

S. 536

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that vast numbers of wild and domestic mammals and birds, including family pets and valuable hunting dogs, are needlessly maimed and exposed to prolonged and painful suffering through the use of steel leghold traps, and other painful, sublethal devices used to trap or otherwise capture mammals and birds. It is the policy of Congress to prevent this unnecessary suffering through discouraging the use of such traps and devices, but in a manner which shall not prejudice the right of private landowners to protect private property or domestic animals on private property against damage and depredation.

SEC. 2. As used in this Act the term—

(1) "trap" means any trap, snare, net, or other device designed to trap or capture any mammal or bird;

(2) "approved trap" means the most humane capture method available for any species as determined by the Secretary's review of trapping, research data, demonstrating that the device causes the minimum of pain and distress;

(3) "person" means any individual, partnership, association, corporation, or other entity; and

(4) "interstate or foreign commerce" shall have the same meaning as that provided under section 10 of title 18, United States Code.

SEC. 3. (a)(1) As soon as practicable following the date of the enactment of this Act, but in no event later than one hundred and twenty days following such date, the Secre-

tary of the Interior (hereinafter referred to as the "Secretary") shall, in consultation with the affected heads of other departments and agencies of the United States, issue, and revise from time to time, regulations relating to the trapping and capturing of mammals and birds thereon. Such regulations shall prescribe acceptable means and methods for trapping and capturing mammals and birds on the Federal lands in a humane manner. Such regulations shall contain standards and criteria setting forth the type of trap determined by the Secretary to be the most humane capture method available, and which, to the extent practicable, minimizes the possibility of trapping mammals and birds not intended for capture. Regulations promulgated pursuant to this section shall be published in the Federal Register. The Secretary is authorized to conduct such tests as may be necessary to enable him to carry out his duties under this Act.

(2) Any person violating any such regulation shall be fined not more than $500 or imprisoned not more than one year, or both.

(b)(1) An advisory commission of seven members shall be appointed by the Chairman of the Council on Environmental Quality, to consult with, and to advise and make recommendations to, the Secretary with respect to traps designed or intended for use in trapping or capturing mammals or birds, including regulations of the Secretary. The commission shall further supervise any and all tests carried out pursuant to subsection (a) of this section.

(2) Members of such commission shall receive no compensation as such for their service as members of the commission but may be reimbursed for expenses actually incurred by them in the performance of their duties under this Act.

SEC. 4. (a)(1) Any person engaged in the trapping or capturing of mammals and birds on Federal lands is required to pass a proficiency test to obtain a permit for such activities.

(2) Persons under the age of sixteen years are prohibited from the trapping or capturing of mammals and birds on Federal lands unless accompanied by an adult who has obtained a permit for such activity.

(b) Whoever sells, ships, transports, or carries, or causes to be sold, shipped, transported, or carried, in interstate or foreign commerce, any trap designed or intended for use in trapping or capturing mammals or birds, or both, which is not an approved trap, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and such trap shall be forfeited to the United States.

(c)(1) Interstate or foreign shipment of any hide, skin, or feathers taken from a mammal or bird which has been captured on any lands with a trap other than an approved trap, or any product made from such hide, skin, or feathers, shall be prohibited. The Secretary of the Interior shall publish regulations for the enforcement of this subsection. Any person violating the regulations of this subsection shall be fined not more than $5,000 or imprisoned not more than one year, or both; and such hides, skins, feathers, or products thereof shall be forfeited to the United States.

(d) Whoever, upon any of the Federal lands, places or causes to be placed any trap other than an approved trap for the purpose of trapping or otherwise capturing any mammal or bird, or who, having so placed or caused to be so placed an approved trap, fails to inspect and empty such trap or fails to cause such trap to be inspected or emptied according to regulations promulgated by the Secretary of the Interior, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and such trap shall be forefited to the United States. The Secretary of the Interior shall publish regulations for the enforcement of this subsection. Such regulations shall designate the minimum period during which devices for trapping and capturing animals and birds are to be inspected and emptied. In any event, the goal of the Secretary is to provide for inspection and clearance of trapping and capturing devices at least once per 24-hour period in those areas designated by the Secretary. Such regulations shall designate that each device for trapping or capturing of wildlife be clearly marked with the name, address, and phone number of the person owning the device. Such regulations shall provide for reporting the number of all wildlife trapped or captured by species, including those nontarget species not retained for use.

SEC. 5. In any violation of subsection (d) of section 4 of this Act involving the placing or causing to be placed of any trap other than an approved trap upon any of the Federal lands, the appropriate Secretary shall, with respect to any person so convicted of such violation, immediately take such action as may be necessary to suspend, revoke, or otherwise terminate any lease, license, contract, permit, or other agreement involved in or connected with such violation, between such person and the United States.

SEC. 6 (a) On and after the effective date of this section, no action involving the trapping or capturing of animals and birds shall be carried out on any Federal lands unless such action is (1) otherwise authorized by or pursuant to any Federal law, (2) carried out in accordance with a program or activity conducted or supervised by Federal or State personnel, designed for the purpose of conserving or controlling, predatory or other wild mammals or birds, (3) carried out by means of an approved trap, and (4) in compliance with regulations promulgated pursuant to sections 3 and 4 of this Act.

(b) Any person violating this section shall be fined not more than $5,000 or imprisoned not more than one year, or both.

SEC. 7. On and after the effective date of this section, no Federal agency shall (1) engage in any program or activity which aids, subsidizes, or encourages the trapping or capturing of wild mammals or birds for recreational or commercial purposes, or (2) assist, financially or otherwise, any State or political subdivision thereof in connection with any program or activity of that State or subdivison involvng the trapping or capturing of wild mammals or birds for recreational or commercial purposes.

SEC. 8. Notwithstanding the provisions of section 7 of this Act, the Secretary is authorized to enter into cooperative agreements with any affected State or political subdivision of a State pursuant to which the Secretary shall be authorized to assist such State or subdivision financially or otherwise to enable it to comply with the requirements of this Act. Such financial assistance may be provided in such amounts, in such manner, and subject to such conditions as the Secretary may prescribe.

SEC. 9. (a) Subsection (a) of section 4, sections 5 and 6, regulations promulgated by the Secretary pursuant to sections 3 and 4 shall take effect upon the expiration of the one-hundred-and-eighty-day period following the date of the enactment of this Act.

(b) Subsections (b), (c)(1), and (d) of section 4 shall take effect upon the expiration of the twenty-four-month period following the date of the enactment of this Act.

SEC. 10. The Attorney General of the United States is authorized to pay any individual an amount not to exceed $10,000 for information and services furnished by such individual concerning any violation of this Act. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

SEC 11. There are authorized to be appropriated such sums as may be necessary to carry out the foregoing provisions of this Act.

SEC. 12. There is authorized to be appropriated to the Secretary of the Interior the sum of $500,000 for use by him in conducting research into the development of methods of instant killing, completely painless restraint, or other humane means of capture or control, of wild mammals and birds, and to evaluate existing methods of such capture and control.

[From the New York Times, Feb. 13, 1979]

TRAPPED

(By John B. Oakes)

The men and women who carelessly toss the furry skin of a wild animal across their shoulders—just as their ancestors did in the forest of Northern Europe and Asia several thousand years ago—may not know it, and if they do, surely prefer not to think about it, but with few exceptions what they're really doing is flaunting evidence of many hours or even days of torture suffered by each wild animal whose pelt they wear.

There is no escape from this ugly fact, nor can it be hidden either by ridicule of the "do-gooders" who are trying to put a stop to this anachronistic form of cruelty or by the false claim that abolition of the steel leghold trap will destroy the fur industry.

For those who prefer facts to emotion on this touchy subject, a look at the facts will show that:

The steel leg-hold trap, as normally used on land throughout the United States and Canada, is a monstrously brutal method of capturing wild animals.

The overwhelming preponderance of wild (as distinct from ranch-raised) animals whose pelts are used in the American fur industry are caught by the steel leg-hold trap although more humane, if more expensive, alternatives are available.

Use of this trap has already been outlawed or restricted in a number of fur-producing countries and in a few American states.

The recent shift in fashion toward "fun" furs has raised the demand (and prices) for pelts of relatively common wild animals, usually taken by this barbaric device.

When the steel trap is sprung on an animal's leg, the traumatic effect has been compared to that of a car door smashing a human finger caught between the hinges. But (unless the trap has been set underwater, in which case the animal fairly quickly drowns) the agony does not end there; it only begins.

The trapped animal will almost certainly thrash wildly about in terror, rage, pain and panic, breaking its teeth on the steel trap or the chain that holds it in place. Occasionally the victim will succeed in gaining freedom, after hours of struggle, by wrenching or biting off its own foot at the point where the steel jaws have already dug into the bone. This is known in the trade as "wring-off" and the animals that thus leave one paw behind them are the lucky ones.

The others—the vast majority of the millions trapped on land each year—are eventually worn out by the struggle and lie inert and exhausted without food or water, until the trap line is visited, which may easily be two, three or more days later. At that point, the victim at last is put out of its misery, usually by clubbing or strangulation—provided it has not already starved or frozen to death. It has been estimated by Government trappers (and the United States Government is the biggest single trapper of all with its indefensibly wasteful predator-control program) that about 75 percent of the

unwanted animals caught in traps set for other species are so badly injured that they have to be destroyed.

More than six and one-half million muskrats and three million raccoon were trapped and killed in the United States in 1976–77; nearly 175,000 coyotes; 21,000 badgers, etc. etc.—to a total of more than 16 million wild animals in that year alone, taken by an estimated two million trappers, licensed and unlicensed.

Various substitutes for, or modifications of, the leg-hold trap have been tried but are not in general use in this country, except perhaps for an "instant kill" trap that has its own dangers and defects.

Nearly a dozen countries, including Denmark, Norway, Sweden and the United Kingdom, forbid use of the steel leg-hold trap. So, to a limited degree, do a few American states, including New Jersey, where a battle is going on right now to extend the prohibition to all counties in the state. Senators Harrison A. Williams of New Jersey and Birch Bayh of Indiana have introduced comparable legislation at the Federal level.

The fur industry itself has been enjoying an economic revival in the last few years, sparked in part by the new emphasis on "fun" furs trapped in the wild. The rise and use of wild-animal furs (80 percent of which in the United States are caught in the steel leg-hold trap) accounts for a significant part of what today has become a $700 million business.

That's why it's becoming more urgent than ever that the abominable cruelty of the leghold trap and the needless suffering it entails be brought to the attention of otherwise sensitive men and women who through ignorance or indifference don't hesitate to wrap themselves in the skin of an animal that probably died under frightful torture.●

By Mr. DURENBERGER:

S. 537. A bill to authorize construction of a project for flood control and other purposes on the South Fork Zumbro River at Rochester, Minn.; to the Committee on Environment and Public Works.

● Mr. DURENBERGER. Mr. President, I urge strong support and quick action on a bill of great importance to the people of Rochester, Minn., and vicinity. This bill authorizes the construction of a flood control protection program on the South Fork of the Zumbro River.

The need for this flood control construction was highlighted last July when 7 inches of rain in less than 6 hours sent flood waters 6 feet deep on a rampage through the city of Rochester. This disastrous flood left five people dead and caused an estimated $50 million worth of property damage.

Since 1951, the South Fork of the Zumbro River has left its banks 11 times, including major floods in 1955, 1962, 1965, and 1974. Rochester is subject to substantial damage of periodic flooding from the Zumbro River because it meanders through the heart of the city and because four tributaries all merge within the city. One-third of Rochester is located on the flood plain.

I urge my colleagues to immediately authorize flood control construction for Rochester based on the plans substantially approved by the Army Corps of Engineers' Board of Review on April 5, 1978. The Corps has said that if the flood project it is planning had been constructed prior to last July's disastrous flood, property damage would have been minimal.

The recommended plan for construction consists of 9.3 miles of channel modifications, 2.6 miles of levees, interior drainage facilities, continued maintenance of flood regulations, flood insurance eligibility, flood warning system, and fish and wildlife compensation measures as well as recreational developments.

The overall flood protection plan for Rochester and vicinity includes a complementary plan now being developed by the Soil Conservation Service. It calls for a system of seven headwaters reservoirs and land treatment measures.

The safety of Rochester citizens depends on passage of this long overdue bill. The potential for serious flooding always exists, especially this spring when there is a heavy snow cover on the ground.●

By Mr. HEINZ (for himself and Mr. MOYNIHAN):

S. 538. A bill to amend the Tariff Act of 1930 with respect to the imposition of countervailing duties, and for other purposes; to the Committee on Finance.

LEGISLATION TO STRENGTHEN U.S. TRADE LAWS

● Mr. HEINZ. Mr. President, this week the Finance Committee begins a series of consultations with Special Trade Representative Robert Strauss and other administration officials on the Multilateral Trade Negotiations and proposed implementing legislation. Since that legislation will not be amendable once it is formally submitted, congressional input will have to be provided early through the consultation format.

To that end the Senator from New York (Mr. MOYNIHAN) and I are today introducing legislation which embodies a series of proposed implementing provisions for the MTN subsidies code. Though we might ultimately seek enactment of this bill, which is in the form of amendments to our current countervailing duty law (section 303 of the Tariff Act of 1930) and our trade discrimination law (section 301 of the Trade Act of 1974), at this point we offer the amendments to the administration as suggested provisions to be included in the implementing legislation.

I cannot emphasize enough, Mr. President, the importance of these negotiations and our forthcoming consideration of the codes and their implementing legislation. Through these negotiations we have, hopefully, established a set of rules of the game, a code of international economic behavior. As a Nation which has always approached its international economic relations with transparency and a belief in the primacy of law, we have potentially much to gain from encouraging other nations to do the same.

Whether these codes achieve that objective, of course, is another issue, as is whether or not the implementing legislation that will accompany their submission adequately reflects our principles and priorities. The Senator from New York and I have given considerable thought to this problem, and the legislation we are introducing today is intended both to further the principles we feel it is vital to establish, and to promote worldwide adherence to the rule of law.

We are quite prepared to deal with our trading partners on fair and equal terms and make reciprocal concessions. We are not, however, willing to continue facing an onslaught of subsidized and unfairly traded imports into this country without adequate countermeasures. The MTN itself will help to prohibit some unacceptable practices, but others remain, and international enforcement, a critical part of the process, is still weak, though stronger than in the past.

It is critical, if the MTN is to mean anything to us, that we write a strong implementing bill to demonstrate to our trading partners our determination to insist on fair trade before we support free trade. To that end we are offering this legislation.

Basically the bill is designed to regularize our trade investigation procedures, insure full and aggressive U.S. investigation of unfair trade practices followed by vigorous enforcement, and provide a framework for our use of the strengthened international dispute settlement apparatus of the GATT.

The legislation regularizes trade procedures by formalizing the investigatory procedure and increasing its transparency. Decisions by the administering authority and the reasons for them would be made public, as well as information compiled on foreign subsidy practices, which would enable more affected parties to file complaints.

A procedure for allowing petitioners to obtain access to confidential data under a court protective order is established, and a system is developed for an orderly review of countervailing duty determinations if a question is raised as to the continuing extent of the subsidy or of the domestic injury.

The bill also regularizes our procedures by clearly defining several key terms used both in U.S. law and in the subsidies code. Section 1(g) provides a clear definition of bounty or grant—that is a subsidy—and provides an illustrative list. Section 1(c) defines material injury (the term used in the code) as more than de minimis, and provides an accompanying definition of the term "industry" which is crucial to defining injury.

It is important to point out in this context that our bill, like the subsidies code itself, contains an injury test. That has been agreed to by our negotiators, notwithstanding the fact that the subsidy practices in question are unfair regardless of injury, and it is our intent to insure a firm test of injury that does not set standards so high that they are impossible to meet.

The bill is also designed to insure more vigorous and effective investigation and enforcement. In the past, for example, only subsidies alleged in the petition for investigation were pursued, even though others, possibly more harmful, were uncovered during the investigation. Similarly, information provided by foreign governments or manufacturers has

often been taken at face value without verification, despite experience that it is not always accurate. Our bill will correct both those defects.

The bill also removes references in the law to the Secretary of the Treasury and instead uses the term, "administering authority." This change reflects widespread unhappiness in the business community and in Congress over Treasury's administration of this law, which many feel has been unnecessarily lax. This issue came up during Trade Subcommittee hearings on February 21 and 22, and material submitted for the record details some examples of Treasury Department failure that have given rise to these concerns. Mr. President, I ask unanimous consent that the material cited be printed at this point in the RECORD.

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

ADMINISTRATION OF THE COUNTERVAILING DUTY STATUTE BY THE TREASURY DEPARTMENT

In response to the request of Senator Heinz at the International Trade Subcommittee's hearings on February 22, 1979, the Ad Hoc Subsidies Coalition of 33 organizations herewith submits the details of our charges regarding the Treasury's Department's administration of the countervailing duty statute.

We find that the Treasury Department has been guilty of the following practices:

1. Treasury has missed statutory deadlines.
2. Treasury has reduced the calculated amount of a subsidy, and hence the countervailing duty, in questionable ways.
3. Treasury has accepted unverified information from foreign representatives as a basis for its determinations.
4. Treasury has changed rulings without adequate opportunity for interested parties to comment.
5. Treasury has stretched the authority of the Trade Act of 1974 with regard to the granting of waivers.

These charges are detailed in the following sections.

1. Treasury Has Missed Statutory Deadlines.

One of the important changes intended to strengthen the countervailing duty statute as incorporated in the Trade Act of 1974 was the 12 month time limit established for the Treasury Department's consideration of countervailing duty petitions.

This time limit was established as part of the legislative "deal" which gave the Secretary of the Treasury authority to waive countervailing duties under certain circumstances. Under the amendment, the Treasury Department has six months from the time of receipt of a valid petition to make a preliminary determination with respect to the existence of foreign countervailable practices and then it has an additional six months in which to make a final determination. Notwithstanding the statutory time limits, Treasury has missed deadlines, particularly for preliminary determinations which deadlines are consistently missed as in the case of Swedish rayon staple where the preliminary determination came three months after the six-month deadline.

Two cases in particular come to mind, one involving Argentine leather apparel where the statutory deadline for a final determination was January 21, 1978 and the other involving Argentine footwear, where the deadline was February 11, 1978. The decisions on both products were finally issued on January 17, 1979; that for leather apparel was negative and the decision on Argentine footwear was affirmative. Thus, Treasury took twelve months and eleven months longer, respectively, than mandated in the statute to make its determinations in these two cases.

The effect of failing to make determinations within the statutory deadline is to deny petitioners due process, particularly where considerable time has elapsed since the deadline. Thus, when an affirmative decision is finally made, petitioners have suffered from Treasury's failure to institute countervailing duties earlier. When a negative determination is finally made, a petitioner has been denied the opportunity to challenge such determinations at an earlier date, in accordance with Section 516 of the Tariff Act of 1930, as amended.

Even a simple publication in the *Federal Register* of a notice of appeal of Treasury's countervailing duty determinations encounters delay despite the provision in Section 516(d) of the Tariff Act of 1930 that such publication be made upon receipt. On December 15, 1978 the Amalgamated Clothing & Textile Workers Union filed with Treasury notice of its intent to appeal six such determinations. Treasury did not publish notice to this effect in the *Federal Register* until February 27, 1979. The appeal process cannot move forward without such notice. Once again due process has been delayed by Treasury.

2. Treasury Has Reduced the Calculated Amount of a Subsidy, and Hence the Countervailing Duty, in Questionable Ways.

Treasury has pursued a policy which they justify as provided for in the countervailing duty statute of reducing the gross amount of subsidy by various offsets. Although in most cases the reductions are in the form of indirect taxes related to the product which receives the subsidy, Treasury has found some rather exotic items with which to reduce the subsidy. These include, in the case of the waiver on handbags from Colombia, the effects of the devaluation of the foreign currency on the grounds that the Colombian Government allows as much as nine months to elapse before subsidies are paid. In this case Treasury even reduced the subsidy by the cost of the interest on the money not received by Colombian handbag producers and exporters during this nine-month period. Treasury describes this offset in the *Federal Register* of May 2, 1978 as "the present value effect of the (exporter's tax certificates) resulting from the inflationary impact on . . . delayed payment." Furthermore, since these exporter's tax certificates are sold in the Bogota Stock Exchange, Treasury also allowed a "discount paid by holders of (exporter's tax certificates) in the stock exchange, thus effectively not providing full value of the (exporter's tax certificates) once sold." It is interesting to note that several of these offsets were disallowed in a more recent case involving Colombian textiles and apparel, but Treasury has not bothered to go back to its earlier decision to recompute the countervailing duties on Colombian handbags. The Colombian handbag case is not untypical.

It is so important to recognize that the reductions which Treasury makes in the subsidy through subtracting the indirect taxes related to the products ignore completely the fact that in virtually all of the foreign countries concerned these indirect taxes would have been borne by the manufacturer even in the absence of the subsidy program, and that the subsidy program clearly is intended to give the foreign manufacturers an edge in selling to the U.S. This is exactly what the countervailing duty statute is aimed at offsetting, but Treasury nevertheless goes on deducting these indirect taxes to the point where many negative or *de minimis* determinations result or the countervailing duty is significantly smaller than it should be.

3. Treasury Has Accepted Unverified Information From Foreign Representatives as a Basis For Its Determinations.

Treasury makes most of its determinations with regard to the size of a countervailing duty or a waiver of a countervailing duty on the basis of data submitted by foreign governments and by foreign firms or associations of firms. In neither case are the data verified by Treasury. Admittedly, it is difficult for Treasury to verify data submitted by foreign interests, but at least an effort should be made to assure the American petitioner that, indeed, the data on which a determination is made by Treasury are reliable. Treasury says that it must take the word of a foreign government. Yet in a case involving Argentine footwear, the word of a foreign government was not good enough. It reneged on a commitment which had been made to Treasury. In that particular case, Treasury said "but they had a change of governments in Argentina." Unfortunately the new government in power did not bother to advise Treasury that it had reversed the commitment made by its predecessors, and Treasury did not reopen this case for a considerable period of time after the subsidies were reinstated. When Treasury finally acted five and a half years after the initial petition was filed, it imposed a countervailing duty of less than 1 percent.

As the result of a request through the Freedom of Information Act, it has been learned that although Treasury waived countervailing duties on Uruguayan handbags and footwear at the end of January 1978 based on certain assurances from the Uruguayan Government, the factual information on which to base the waiver was not available to Treasury at the time of the waiver action. On May 15, 1978 the Minister of the Uruguayan Embassy in Washington was told by Treasury that in October 1977 Treasury had requested of the Uruguayan Government "a detailed description . . . of the laws providing for the various offsets accepted by Treasury . . . as well as a detailed itemization of how the offsets were calculated for each of the product sectors." That had not yet been furnished by the Uruguayan Government as of mid-May 1978.

Treasury pointed out that the Uruguayan Government had promised in December 1977 to furnish by the following month "a detailed enumeration of the program to eliminate the entire 'reintegro' system by 1981 . . ." That, too, had not been furnished by the Uruguayan Government by mid-May 1978.

Apparently a copy of the December 28, 1977 decree of the Uruguayan Government reducing the "reintegro" was also not submitted in January 1978 before Treasury waived the countervailing duties. At least Treasury was still inquiring about it from the Uruguyan Government in mid-May 1978.

4. Treasury Has Changed Rulings Without Adequate Opportunity For Interested Parties to Comment.

Even when Treasury once announces a net subsidy, taking into account the reduction for indirect taxes, it continues to amend those calculations mostly on the downside based upon new information which it receives from the foreign government. For instance, in the case of Spain, Treasury announced a 4 percent countervailing duty on unwrough zinc in April 1977. In June 1978, Treasury reduced the existing countervailing duty on zinc and on several other Spanish products subject to U.S. countervailing duties by revising its method for calculating indirect tax subsidy offsets. This action was taken after consultation with Spanish authorities but without consultation with U.S. industries involved. Despite the controversy Treasury aroused over the basis for this reduction, Treasury reduced the countervailing duty but without suspending the liquidation of entries until all views could be heard.

Treasury later realized the views of the

U.S. industries had merit and that it had made a mistake on its revised method for calculating the countervailing duties. Six months later Treasury reverted to the basis of calculations it used prior to June 1978 with the effect that the countervailing duty was now raised again, although not quite to the original levels.

In the interim, between June 15, 1978 and January 17, 1979, because Treasury had not suspended the liquidation of entries on Spanish zinc, nonrubber footwear, and bottled olives, importers benefited from a lower rate of countervailing duty which gave them a windfall they certainly did not merit.

It is of interest to note that the American Footwear Industries Association had requested Treasury to reconsider and revise upward the 3 percent countervailing duty on Spanish footwear some four years ago. It has never received a reply to its request.

While Treasury acted speedily, without consultation with domestic industry, to reduce duties in the Spanish cases, and without suspension of liquidation, it took Treasury almost five months to revoke a waiver and institute a countervailing duty in a case involving Uruguayan leather apparel and almost eleven months to revoke waivers on Uruguayan footwear and handbags. (The waiver action on leather apparel is discussed more fully below.) But in these cases where Treasury was acting to impose duties, it suspended liquidation of entries to give the Uruguayan Government more time to protest Treasury's action.

Thus, on the downside, Treasury appears to act with haste, but on the upside, Treasury clearly takes its time.

5. Treasury Has Stretched the Authority of the Trade Act of 1974 With Regard to the Granting of Waivers.

The Trade Act and the temporary four-year waiver authority which expired January 3, 1979, provided the Secretary of the Treasury with authority to waive the imposition of countervailing duties when he determines that:

1. adequate steps have been taken to reduce substantially or eliminate the adverse effect of the bounty or grant on domestic producers;

2. that there is a reasonable prospect that trade agreements to reduce or eliminate nontariff barriers will be entered into; and

3. the imposition of countervailing duties would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Treasury Department officials have consistently interpreted these three criteria—all of which must exist before a waiver can be issued—so loosely as to permit them to justify any action administratively decided upon.

In one case, involving the imposition on January 12, 1976 of a 14 percent countervailing duty on Brazilian handbags, the Secretary of the Treasury undertook subsequently to waive this duty as part of a "package agreement" on trade issues which he personally negotiated during a visit to Brazil in May 1976. That waiver on Brazilian handbags was made effective July 1, 1976. Can it be said that at that time there was a "reasonable prospect" that successful trade agreements were to be entered into? Could it have been said in May 1976 that the imposition of the additional duty was "likely to seriously jeopardize the satisfactory completion of such negotiations?" Hardly, on both counts.

A recent glaring example of a new horror story is that related to Treasury's finding that Uruguayan subsidies on leather wearing apparel were equivalent to 12 percent of the f.o.b. price for export to the United States.

In its final determination issued January 30, 1978, Treasury noted an intent to waive the imposition of countervailing duties on the basis that it had received assurances from Uruguay of a phase-down of only one subsidy—the "reintegro" program of cash rebates which alone amcunted to 20 percent or more of the value of the goods exported. However, because leather wearing apparel from Uruguay entered the United States free of duty under the Generalized System of Preferences, the International Trade Commission was called upon (as required by Section 303(b) of the Trade Act) to determine whether Uruguayan subsidies on leather wearing apparel injured the United States industry. Following a comprehensive investigation, the ITC in April 1978, announced a unanimous injury finding. Nonetheless, even in the face of such a unanimous decision by the Commission with respect to the subsidized Uruguayan leather apparel, the Treasury Department carried out its planned waiver, which was duly announced in the Federal Register of June 30, 1978.

Treasury justified its waiver on the basis of Uruguayan assurances that it would phase out its major "reintegro" subsidy program by January 1, 1979. In agreeing to waive the countervailing duty on this basis, Treasury did not require the Government of Uruguay to reduce or eliminate other countervailable trade practices which the Treasury had determined to, exist in Uruguay. Treasury's justification for permitting a waiver while the Uruguayans would leave these subsidies intact, was that they were very small, perhaps in the order of 2 percent, whereas the major subsidy program, which provided a subsidy of at least 20 percent was netted down to around 12 percent.

The domestic industry argued with Treasury officials that they were ignoring an additional subsidy benefitting Uruguayan tanners equal to 8 percent of the value of the leather content in various products exported. Treasury decided differently. However, more recently, Treasury discovered that, indeed, it had made a mistake and that the 8 percent subsidy on the leather content of products exported to the United States was a countervailable duty. Thus, instead of a residual of 2 percent after the scaling down of the major subsidy, Treasury found that the remaining subsidy on Uruguayan leather apparel added up to a total of 13.3 percent. It decided to impose this subsidy effective November 13, 1978 and revoked its former waiver.

Even after Congress failed to extend the countervailing duty waiver authority last October, Treasury went ahead and waived the countervailing duty of almost 38 percent on Brazilian textiles and apparel on assurances that subsidies would be reduced by half by January 1, 1979 and by the remaining half by January 1, 1980. In the interim of one year, Brazil is being allowed to continue subsidies of a substantial amount without having countervailing duties applied, to the detriment of American firms and workers.

CONCLUSION

The foregoing documents that our group considers to have been a mismanagement of the countervailing duty program by the Treasury Department. This record does not support the assertion of the Secretary of the Treasury to the Joint Economic Committee on January 31, 1979 that Treasury does its "best to administer the statute fairly and efficiently." It is for these reasons that our group of 33 organizations believes that the administration of the countervailing duty statute should be removed from the Treasury department.

Mr. HEINZ. I should also note in passing, Mr. President, that removing enforcement of these laws from the Treasury is consistent with growing support for a complete reorganization of our trade functions. Senators ROTH and RIBICOFF have introduced legislation to create a Department of International Trade and Investment which I am pleased to cosponsor. The distinguished majority leader has indicated he is developing his own legislation along similar lines. An OMB task force labored long and hard on recommendations to the same end. I am confident, Mr. President, that trade reorganization is an idea whose time has come and that one of these proposals will shortly be approved, reflecting the same widespread dissatisfaction with the status quo that is implied in our bill.

Finally, our legislation amends section 301 of the Trade Act of 1974 to conform our law to the international dispute settlement mechanism established in the Subsidies Code. While effective enforcement of our domestic unfair trade laws is essential, the entire problem is inevitably a multilateral one that demands collective solutions. The negotiation of the code itself is a major step in that direction, but in addition it is imperative that we obtain in the process a strong dispute settlement mechanism so that our rights can be adequately protected and enforced multilaterally and so that all nations accustom themselves to the idea of an economic world grounded in law rather than blatant self-interest and discrimination. To that end our section 301 amendment continues to allow for domestic investigations of alleged unfair practices or discriminatory treatment, but it also provides for simultaneous referral to the GATT on a dual time frame which permits the President to act in light of both an STR recommendation and the recommendations of any GATT panel that might be constituted. In this manner we preserve our right of action while bringing in the GATT process at an earlier stage and permitting it to operate as well.

Mr. President, this is a long and detailed bill reflecting what I am afraid are complicated and entailed issues. It is vital, however, that the Congress master these issues because a significant part of the world's—and our Nation's—economic future is going to be determined by the MTN codes and their implementing legislation. Our trade deficit alone is graphic evidence of the importance of the MTN to us and of our need to examine what the Administration has agreed to with great care. The Senator from New York and I offer this proposal both as a reflection of our own examination of the subsidies code and in an effort to stimulate discussion among our colleagues. Speaking for myself, I believe it is absolutely essential that provisions such as those we have proposed be included in the implementing legislation if the code is to have any meaning. Senator MOYNIHAN and I will be working to that end, and we welcome the support of our colleagues.

Mr. President, I ask unanimous consent that a summary of the bill and its text be printed at this point in the RECORD.

There being no objection, the bill and

summary were ordered to be printed in the RECORD, as follows:

S. 538

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

SECTION 1. AMENDMENT OF COUNTERVAILING DUTY PROVISIONS

(a) Investigation of Bounties or Grants Not Specifically Plead.—Paragraph (3) of section 303(a) of the Tariff Act of 1930 (19 U.S.C. 1303 (a)) is amended by adding at the end thereof the following new sentence: "If, in the course of his investigation, the administering authority discovers the existence of any bounty or grant not set forth in the petition, he shall include such other bounty or grant within the scope of his investigation.".

(b) Suspension of Liquidation During Investigation.—

(1) Paragraph (4) of such section (19 U.S.C. 1303(a) (4)) is amended—

(A) by striking out "six months" and inserting in lieu thereof "three months".

(B) by striking out "twelve months" and inserting in lieu thereof "six months",

(C) by striking out "Secretary" and inserting in lieu thereof "administering authority", and

(D) by adding at the end thereof the following: "If the preliminary determination of the administering authority is affirmative, he shall require, under such regulations as he may prescribe, the suspension of liquidation of the article or merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the preliminary determination in the Federal Register (or such earlier date, not more than 120 days before the date of publication under paragraph (3) of notice of investigation, as the administering authority may prescribe), and such suspension of liquidation shall continue until the administering authority has made public—

"(i) an order directing the assessment and collection of duties pursuant to an affirmative final determination, or, in the case of articles or merchandise for which a determination by the Commission is required, an affirmative determination by the Commission under subsection (b); or

"(ii) a negative final determination.".

(2) The first sentence of section 303 (c) of such Act (19 U.S.C. 1303 (c)) is amended by inserting before the period the following: ", and with respect to any article or merchandise subject to suspension of liquidation under subsection (a) (4)".

(C) Injury Determination Required in All Cases; Procedure and Rules for Determination.—

(1) Paragraph (2) of section 303 (a) of such Act (19 U.S.C. 1303 (a)) is amended to read as follows:

"(2) If the international obligations of the United States require a determination of injury before the imposition of duty under this section, then duties may be imposed under this section only after an affirmative determination by the Commission under subsection (b) (1).".

(2) Paragraph (1) of section 303 (b) of such Act (19 U.S.C. 1303 (b)) is amended to read as follows:

"(1) (A) Whenever the administering authority initiates an investigation under subsection (a) with respect to an article or merchandise upon which duty may be imposed under this section only after an affirmative determination by the Commission, he shall notify the Commission and transmit to the Commission such information concerning the importation of such article or merchandise as is available to him. Within four months after receipt of such notification, the Commission shall determine whether an industry in the United States is being, or is likely to be, injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States.

"(B) In reaching its determination under subparagraph (A), the Commission shall be guided by the provisions respecting injury determinations of Article VI of the General Agreement on Tariffs and Trade and the Arrangement in respect thereof and the following criteria:

"(i) The requisite injury to the domestic industry may be the result of either an increase (whether absolute or relative to domestic production or consumption) in subsidized imports or the effect of subsidized imports on prices in the domestic markets for like or directly competitive products.

"(ii) Any impact of the subsidized imports on the industry concerned that is more than de minimis shall be considered material.

"(iii) It is not necessary that the subsidized imports be the principal cause of injury nor should the injury from subsidized imports be weighted against other factors which may be contributing to injury to an industry.

"(iv) In any event, an affirmative determination by the Commission shall be required whenever subsidized imports of an article from a country or countries, like or directly competitive with an article produced by an industry in the United States, exceed 5 percent of the domestic market, or are increasing, either absolutely or relatively, at a higher rate than all other imports of the like or the directly competitive article.

"(v) In any case in which there is outstanding, on the date of the determination under subsection (a)(4), a finding of injury or threat thereof by the Commission pursuant to section 201 (d) (1) of the Trade Act of 1974, and a Presidential determination to provide import relief under section 203 (a) of such Act, with respect to the articles tentatively determined to have been subsidized pursuant to the preliminary determination under subsection (a) (4), then such imports shall be presumed to have caused injury to the domestic industry if imports of like or directly competitive products from the country cited in the complaint have increased either absolutely or relative to domestic production or consumption since the date of the final determination of the Commission under section 201(d)(1). Such presumption shall remain in effect for the duration of import relief granted pursuant to section 203(a).

"(C) For purposes of subparagraph (A), in determining the domestic industry producing an article like or directly competitive with an imported article, the Commission—

"(i) shall, in the case of a domestic producer which also imports, treat as part of such domestic industry only its domestic production,

"(ii) shall, in the case of a domestic producer which produces more than one article, treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article, and

"(iii) may, in the case of one or more domestic producers, who produce a like or directly competitive article in a geographic area of the United States and whose production facilities in such an area for such article constitute a significant portion of the domestic industry in the United States and primarily serve the market in such area, and where the imports are concentrated in such area, treat as such domestic industry only that segment of the production located in such area.

"(D) The Commission's final determination shall be published in the Federal Register and shall state with particularity the basis for the determination in respect to the provisions of subparagraph (B).".

(d) Bounty or Grant Not to Be Reduced or Offset for Export Charges or Taxes.—Paragraphs (1) and (5) of section 303(a) of such Act (19 U.S.C. 1303(a)) are each amended by striking out "net" each place it appears.

(e) Start-Up Bounty or Grant to Be Treated As If It Were Paid or Bestowed Over Foreign Amortization Period of Facility.—Paragraph (5) of section 303(a) of such Act (19 U.S.C. 1303(a)) is amended by adding at the end thereof the following new sentence: "In the case of any bounty or grant related to the acquisition of depreciable assets for start-up or expansion activitives, the administrating authority shall determine or estimate the amount of such bounty or grant as though it were paid or bestowed in full over a period of time, beginning with the first importation with respect to which a countervailing duty would be imposed, equal to the period of depreciation or amortization applicable to such assets under the tax laws of the county of origin. The amount of any other bounty or grant, paid or bestowed in connection with start-up or expansion costs, shall be determined or estimated in the same manner.".

(f) Administering Authority to Publish Reasons For Determination.—The second sentence of section 303(a)(6) of such Act (19 U.S.C. 1303(a)(6)) is amended by inserting before the period the following: "together with a detailed statement of the reasons for his determination".

(g) Definition of Bounty or Grant.—Subsection (a) of section 303 of such Act (19 U.S.C. 1303) is amended by adding at the end thereof the following new paragraph:

"(7) For purposes of this section, the term 'bounty or grant' means any payment, remission of charges, furnishing of commodities or services at less than market price or value, or preferential treatment which benefits the manufacture, production, or distribution of any class or kind of article imported from the country concerned, or any other thing of value, including, but not limited to—

"(A) loans, export credit, guarantees, or export insurance extended on more favorable terms than are available from private institutions under free-market conditions,

"(B) currency retention schemes or similar practices which involve bonuses on exports or reexports,

"(C) the remission of direct taxes or social welfare charges calculated in relation to exports, or extended to firms or industries on a selected basis, or excessive rebates of indirect taxes,

"(D) the operation of any government-owned or government-controlled enterprise at a loss from operations over a significant period of time, and

"(E) the bearing, by the government of the country concerned, of any cost or expense relating to manufacture, production, or distribution of any article, including costs and expenses associated with research and development, transportation, quality control, acquisition or rental of plant and equipment, acquisition of raw materials, advertising, export market research, or administrative activities.".

(h) Verification of Information Required.—Subsection (a) of section 303 of such Act (13 U.S.C. 1303) is amended by adding at the end thereof the following new paragraph:

"(8) The administering authority shall verify all information submitted to him in connection with an investigation under this section for purposes of determining or estimating a bounty or grant. In publishing his determination, the administering authority shall report in detail the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of information provided to him, he shall accept the information provided in the petition submitted to him, or such other information as he may gather

which he determines to be accurate, as the basis for his determination or estimate.".

(i) Semiannual Reports on Possible Bounty or Grant Practices.—Section 303 of such Act (19 U.S.C. 1303) is amended by adding at the end thereof the following new subsection:

"(f) Semiannual Report on Possible Foreign Subsidy Practices.—Not less frequently than twice each year, the administering authority shall publish in the Federal Register a report describing any practice engaged in by a foreign country which may constitute a bounty or grant (as defined in subsection (a) (7)). Each such practice shall be described in sufficient detail to enable interested parties to determine whether a petition under subsection (a) should be filed.".

(j) Conforming Amendments.—

(1) Section 303 of such Act (19 U.S.C. 1303) is amended—

(A) by striking out "Secretary of the Treasury (hereafter in this section referred to as the 'Secretary')" in subsection (a)(4) and inserting in lieu thereof "administering authority", and

(B) by striking out "secretary" each place it appears and inserting in lieu thereof "administering authority".

(2) Section 516 of such Act (19 U.S.C. 1516) is amended—

(A) by striking out "Secretary" each place it appears and inserting in lieu thereof "administering authority", and

(B) by striking out "Secretary's" in subsection (b) and inserting in lieu thereof "administering authority's".

SEC. 2. ACCESS TO INFORMATION CONCERNING FOREIGN SUBSIDY PRACTICES; ACCESS TO CONFIDENTIAL INFORMATION.

Title III of the Tariff Act of 1930 (19 U.S.C. 1303 et seq.) is amended by inserting immediately after section 303 the following new section:

"SEC. 303A. ACCESS TO CONFIDENTIAL INFORMATION.

"(a) In accordance with the provisions of this section, an interested party (as defined in section 516 (h)) of this Act) which is a petitioner for, or otherwise a party to, an investigation being conducted under section 303 may obtain information obtained or developed by the administering authority in that investigation which is not otherwise available to the interested party under section 552 of title 5, United States Code, because it is information described in subsection (b) (4) of that section.

"(b) The United States District Court for the District of Columbia shall have jurisdiction over actions brought under this section. Upon application made by such an interested party, and after notification of all parties to the investigation and the party or parties from which the information was obtained by the administering authority, and an opportunity for a hearing on the record before the court with respect to the application, the court may issue an order directing the administering authority to make all or a part of the requested information available to the requesting party if the court finds that—

"(1) the administering authority has denied that party such information on the ground that it is information described in section 552(b)(4) of title 5, United States Code, and cannot otherwise be obtained under section 552 of such title,

"(2) the requesting party is a party to the investigation in connection with which the information was obtained or developed, and

"(3) all parties to that investigation have been notified, in advance of the hearing under this section, of the request made under this section and of their right to appear and be heard.

"(c) In ordering the administering authority to make information available to a requesting party under this section, the court shall—

"(1) prohibit disclosure of the information in any form, including summaries, extracts, and similar forms, by the requesting party except to the extent authorized in writing by the party from which the information was obtained by the administering authority,

"(2) require the signature of the requesting party or its legal representative on an agreement not to violate the prohibition described in paragraph (1), and

"(3) require the return of the information and all copies thereof to the administering authority immediately after a final determination is made by that authority in the investigation.".

SEC. 3. REVIEW OF INJURY DETERMINATIONS.

Title III of the Tariff Act of 1930 (19 U.S.C. 1303 et seq.) is amended by inserting immediately after section 303A (as added by section 2 of this Act) the following new section:

"SEC. 302B. REVIEW OF INJURY DETERMINATIONS.

"(a)(1) Upon application made by an importer more than thirty-six months after the publication of an affirmative determination of injury under section 303(b) with respect to an article or merchandise, the administering authority, if it finds good cause, shall ask the Commission to determine—

"(A) whether the bounty or grant (as defined in section 303(a)(7)) to which the determination related continues to be paid or bestowed with respect to such article or merchandise, and

"(B) whether the importation of such article or merchandise, without the duty imposed under section 303(a) on the importation of such article or merchandise, would injure, or be likely to injure, or prevent the establishment of, and industry in the United States.

"(2) The Commission, within three months after receiving the request and after such investigation as it deems necessary, shall notify the administering authority of its preliminary determination.

"(b)(1) The review for which subsection (a) provides may be begun by the administering authority upon application made by an importer after only twelve months following the publication of the affirmative determination of injury if the petitioner affirmatively shows that—

"(A) there is no evidence of current material injury (or the threat of material injury) to, or of the current prevention of establishment of, an industry in the United States from the importation of the article or merchandise to which the determination related.

"(B) there is no likelihood that, in the absence of the duty imposed under section 303(a), such injury or prevention will recur in the near future during the remainder of the period for which the duty was imposed, and

"(C) any continued bounty or grant (as defined in section 303(a)(7)) with respect to such article or merchandise will have no adverse effect on the affected industry in the United States.

"(2) For purposes of paragraph (1)—

"(A) the affirmative showing under subparagraph (A) shall establish the absence of price undercutting, the absence of the prevention of price increases or other evidence of price suppression or depression, and the decline of imports of the article or merchandise with respect to which the bounty or grant (as defined in section 303(a)(7)) is bestowed (either absolutely or relative to domestic production or consumption), and

"(B) the affirmative showing under subparagraph (C) shall include evidence on every factor taken into account by the Commission in making its original affirmative determination of injury (under section 303(b)).

"(c) If the determination of the Commission as to either question under subsection (a)(1) is negative, and if the administering agency determines that there has been a clear demonstration of substantial and sustained improvement in all relevant aspects of those conditions in the affected industry which were taken into account in the original affirmative determination of injury, then the administering agency shall publish in the Federal Register a notice of its preliminary determination, inviting public comment on any issues presented, and, unless waived by the original petitioner under section 303, shall conduct a hearing not earlier than thirty days after the date of publication of such notice.

"(d) After the notice and hearing provided for which subsection (c) provides, the administering authority, if it finally determines that the answer to either of the questions set forth in subsection (a)(1) is negative, shall suspend the duty previously imposed under section 303(a) with respect to such article or merchandise.

"(e) Upon application by the initial petitioner under section 303, or by an interested party with respect to that petition, made after a suspension of duty under this section the administering authority may suspend shall terminate the suspension of duty effective for the remainder of the period for which the duty was initially imposed if the petitioner shows that * * *

"(f) Any interested party may apply to the administering authority for the termination of suspension of any duty suspended under this section. Upon receipt of such an application, the administering authority shall publish in the Federal Register notice of a hearing with respect to the termination of the suspension and conduct such hearing, permitting any interested party to appear and testify. If the petitioner shows that the importation of the article or merchandise to which the duty applied is injuring, or threatening to injure, or is preventing the establishment of, an industry in the United States, then the administering authority shall terminate the suspension of the duty imposed under section 303(a) with respect to such article or merchandise. In proceedings conducted under this subsection, it shall be conclusively presumed that any material injury to an affected industry in the United States has been caused by the importation of the article or merchandise on which the suspended duty was imposed.".

SEC. 4. PETITIONS BY TRADE ASSOCIATIONS, UNIONS, AND OTHER INTERESTED GROUPS; CHANGES IN SCOPE OF JUDICIAL REVIEW.

(a) Broadened Class of Petitioners.—

(1) In general.—Section 516 of the Tariff Act of 1930 (19 U.S.C. 1516) is amended—

(A) by striking out "American manufacturer, producer, or wholesaler" in subsections (a) and (b) and inserting in lieu thereof "interested party",

(B) by striking out "such manufacturer, producer, or wholesaler" in subsections (a) and (d) and inserting in lieu thereof "such interested party",

(C) by striking out "an American manufacturer, producer, or wholesaler of merchandise of" in subsection (d) and inserting in lieu thereof "an interested party with respect to",

(D) by striking out "such manufacturer's, producer's, or wholesaler's" in subsection (d) and inserting in lieu thereof "such interested party's",

(E) by redesignating subsection (h) as (i) and by inserting after subsection (g) the following new subsection:

"(h) Interested Party Defined.—For purposes of this section, the term 'interested party' with respect to any class or kind of merchandise, means—

"(1) an American manufacturer, producer, or wholesaler of such merchandise,

"(2) a labor organization or group of workers concerned with the manufacture, production, or wholesale of such merchandise, and

"(3) a trade or business association whose members include such manufacturers, producers, or wholesalers.", and

(F) by striking out "AMERICAN MANUFACTURERS, PRODUCERS, OR WHOLESALERS" in the caption of such section and inserting in lieu thereof "AMERICAN INTERESTED PARTIES".

(2) Conforming amendments.—

(A) Subparagraph (A) of section 303(a)(3) of such Act (19 U.S.C. 1303(a)(3)) is amended by striking out "any person" and inserting in lieu thereof "an interested party (as defined in section 516(h) of this Act)".

(B) Subsection (a) of section 514 of such Act (19 U.S.C. 514) is amended by striking out "American manufacturers, producers, and wholesalers" and inserting in lieu thereof "interested parties".

(b) Changes in Scope of, and Time for, Judicial Review.—Subsection (d) of section 516 of such Act (19 U.S.C. 1516) is amended—

(1) by striking out "or" at the end of paragraph (1),

(2) by inserting "or" at the end of paragraph (2),

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

"(3) as to the rate or amount of antidumping or countervailing duties to be assessed,",

(4) by inserting before the period at the end of the first sentence the following: ", and the reasons for desiring to contest the determination", and

(5) by striking out "Upon receipt" in the second sentence and inserting in lieu thereof "Within 30 days after receipt", and

(6) by striking out "Within 30 days after such publication," in the last sentence and inserting in lieu thereof "More than 30 days, but not more than 60 days, after such publication,".

SEC. 5. UNFAIR TRADE PRACTICE DETERMINATIONS.

(a) Determinations by Special Representative for Trade Negotiations.—Subsection (d) of section 301 of the Trade Act of 1974 (19 U.S.C. 2411) is amended to read as follows:

"(d)(1) Whenever the Special Representative for Trade Negotiations receives information which he has reason to believe is reliable and accurate that a foreign country or instrumentality is engaging in an unfair trade practice described in paragraph (1), (2), (3), or (4) of subsection (a) with respect to a class or kind of merchandise, he shall conduct an inquiry into the unfair trade practice with respect to that class or kind of merchandise and, within 30 days after receiving the information, determine whether to conduct an investigation into the matter. For the purpose of making his inquiry, the Special Representative may request the assistance of an industry affected by the unfair trade practice which is the subject of the inquiry, but may not require the production of more information than is reasonably available to that industry.

"(2)(A) Upon complaint filed by any interested party with the Special Representative for Trade Negotiations alleging any such restriction, act, policy, or practice, the Special Representative shall conduct a review of the alleged restriction, act, policy, or practice, and shall, within 30 days after receipt of the complaint, determine whether good cause exists for instituting a formal investigation of the complaint.

"(B) If the Special Representative determines under subparagraph (A) that good cause exists for instituting a formal investigation, he shall—

"(i) notify the executive secretary to the contracting parties to the General Agreement on Tariffs and Trade of his preliminary determination, and

"(ii) institute a formal investigation to determine whether the foreign country or instrumentality named in the allegation is engaging in an unfair trade practice described in paragraph (1), (2), (3), or (4) of subsection (a) with respect to a class or kind of merchandise.

In conducting the formal investigation under this subparagraph, the Special Representative shall, under regulations prescribed by him, afford reasonable notice to interested parties and to the foreign government or instrumentality involved, hold public hearings on the subject matter of the investigation, and afford such parties, governments, and instrumentalities an opportunity to be present, to present evidence, and to be heard at such hearings.

"(C) The Special Representative shall conclude any formal investigation commenced under subparagraph (B) within 3 months after the date of his preliminary determination under subparagraph (A), and shall submit to the President within 30 days after the conclusion of the investigation, a report of his determination under subparagraph (B). If the determination of the Special Representative under subparagraph (B) in any investigation is affirmative, he shall include in his report to the President an estimate of the amount of impairment of United States commerce attributable to the practice with respect to which the determination was made, and his recommendation for Presidential action under subsection (a). Within 30 days after receipt of the recommendation of the Special Representative, and taking into account any recommendations made by any advisory panel of foreign experts convened by the contracting parties to the General Agreements on Tariffs and Trade which are received before such 30th day, the President shall take the action recommended by the Special Representaive unless the President determines that such action would be contrary to the interests of the United States.

"(D) Any notice issued or determination made under this paragraph by the Special Representative, the President, or and such advisory panel of foreign experts, including the findings and recomendations of the Special Representative, shall be published in the Federal Register. Whenever the Special Representative makes a determination under subparagraph (B)(ii) he shall report that determination, whether affirmative or negative, including a full statement of the reasons for his determination, and publish that report in the Federal Register.

"(3) Upon receipt of a written request from an interested party (as defined in section 516(h) of this Act) for information concerning the nature and extent of subsidy practives of a foreign government which is a signatory to the Code on Subsidies and Countervailing Duties with respect to an article or merchandise, the Special Representative shall request the information from such government within 10 days after receiving the request.".

(b) Conforming Amendment.—Subsection (e) of such section is amended—

(A) by striking out paragraph (1) and (2) and inserting in lieu thereof the following:

"(1) the Special Representative shall provide for appropriate public hearings concerning the taking of action with respect to such product or service, including an opportunity for the presentation of views through testimony and written submissions,

"(2) the Special Representative shall publish in the Federal Register, within 30 days after the conclusion of such hearings, his final recommendations to the President on such action, and",

(B) by striking out "he may" in paragraph (3) and inserting in lieu thereof "the President may",

(C) by striking out "thereafter promptly provide an opportunity" in the second sentence and inserting in lieu thereof "thereafter promptly direct the Special Representative to provide an early opportunity", and

(D) by striking out "The President" in the last sentence and inserting in lieu thereof "The Special Representative".

SEC. 6. EFFECTIVE DATE.

The amendments made by sections 1, 2, 3, and 4 of this Act apply only to investigations initiated, applications made, and petitions filed after the date of enactment of this Act.

SECTION-BY-SECTION SUMMARY, COUNTERVAILING DUTY AMENDMENTS

Sec. 1(a) Investigation of bounties not specifically plead. Under present practice an investigation would consider only bounties or grants specifically referred to in the petition. This subsection would require the administering authority to include other bounties or grants that might be discovered during the investigation.

Sec. 1(b) Suspension of Liquidation during investigation. Under present law duties are assessed only prospectively. This subsection would conform practice to the Antidumping Act and require suspension of liquidation from the point of preliminary determination (or retroactively up to 120 days before the investigation was begun.) The investigating period is also shortened to 6 months with a preliminary determination after 3 months.

Sec. 1(c) Injury test. Requires and defines a "more than *de minimis*" injury test which must be met before duties can be imposed, even if a bounty or grant is determined to exist.

Sec. 1(d) Bounty or grant not to be reduced or offset for export charges or taxes. In calculating a countervailing duty, Treasury currently deducts from the subsidy import duties and taxes paid by the foreign industry, even though they are paid in any case. This subsection would end that practice.

Sec. 1(e) Treatment of start-up bounties or grants. This subsection would help counter start-up subsidies by 1) requiring payment of a countervailing duty regardless of when the subsidy was detected; and 2) requiring that in calculating the duty the subsidy be treated as spread over the amortization period for plant and equipment in that country and that industry.

Sec. 1(f) Publication of reasons for determination. Requires published decisions to be accompanied by a detailed statement of the reasons for them, conforming practice to the Antidumping Act.

Sec. 1(g) Definition of bounty or grant. More clearly defines the terms and includes an illustrative, but not limiting, list of such practices.

Sec. 1(h) Verification of information. Present practice is often to accept statements made during an investigation at face value. This subsection would require verification, and if that were impossible, generally resolve uncertainties in favor of the petitioner.

Sec. 1(i) Reports on subsidy practices. Requires semiannual report describing any foreign practice which may be a bounty or grant under this section. Each practice must be described in sufficient detail to enable interested parties to determine whether to file a petition.

Sec. 1(j) Administering authority. Deletes references to the Secretary of the Treasury and substitutes "administering authority" reflecting growing support for reorganization of government trade functions.

Sec. 2 Confidentiality. Would enable designates of a petitioner to obtain access to confidential information filed by a foreign source, pursuant to a protective order from federal district court, consistent with the intent of footnote 1 on page 4 of the MTN subsidies code.

Sec. 3. Review of injury determinations. Provides for review of injury determinations on request after 3 years, sooner (but at least after one year) with the submission of a

petition demonstrating positively that injury no longer exists and is unlikely to recur. Provides for reimposition of duties, should they be suspended pursuant to such a petition, and if injury subsequently recurs.

Sec. 4(a) Petitioner eligible to seek judicial review. Broadens class of petitioners who can seek judicial review by including trade associations, unions, and other interested parties who at present can file a petition, but cannot seek judicial review.

Sec. 4(b) Class of petitioners. Makes clear that those eligible to file petitions alleging a bounty or grant include unions, trade associations, and other interested parties, and expands the scope of judicial review to include determinations on the amount of duties.

Sec. 5. Section 301 amendments. Conforms section 301 of the Trade Act of 1974 to the international dispute settlement provisions of the subsidies code. Requires the administering authority to pursue petitions for requests for information on subsidy practices from other signatories. Provides a time table for considering petitions alleging unfair trade practices by other code signatories, for requesting the GATT to act on such allegations, and for Presidential action pursuant to a determination that such practices have occurred, with due time and consideration allowed for GATT recommendations. Proceedings would generally be open and notices and determinations made would be public.

Sec. 6. Effective Date. Makes the first 4 sections of the bill effective to cases occurring after date of enactment, thus preventing the reopening of current cases.●

By Mr. DOMENICI:

S. 539. A bill to authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States; to the Committee on Energy and Natural Resources.

VERMEJO CONSERVANCY DISTRICT

● Mr. DOMENICI. Mr. President, I rise today to introduce a bill to authorize the Secretary of the Interior to enter into an amended contract with the Vermejo Conservancy District in Maxwell, N. Mex. of the remaining repayment obligation for the construction of the project.

This bill is identical to legislation which passed the Senate after full hearings in the 95th Congress. Unfortunately, it was late in the session and the House of Representatives did not have an opportunity to consider the measure before adjournment.

The need for this legislation was demonstrated during the hearings on this bill last Congress, and I will briefly outline the problem as it was described in that hearing. The Vermejo Conservancy District is unable to meet the repayment obligation established in the basic repayment contract. Virtually all income derived from the project is needed for operation and maintenance with little left over to apply toward the repayment of capital costs. The effect of this legislation would be to cancel the entire remaining construction obligation of approximately $2 million and transfer the title to the project facilities to the district with the understanding that the project will continue to be operated for the benefit of all authorized project purposes.

Mr. President, I hope that the Senate will act quickly on this bill so that the residents of Maxwell do not have to continue to face this extreme hardship.

I ask unanimous consent that the favorable report of the Department of the Interior be printed in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 26, 1978.

Hon. HENRY M. JACKSON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department with respect to a bill, S. 876, "To authorize the Secretary of the Interior to amend the contract for the construction, operation, and maintenance of the Vermejo reclamation project between the Vermejo Conservancy District, located in the State of New Mexico, and the United States."

The Department recommends the bill be enacted with certain modifications proposed herein.

The bill would authorize the Secretary to amend contract No. 178r–458 dated August 7, 1952, as amended, to relieve the Vermejo Conservancy District of its remaining repayment obligation of $2,065,099 plus delinquency and penalty charges of about $30,000. The proposed bill would also transfer to the Vermejo Conservancy District all rights, title, and interest in or to the project facilities. The bill further provides that the District, to the extent practicable, shall continue to operate and maintain the facilities of the Vermejo project for the benefit of all authorized project beneficiaries in accordance with authorized project purposes. S. 876 would amend the authorizing legislation for the Vermejo project of September 27, 1950, as amended.

The Department does not ordinarily favor the course of action proposed in S. 876 and has not often done so. Where a significant sum of the Federal taxpayers' money has been spent for the benefit of a specific group of beneficiaries, and where the law calls for repayment from those beneficiaries, we strongly believe that a fair repayment should be obtained. There are special circumstances in this case, however, which we believe justify some legislative relief, similar to that proposed in S. 876 but with the modifications suggested in this report and the attached amendment. There are strongly competing considerations in this case.

Since 1955 when the Vermejo project was declared to be complete the district and its water users have had the use and benefit of some $2 million of Federal money expended by the Bureau. The water users paid only operation, maintenance and replacement costs (OM&R) during the 10-year development period through 1965. Reduced payments and relief from capital payments were granted during the first 7 years of capital payments. From 1966 through 1975, the water users have repaid only about $43,000 towards amortizing the debt. This represents an average assessment of less than $0.60 per irrigable acre or less than $0.10 per acre for the total conservancy district which includes 49,000 acres.

On the other hand, water deliveries to irrigators, the principal benefit of the project, have consistently fallen far short of original estimates and plans, particularly in the recent dry years, and in 5 of the past 7 years water available to irrigators has been less than 10 percent of the targeted 20,000 acre-feet per year. In fact, in 1977, there were no project water deliveries. The total acreage under irrigation has declined from 4,940 acres in 1974 to 1,845 acres in 1976, and we believe to 0 last year. Total gross crop income has declined from a high $291,700 in 1973 (or $67 per harvested acre, $39 per irrigable acre) to $12,960 (or $7.02 per harvested acre and $1.76 per irrigable acre) in 1976; no cash crop at all has been reported for 1977. Water deliveries have totaled 3,689 acre-feet so far this year, indicating some improvement.

Our proposal represents a fair balance, we believe, of these considerations.

We recommend that the proposed bill be modified to provide the Secretary discretionary authority to negotiate an amendatory contract with the Vermejo Conservancy District that would permit deferral of payments on the district's current repayment obligation for an indefinite period but would not eliminate the obligation, and would require repayment be made toward the capital cost in those years when water supply and crop returns are favorable and repayment is determined to be feasible by the Secretary. The obligation would continue until repaid, or for the useful life of the facilities, while recognizing the financial difficulties of the District. Delinquency assessments and other special charges on the debt under the existing contract would be relieved.

Because of unanswered questions that still exist with respect to the repayment ability of the District, and because of the prospect of possible favorable years in the future, we believe that the District's contract obligation should not be terminated but merely deferred. In order to avoid unreasonable uncertainty in future dealings of the District, the amended contract could be negotiated with a specific ceiling that would limit the maximum payment that could be required of the District in a given year.

On the other hand, we strongly recommend that title to the project works, except fish and wildlife lands and any attendant water rights, revert to the District and that the United States should be relieved of all responsibility and liability for ownership, upkeep, rehabilitation, or all types of failures in the system. Continued upkeep of project facilities must be the sole responsibility of the District. Additional Federal expenditures on this project should be avoided or kept to a minimum as it is unlikely that any repayment would ever be obtained.

The Vermejo Project is situated in northeastern New Mexico, in the Canadian River Basin, and lies approximately in the center of Colfax County. The Vermejo Conservancy District includes a total of some 49,000 acres of land, of which 7,379 acres are irrigable, lying in a general northwesterly direction from the village of Maxwell, New Mexico. Maxwell is located 27 miles south of Raton, the county seat.

The Vermejo Project works include Vermejo Diversion Dam, Vermejo Canal with appurtenant structures, Eagle Tail Canal Headworks, Eagle Tail Canal with appurtenant structures, Stubblefield Dam and Reservoir, Dam and Reservoirs Nos. 2, 12, and 13, and a lateral distribution system serving 7,379 acres.

The project is located in an open basin, bounded on the northeast by high mesas and on the west and northwest by high mountains. The elevation is about 6,000 feet above sea level; and the terrain is gently rolling interspersed by a large number of depressions, some of which receive the discharge of small water courses and form natural lakes. Chico Rico Creek and Vermejo River, tributaries of the Canadian River, comprise the two main sources of the project water supply.

The first irrigation development on the project area was in 1888 by the Maxwell Land

Grant Company, which diverted water from the Vermejo River. In 1903, the Vermejo Ditch Company, owned by the Maxwell Land Grant Company, took over and did some development work. In 1908, the Maxwell Irrigated Land Company took over the system and developed a source of water from Chico Rico Creek.

In 1912, the water users organized the Maxwell Ditch and Reservoir Company and operated until 1935 when the organization went into bankruptcy, and the Maxwell Irrigation Company was organized. In 1952, the Vermejo Conservancy District took over the project system, which was in a very deteriorated condition.

The Bureau of Reclamation first became involved in the affairs of the Vermejo Project when it made a reconnaissance investigation in 1944 at the request of the Maxwell Irrigation Company. This investigation was completed early in 1945, and work was started on a feasibility report. The project was authorized by Public Law 848 dated September 27, 1950.

Construction work was started in the spring of 1953 and was essentially completed early in 1955. This work consisted of the enlargement and rehabilitation of three offstream, on-project reservoirs, and the rehabilitation and construction of new headworks for the diversion dam on the Vermejo River. New structures along the Vermejo Canal were constructed and the first mile of the Vermejo Canal was rebuilt. New structures and headworks were constructed on the Eagle Tail Canal, which brings water from the old Hebron Dam on the Chico Rico Creek. On the project, the main distribution system was rehabilitated by constructing many new structures and minor surface drains. In accordance with the terms of the repayment contract, the district cleaned the Vermejo and Eagle Tail Canals, the lateral system, and rehabilitated operating roads.

Repayment Contract No. 178r–458 provided for a maximum repayment to the United States of $2,010,080. This contract was amended August 31, 1954, to increase the obligation of the district by $97,863.33, the amount of principal and interest due on Reconstruction Finance Corporation bonds, making a total obligation of $2,107,943.33. Repayment has been troublesome from the start. The contract was amended on November 13, 1962, to extend the development period from 7 to 10 years. An amendment to the contract dated November 18, 1964, provided for annual construction installments of $2,213.70 for 1966, 1967, and 1968. In 1968, the contract was further amended to defer part of the construction installments and fixed the obligation at $3,690, or 50 cents an acre, for the years 1969 through 1973. After that time, payments were to be made using a variable formula taking into account parity concepts and current gross crop values produced on the project. The 1974 payment of $12,688 computed under that formula was made on time and the district paid $5,000 of its 1975 billing which totaled $16,842. The remaining 1975, 1976, 1977, and 1978 payments totaling $26,634 are delinquent. Annual operation and maintenance assessments, which have averaged about $6 to $8 per acre of irrigated land, have been regularly paid by the water users.

S. 876 would relieve the Vermejo Conservancy District of its contract responsibilities to repay costs owed to the United States Government for construction and rehabilitation of the Vermejo Project works. The principal cause for the district's difficulties in meeting its annual payments appears to have been inadequate water supplies, which have in turn resulted in very low crop production. The only available long-term streamflow records for the Vermejo watershed taken at Dawson, New Mexico, indicate a declining trend in total runoff. The average water supply for the project has been far short of what was originally expected at the time of project authorization, as is demonstrated in the table below:

Year	Irrigated acreage	Acre-feet: Total deliveries	Acre-feet: Per acre
Planned	7,379	[1] 20,000	
1972	4,912	1,800	0.37
1973	5,083	7,700	1.51
1974	6,262	1,770	.28
1975	5,422	1,200	.22
1976	2,748	1,845	.67
1977	0	0	0

[1] Includes rainfall and natural runoff in addition to deliveries through project works.

Because of the drought, no water was available for delivery in 1977. Silt has also hampered project operations. Stream diversions include an extremely large quantity of silt, which adds to the maintenance problems of canals, laterals and other main supply works and results in rapid sedimentation of the storage reservoirs.

One indicator of the disappointing economic situation in the project is that gross crop income figures have fallen below the feasibility estimates done in 1957 and 1964. The gross crop income reported for the project from 1955 through 1976—a period of 22 years—has averaged $176,195. The harvested areas have averaged about 4,100 acres during this period. The best income year was in 1970, when $341,271 was reported for 4,687 acres. In 1976, a meager $12,960 was earned on 1,845 harvested acres in that low water year. The worst year was 1977, when no irrigation water was delivered and no irrigated cropland was harvested. There is obviously a high-correlation between water deliveries and crop production.

Low reservoir storage during the early part of the growing seasons has consistently deterred project farmers from fertilizing and planting crops and proceeding with other improvements. Runoff continues to be unpredictable. It may occur in significant quantities, well spaced throughout the year. Or it may come in one high intensity storm lasting only a few days.

The area of the Vermejo Conservancy District is substantially a range livestock growing area. The project contains about 7,300 acres of irrigable land of the total 49,000-acre area within the district. While we fully recognize the difficulties the project has incurred since its inception, and we believe this should be recognized in legislation, we do not at this time have a satisfactory understanding of the possible relationship between the livestock operations on non-project district lands and the agriculture operations on the irrigated lands in the project, nor of possible land ownership and management relationships between project lands and non-project lands within the district.

We believe that the project has also suffered from inconsistent objectives and activities under the soil bank program and through development of upstream impoundments through Soil Conservation Service assistance. It appears that these impoundments may have retarded runoff into the project area, and some may be on District lands. Participation in soil bank programs by land owners in the district, both on and off the irrigated lands, has in some instances impeded the development of efficient land ownership and cropping patterns and land development needed for irrigation.

In determining possible repayment capabilities of the district in future years under a modified contract, these issues, as well as the more immediate factors of water availability and delivery, agricultural output and other factors in a given year, will have to receive further consideration.

The sad story of the Vermejo Project is a good example of the need for an adequate understanding of the economic and environmental ramifications of a reclamation project before it is authorized and funded. Based on our current understanding of the hydrology and soil characteristics of the area and the potential of the area for economic production of crops, this project probably should not have been authorized. The fact that we find ourselves faced with a decision to defer and possibly write-off costs owed the United States because a project has not lived up to its expectations is evidence of the need for a more sound approach to evaluating and authorizing projects.

We believe that our proposed amendment to the bill would allow the Secretary sufficient flexibility to obtain repayment, when possible, up to the ability of the water users to pay or to defer payments. We intend to work with the water users to secure such an arrangement. Such a contract could be completed in less than 1 year. Delinquency assessments and other associated penalties will be cancelled. Only the remaining outstanding repayment obligation after the enactment of this bill will be considered for future repayment.

Attached to this report is our suggested markup of the bill. We recommend S. 876 be modified accordingly and enacted.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

DANIEL BEARD,
Acting Assistant Secretary.●

By Mr. McCLURE (for himself, Mr. RANDOLPH, Mr. DOMENICI, Mr. GRAVEL, and Mr. STAFFORD):

S. 540. A bill to amend the act of August 8, 1972 (Public Law 92–367) to provide Federal assistance to the States for the development and implementation of effective dam safety programs, in order to protect human life and property; to the Committee on Environment and Public Works.

STATE DAM SAFETY AND INSPECTION ACT

● Mr. McCLURE. Mr. President, I am reintroducing along with my colleagues, Senators RANDOLPH, DOMENICI, GRAVEL, and STAFFORD, the State Dam Safety and Inspection Act designed to augment the States' responsibility for dam safety and to address the concern of the growing number of unsafe dams in our country. We have recently witnessed the failures of the Bureau of Reclamation's Teton Dam in Idaho and the private Toccoa Falls Dam in Georgia and have learned that action can be taken to help prevent such disasters.

In considering any dam safety legislation, we must recognize that no dam can ever become totally free of risk. What is important in any effective safety effort is a wise evaluation of that risk, the monitoring of that risk and its minimization to the greatest practical degree, given the restrictions of cost. We must seek to develop State programs that assure such maximum protection.

This legislation builds upon the existing authority of the 1972 Dam Safety Act by creating a better, more systematic, long-term approach to dam safety. It encourages the States to move forward

in implementing effective dam safety programs, supported with Federal assistance. Its thrust is to underscore the basic responsibility of the States, but unfortunately, a responsibility that only a few States have fully accepted by administering their own dam safety programs. Some State programs have been ongoing for nearly 100 years. The problem is that most States either have no dam safety program or an unfunded one. This legislation encourages those States where participation now is lacking or minimal to develop such efforts. And it will assist States in building on programs already in place.

The 1972 Dam Safety Inspection Act has been effective to the extent of providing us with an inventory of dams in the country and establishing a one-shot inspection program of those dams. The inventory, taken on dams having a height of 25 feet or more or with a capacity of at least 50 acre-feet of storage, identified the existence of approximately 50,000 dams, 45,000 of which are non-Federal structures. Merely with regard to location, not stability, 20,000 of these have been determined high hazard. The inspection program, carried out by the Corps of Engineers in cooperation with the States, has been underway for 1 year, but already has begun to alert us to the serious number of private dams throughout the country in need of rehabilitation for safety purposes.

While this legislation is not designed to directly finance the repair or replacement of unsafe structures in emergency situations, it will assist both State programs and private dam owners in a variety of ways to help them correct dam safety problems. Funds would be distributed to the States to boost their own programs and technical assistance would be available to them. A revolving loan fund for repairs for private dams would be available to private owners as well as Federal guarantees or reinsurance on liability insurance. Both of these programs are available to dam owners if the State has an approved dam safety program under the bill.

Specifically, this bill adds several new sections—section 7 through 14—to the existing authorities under the Dam Safety Act (Public Law 92-367), which authorized a one-time inspection of existing dams. To give my colleagues a better perspective on the bill, let me review these proposed new sections:

The current Federal program is strictly Federal authority, although it is being administered with State cooperation. Under this bill, in section 7, the Corps of Engineers would be authorized to distribute among the States $15 million in each of the fiscal years 1980, 1981, and 1982. Part of the money would be distributed equally, the other portion on the basis of the number of dams in each State. Grants, however, would be limited to 50 percent of a State's program costs.

Section 8 established the standards for approving State programs. My bill, as does existing law, requires such a program only for dams that are 25 feet or higher. But it would be hoped that State programs would encompass smaller dams, depending on local situations.

State programs would have to provide preconstruction review of plans for new dams, a preoperation safety check, plus ongoing inspections once every 2 years thereafter. The State program would have to provide authority to require changes or modifications in a dam, or its operation, if the dam were found to be in danger of failure. The State would also have to develop emergency procedures in the event of a dam failure and have authority to see to it that dam repairs will be made by the dam owners. Each State program must include some form of emergency fund or the ability to get emergency moneys to be available to breach a dam or take other emergency corrective action, if necessary.

State programs under my bill would be deemed approved 120 days following submission, unless the corps finds that the program fails to meet the requirements of this section.

A Dam Safety Review Board is established under section 11. The Board would review the existing Federal dam safety procedures and standards used on Federal dams, as well as the implementation and effectiveness of approved State dam safety programs. The corps would have the authority to withdraw approval of a State plan, based on the Board's recommendation. This Board, composed of three Federal, two State, and two other non-Federal experts, also will review the plans and specifications for all Federal dams for safety purposes.

Section 9 addresses the need for assuring the availability of dam liability insurance. This is a growing problem, because as a result of recent dam failures, liability insurance is no longer available or too costly for dam owners to obtain. This section authorizes the Federal Government to provide insurance companies with reinsurance or guarantees on any dam liability insurance, but only in States which have an approved program. There is much discussion on how legislation should address the insurance question and this section is merely an attempt to begin trying to resolve the problem.

Section 10 establishes a revolving fund of $20 million for loans to dam owners to assist them in making any required repairs or replacements to a dam, if the owner can demonstrate that other funds are not reasonably available.

Section 11 establishes the Dam Safety Board mentioned earlier.

Section 12 requires Federal dam building agencies to consult fully with the State on the design and safety of any Federal dam built there, and to allow State officials to join Federal inspectors on safety inspection of those Federal dams. This is not a State veto, but assures reasonable cooperation among States and Federal authorities. States will have full authority over dams on Federal property.

Section 13 provides $2,500,000 over 4 years for training of State dam safety inspectors.

Section 14 directs the corps and the National Bureau of Standards to undertake research to develop improved techniques and equipment for rapid and effective dam inspection, augmenting work the Bureau is now undertaking on techniques, such as portable microwave units to make a safety profile of dams. There is $4 million appropriated for this section.

Many of the ideas for this program have grown from the fine program conducted by the State of Idaho, a program that dates back into the 19th century. Idaho presently spends about $200,000 yearly on dam safety, utilizing six full-time persons to make preconstruction reviews, plus visual inspections at least every 2 years checking for seepage, cracks, or changes in the structure.

Throughout the past year I have had contact with the States on this legislation and have been especially appreciative of the support and assistance of the Western States. Because most of the Western States have histories of adequate dam safety programs designed to fit their own needs, I want to make certain this legislation does not usurp nor jeopardize these existing State programs, but assists the States in bettering their dam safety efforts. The Western States Water Council, representing the Western Governors, have enacted a resolution stating very clearly their position on this issue and this specific legislation. I agree with their position and ask that a copy of their resolution be printed in the RECORD. They have made some specific suggestions in the form of amendments to this bill that should be carefully considered by Congress before we enact dam safety legislation.

Hearings were held on S. 2437, the same bill being reintroduced today, on February 3 and March 17, 1978, before the Environment and Public Works Committee. The bill passed the Senate in June 1978, but no action was taken on it in the House, because of time problems. I trust the Senate will see fit to pass this legislation quickly this session so we can get the State programs on line so the increased demand for dam safety assistance in all the States can be met.

I am proud that this bill is the kind of preventative, long-reaching, reasonable approach that we always talk about but never seem to get around to passing before a crisis is upon us. We have the opportunity now to implement this effective, necessary, cooperative Federal-State program before it is once again, too late. The consequences of another dam disaster are to great to not initiate immediate action to try and prevent such a tragedy.

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

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

S. 540

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of Public Law 92-367 is amended by repealing the final sentence.

SEC. 2. Section 2 of Public Law 92-367 (86

Stat. 506) is amended by striking the "and" after "inspection" and striking the period after "property" and inserting the following: "and (5) dams located within a State having an approved program under section 8 of this Act.".

SEC. 3. Public Law 92-367 (86 Stat. 506) is amended further by adding at the end thereof the following new sections:

"SEC. 7. There is authorized to be appropriated to the Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the 'Secretary'), $15,000,000 for each of the fiscal years ending September 30, 1980, September 30, 1981, and September 30, 1982. Sums appropriated under this section shall be distributed annually among the States on the following basis; one-third equally among those States that have established dam safety programs approved under the terms of section 8 of this Act, and two-thirds in proportion to the number of dams located in each State that has an established dam safety program under the terms of section 8 of this Act to the number of dams in all States with such approved programs. In no event shall funds distributed to any State under this section exceed 50 per centum of the reasonable cost for implementing *an approved* dam safety program in such State.

"SEC. 8. (a) In order to encourage the establishment and maintenance of effective programs intended to assure dam safety to protect human life and property, the Secretary shall provide assistance under the terms of section 7 of this Act to any State that establishes and maintains a dam safety program which is approved under this section. In evaluating a State's dam safety program, under the terms of subsections (b) and (c) of this section, the Secretary shall assure himself that such program includes the following:

"(1) a procedure whereby, prior to any construction, the plans for any dam will be reviewed to provide reasonable assurance of the safety and integrity of such dam over its intended life;

"(2) a procedure to determine, during and following construction and prior to operation of each dam built in the State, that such dam will be operated in a safe and reasonable manner;

"(3) a procedure to inspect every dam within such State at least once every two years;

"(4) a procedure for more detailed and frequent safety inspections, if warranted;

"(5) the State has or can be expected to have authority to require those changes or modifications in a dam, or its operation, necessary to assure the dam's safety;

"(6) the State has or can be expected to develop a system of emergency procedures that would be utilized in the event a dam fails or for which failure is imminent together with an identification for those dams where failure could be reasonably expected to endanger human life, of the maximum area that could be inundated in the event of the failure of such dam, as well as identification of those necessary public facilities that would be affected by such inundation;

"(7) the State has or can be expected to have the authority to assure that any repairs or other changes needed to maintain the integrity of any dam will be undertaken by the dam's owner, or other responsible party; and

"(8) the State has or can be expected to have authority and necessary funds to make immediate repairs or other changes to, or removal of, a dam in order to protect human life and property, and if the owner does not take action, to take appropriate action as expeditiously as possible.

"(b) Any program which is submitted to the Secretary under the authority of this section shall be deemed approved one hundred and twenty days following its receipt by the Secretary unless the Secretary determines that such program fails to reasonably meet the requirements of subsection (a) of this section. If the Secretary determines such a program cannot be approved, he shall immediately notify such State in writing, together with his reasons and those changes needed to enable such plan to be approved.

"(c) Utilizing the expertise of the Board established under section 11 of this Act, the Secretary shall review periodically the implementation and effectiveness of approved State dam safety programs. In the event the Board finds that a State program under this Act has proven inadequate to reasonably protect human life and property, and the Secretary agrees, the Secretary shall revoke approval of such State program and withhold assistance under the terms of section 7 of this Act until such State program has been reapproved.

"SEC. 9. (a) In order to assure that owners of dams will be able to obtain liability insurance at reasonable rates, and to protect persons located downriver of dams, the Secretary, or the head of any agency of the United States designated by the Secretary, shall provide to any insurer, subject to conditions established by regulation, reinsurance or guarantees of any insurance provided to the owner of a dam to protect such owner from liabilities incurred in the event of the failure of such dam. Reinsurance or guarantees provided under this section shall reimburse an insurer for those liabilities in excess of an amount agreed upon between the Secretary, or his designee, and the insurer.

"(b) Any reinsurance or guarantees provided under this section shall be available only in a State which has an approved dam safety program under the terms of section 8 of this Act.

"(c) Agreements on reinsurance or guarantees under this section shall provide that the failure of the owner of any dam to carry out expeditiously any modification or procedure required by a State under the terms of its dam safety program shall result in the cancellation of any reinsurance or guarantee provided by the Secretary, or his designee.

"(d) There is authorized to be appropriated such sums as may be necessary to carry out this section.

"(e) Not later than eighteen months after enactment of this Act, the Secretary and the Secretary of the Treasury shall report jointly to the Congress with an analysis of the effects of this section, together with any recommendations for a more comprehensive dam safety insurance program to assure the availability of insurance to owners of dams inspected under a State program approval under section 8 of this Act, in an effort to lessen or eliminate the need for any disaster assistance in the event of the failure of such a dam.

"SEC. 10. There is authorized to be appropriated and remain available the sum of $20,000,000 to be placed in a revolving fund by the Secretary, such funds to be available for loans, on terms established by the Secretary, to any owner for any dam required to make repairs, to replace, or to make other safety improvements in such dam under any safety program approved under section 8 of this Act, if such owner can demonstrate to the Secretary that other funds are not reasonably available.

"SEC. 11. (a) There is authorized to be established a Federal Dam Safety Review Board (hereinafter referred to as the 'Board'), which shall be responsible for reviewing the procedures and standards utilized in the design and safety analysis of dams constructed and operated under authority of the United States, and to monitor State implementation of this Act. The Board shall review as expeditiously as possible the plans and specifications on all dams specifically authorized by Congress prior to initiation of construction of such dam, and file an advisory report on the safety of such dam with the appropriate agency, the appropriate State, and the Congress. The Board is authorized to utilize the expertise of other agencies of the United States and to enter into contracts for necessary studies to carry out the requirements for this section. There is authorized to be appropriated to the Board such sums as may be necessary to carry out this section.

"(b) The Board shall consist of seven members selected for their expertise in dam safety, including one representative each from the Department of the Army, the Department of the Interior, and the Department of Agriculture, plus four members, appointed by the President for periods of two years on a rotating basis, who are not employees of the United States. At least two members of the Board shall be employees of the States having an approved program under section 8 of this Act. The Chairman of the Board shall be selected from among those members who are not employees of the United States.

"SEC. 12. The head of any agency of the United States that owns or operates a dam, or proposes to construct a dam in any State, shall, when requested by such State, consult fully with such State on the design and safety of such dam and allow officials of such State to participate with officials of such agency in all safety inspections of such dam.

"SEC. 13. The Secretary shall, at the request of any State that has or intends to develop a dam safety program under section 8 of this Act, provides training for State dam safety inspectors. There is authorized to be appropriated to carry out this section $1,000,000 for the fiscal year ending September 30, 1980, and $500,000 during each of fiscal years ending September 30, 1981 and September 30, 1982.

"SEC. 14. The Secretary, in cooperation with the National Bureau of Standards, shall undertake a program of research in order to develop improved techniques and equipment for rapid and effective dam inspection, together with devices for the continued monitoring of dams for safety purposes. The Secretary shall provide for State participation in such research and periodically advise all States of the results of such research. There is authorized to be appropriated to carry out this section $1,000,000 for each of the fiscal years ending September 30, 1980, September 30, 1981, and September 30, 1982.".

PROPOSED RESOLUTION OF THE WESTERN STATES WATER COUNCIL CONCERNING DAM SAFETY LEGISLATION

The Western States Water Council has been actively discussing various programs and proposals that relate to dam safety and federal and state responsibilities. All of the western states have ongoing dam safety programs. Many of these programs have been in existence for three quarters of a century and all of the states are fearful that existing federal programs and proposed federal initiatives might move to usurp states' responsibilities, rights and prerogatives in these areas.

The western states are not collectively supportive of federal dam safety legislation at this time. However, because there are federal proposals being considered it was determined that it would be appropriate for the western states, collectively, to identify the type of federal legislation that they feel would be acceptable if federal legislation is to be enacted.

The western states have examined the legislation passed by the Senate in the 95th Congress that is identified by Calendar Report No. 765 and the western states find that if federal dam safety legislation is to be enacted, many of the concepts found

within that legislation are favored by the states. The Western States Water Council urges, however, that if this legislation is to be considered by the 96th Congress that certain amendments be made to that legislation.

In the first paragraph of Section 8(a) the states urge that the language in that paragraph be amended so that a governor might certify that the state has an adequate program if a governor so chooses in lieu of certification by the Secretary of Army. Further under Section 8(a) of the previously passed legislation, the concepts should be changed so that states can instead of will be able to review the construction and operation of dams and further, the inspection of dams should be on a regular basis rather than on a federally prescribed period of time.

Under Section 8(a)(6) states should only be required to accomplish what would be set forth in that paragraph through the word "imminent" and the remainder of that paragraph should be stricken so as not to prescribe in detail exactly how states might choose to operate their dam safety program.

The western states believe that Section 8(a)(8) should be changed to read that the states should have or can be expected to have authority and capabilities if the owner does not take action to take steps necessary as expediently as possible in order to protect human life and property.

Section 13 of the Senate adopted legislation the states believe should be added to allow the states to request from federal entities both technical and administrative advice and assistance on a wide spectrum of dam safety concerns.

With respect to the concept of a Federal Dam Safety Review Board, as identified in Section 11, the states feel that if a governor is given the authority to identify whether or not the state has an adequate dam safety program, then the value and the need for such a Federal Dam Safety Review Board is greatly lessened. From the state point of view the board could best be used to examine federal programs in dam construction and inspection and to act as an appeal board for states from decisions made by the Secretary of Army.

With respect to the concept of insurance or reinsurance as identified in Section 8 of the Senate enacted legislation, the states recognize that there is a significant need for owners and citizens to be protected by an adequate insurance program. Further, the states recognize that often it is difficult for this insurance to be obtained at a reasonable rate. However, the states feel that for this to be offered as proposed in the legislation without giving a governor the prerogative of identifying whether or not his dam safety program is an adequate one gives federal officials too much authority and too much leverage if they try to force states to implement a federal dam safety program instead of a state program that might reflect the choices and prerogatives of the states. Therefore, the states would urge that the Congress consider many procedures that might be available to provide adequate protection in the event of a failure of a dam, but further that the Congress recognize that the needed protection should not ever be held in ransom until a state adopts a program that some federal administrator might perceive is the appropriate program to be implemented in a state or across the nation.

In summary, the states are concerned that federal legislation could be enacted in such a way that states' rights and prerogatives to administer dam safety programs might be lost either through direct usurpment of rights or by incentives that are offered to insure the implementation of a federal program.

The states urge the Congress to be most sensitive to these issues and to consult with all states that have or choose to have a viable dam safety program before proceeding with federal legislation.

III. Dam Safety

The Western Governors' Conference recognizes that the hundreds of dams across the west play a significant and vital role in the promoting of water conservation, managing water resources, and enhancing the economy of the western states. It is further recognized that inadequately constructed and poorly maintained dams, many of which are decades old, can, however, pose serious threats to public property and to the health and safety of the citizenry.

Western states have the power to protect the public from the dangers posed by unsafe dams. Western states have dam safety statutes, many of which were instituted around the turn of the century. The western states are continually working to upgrade the effectiveness of their dam safety statutes and programs. Several have adopted dam safety standards to be used in the administration of their dam safety programs.

The Western Governors recognize the power of the federal government to establish national goals for the achievement of dam safety, are aware of existing federal statutes and are keenly interested in current legislative proposals now before Congress.

The Western Governors' Conference urges the federal government to recognize and implement the following principles relating to dam safety:

1. States have the primary and lead role in the implementation and administration of dam safety programs, including inspections and the establishment of standards.

2. Federal programs and legislation should not impose upon the prerogatives the states have exercised in the past in the area of dam safety.

3. The proper role for the federal government is to assist western states in determining dam safety needs and establishing goals. The federal government should provide support to state dam safety programs through funding, training and research.

To provide for the adoption of the above principles the Western Governors' Conference instructs the Western States Water Council to:

1. Advise the federal officials of the position of the Western Governors' Conference,

2. Monitor the efforts of the federal government in dam safety, and

3. Report to Western Governors important actions taken or anticipated to be taken by the federal government.●

By Mr. BAKER (for himself and Mr. Sasser):

S. 541. A bill to amend the Internal Revenue Code of 1954 relating to estate taxes to provide that the election to use the alternate valuation date may be made on a return that is filed late; to the Committee on Finance.

● Mr. BAKER. Mr. President, I am introducing today with my distinguished colleague from Tennessee (Mr. Sasser) a bill identical to S. 3381, which we sponsored in the 95th Congress. Unfortunately, that measure was introduced so late in last year's session that the Committee on Finance did not have an opportunity to consider it fully prior to adjournment. It is my hope that this bill will receive attention from the committee during the 96th Congress, and I ask unanimous consent that the introductory remarks which I made last year and a technical explanation of the bill be printed at this point in the Record.

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

Mr. President, I am today introducing a bill which would alleviate an inequity in the Internal Revenue Code relating to the evaluation of property for estate tax purposes.

I am referring to the rule which permits the estate of a decedent to use the "alternate valuation date" for purposes of computing the value of the estate for estate tax purposes. This rule, which has its origin in the economic decline of the 1930's, is intended to prevent the inequity of imposing the estate tax on the date of death value of property, if that value declines shortly after the date of death.

The current rule is that the estate may elect to value the property of the decedent as of the date 6 months after the decedent's death instead of at the date of death. Thus, if the decedent's property declines in value during that six month period, the estate tax may be computed on the lower actual value of the property. This is an eminently fair rule which avoids the harsh result of paying an estate tax which is based on a valuation of the property which is greater than the actual value at the time the tax falls due.

One problem with the existing rule is that the alternate valuation date may be used only if it is elected on an estate tax return that is filed within the prescribed time. Thus, even where there is reasonable cause for the failure to file the return within the prescribed time, the alternate valuation date may not be used. Moreover, if the estate tax return is just one day late, and even if the delay is due to reasonable cause, the estate may not use the atlernate valuation date.

It is also incongruous that the penalties specifically provided for the late filing of a return do not apply if there is reasonable cause for the late filing, while in such a case the alternate valuation date election is absolutely precluded. Yet, the penalty of the loss of the alternate valuation date may be more severe than the penalty specifically provided for late filing.

The effects of this provision of the Federal estate tax law are illustrated by the case of the estate of one of my Tennessee constituents. In this case, Mr. President, the value of the estate declined severely during the six months following death, yet the alternate valuation date election was denied because the estate's co-executor was recovering from open heart surgery at the time the return was due, and the return was filed late. As a result, the death tax due actually exceeds the value of the estate.

I do not believe that this harsh result serves any legitimate policy of the tax law. This bill would not change any of the specified penalties for the late filing of a return. It would merely permit the estate to elect the alternate valuation date on a late return. I believe this alternate valuation date is intended to and should apply if the decedent's property has severely decreased in value, even if, for some reason, the return is filed late.

Mr. President, my staff has discussed this measure with staff at the Treasury Department, and it is my understanding that, although the Department does object to making the proposed change applicable to open cases, it has no objection to making the prospective change in the law contained in the bill. I believe that this measure will redress a glaring inequity in existing law, and I urge my colleagues to consider it favorably.

Technical Explanation

This bill would amend section 2032(c) of the Internal Revenue Code in order to permit an election to use the alternate valuation date for estate tax purposes on an estate tax return which is filed late.

The general rule for estate tax purposes is that the value of the decedent's property is

determined as of the date of death. The alternate valuation date election under section 2032 of the Code permits an estate to compute its estate tax liability using the value of the decedent's property as of the date 6 months after the date of death. The purpose of this provision is to prevent the inequity which would result from paying taxes on the date of death value when there is a severe decline in the value of the property shortly after the date of death. Otherwise, the estate tax could conceivably be greater than the value of the decedent's property at the time the tax is due.

Section 2032(c) currently provides that the alternate valuation date election can only be made on a timely filed estate tax return. If the return is late for any reason, including reasonable cause, the election cannot be made.

There is no reason for this harsh penalty for late filing. No tax avoidance can be achieved if the election can be made on a late return, and no administrative problems are foreseen if the rule is changed to permit an election on a late return. Moreover, it is incongruous that the specific severe penalties for filing a late return and for late payment of the tax may under existing law be excused if there is reasonable cause for the late filing or payment, while the alternate valuation date election, which is intended to be helpful to estates in distress, is absolutely precluded if the return is late, even if there is good reason for the late filing.

The bill would amend section 2032(c) to permit an alternate valuation date election on a late return. This rule cannot result in any planned tax avoidance because the due date of the return (9 months after date of death) is in all cases after the alternate valuation date (6 months after date of death). The values on the alternate valuation date are thus fixed on the due date of the return, and delay in the filing of the return therefore cannot change the tax consequences which would have resulted if the return had been timely filed.

In summary, the only effect of precluding the alternate valuation date election on a late return is to impose the loss of this election as an additional penalty for filing the late return—a penalty which is unrelated to the policy of the alternate valuation date election, and which cannot be excused even for reasonable cause. There is no administrative or tax policy reason for such a result, and this bill would remedy that situation.

Because of the remedial nature of this bill, it should apply to all cases which are not barred by the statute of limitations on the date of enactment.●

By Mr. CULVER (for himself, Mr. NELSON, Mr. MCGOVERN, Mr. REIGLE, Mr. HEINZ, Mr. HELMS, Mr. PERCY, and Mr. SCHMITT):

S. 542. A bill to amend the Internal Revenue Code of 1954 to provide for a deduction paid into a reserve for product liability losses and expenses, to provide a deduction for certain amounts paid to captive insurers, and for other purposes; to the Committee on Finance.

PRODUCT LIABILITY SELF-INSURANCE

● Mr. CULVER. Mr. President, I am today introducing legislation designed to help small businesses better protect themselves and their customers from the rising costs and declining availability of product liability insurance. It would permit businesses to claim a deduction from taxable income for contributions to a reserve account used exclusively to pay product liability related costs.

I believe it is a useful and necessary complement to legislation which I introduced last year and which Congress made part of the Revenue Act of 1978. That amendment to the IRS Code permitted operating losses due to product liability to be "carried back" and applied against taxable income for the previous 10 years—7 years longer than the carryback period for most business losses.

According to this bill, businesses with a severe product liability problem—defined in the legislation as an inability to obtain $1 million of conventional coverage for 3 percent of annual gross sales—could claim deductions for funds contributed to a reserve account if they are limited to 5 percent of annual gross sales. The total account would not be allowed to accumulate beyond 15 percent of average annual gross sales. For businesses which do not meet the "severe problem" definition, the comparable figures would be 2 percent and 10 percent. In order to target the tax benefits to smaller firms which are feeling the brunt of the problem, as well as to keep revenue losses to a minimum, there would be absolute caps on annual contributions of $100,000 for severely affected firms and $25,000 for other companies. Funds in the accounts could be utilized only to pay product liability losses and related costs such as legal expenses, and strict penalties are imposed for other uses.

Mr. President, in September 1976 I chaired a hearing by the Senate Small Business Committee on the general nature of the product liability problem. That was the first inquiry made by a congressional committee into the subject, and I doubt there were many people here who even understood what the term meant. Even fewer of us had a real understanding of the difficulties small business owners were encountering in obtaining insurance coverage for product liability.

Since that time, a detailed and substantial public record has been compiled. Small Business Committees in both the House and Senate, the Senate Commerce Committee, the Senate Finance Committee and the House Ways and Means Committee have all held hearings into various aspects of the problem area. In addition, a major Federal interagency task force conducted an extensive 18-month study and issued a comprehensive report in 1978. What all these investigations have documented can be summarized in three conclusions.

First, in the last few years, insurance premiums for product liability—financial responsibility for injuries caused by products which a firm manufactures, distributes, or sells—have doubled and tripled on an annual basis for entire industries. For many individual firms, increases running as high as thousands of percent have not been uncommon.

Second, according to the best available data, these increases generally have not been justified by claims and settlements experience. Instead, in the judgment of the interagency task force on product liability, insurers have been "panic pricing."

Third, this situation has unfavorable effects both on businesses and consumers. Many firms, particularly smaller ones, are watching skyrocketing premium costs erode their scarce capital. Other risk "going bare"—carrying no insurance at all—with the consequent danger of bankruptcy in the event of a substantial adverse settlement. Consumers face the Hobson's choice of higher prices charged by businesses paying the increased premiums or inadequate compensation for injuries if firms are without coverage.

Fundamental causes of the problem and long-range solutions to it, according to the interagency task force, may well involve tort law, insurance ratemaking procedures, and product design and manufacturing practices. A number of efforts—inside and outside Government—to address these areas are now underway. To cite just one example, the Department of Commerce in January issued a draft uniform product liability law as a model for State reform efforts attempting to balance the legitimate interests of products sellers and products users. Whatever the merits or ultimate success of any of these efforts, it is clear that their final design and implementation will require years to achieve. Until then, it makes sense to take action to insure that a major product liability settlement neither drives a firm out of business nor leaves an injured consumer without financial compensation.

In enacting my amendment to extend the carryback period from 3 to 10 years, as part of the Revenue Act of 1978, Congress acknowledged the severity of the product liability problem and the wisdom of establishing a responsible mechanism to provide short-term financial relief. Under the terms of this new provision of the Internal Revenue Code, firms faced with a major product liability settlement can, in effect, use taxes previously paid to satisfy at least part of their liability. For firms in such a position, this amendment will prove a very useful addition.

For many other companies, however, product liability problems do not involve large individual settlements but rather nonavailability of insurance when proof of coverage is required as a condition of doing business by many customers. A large number of still other companies are seeking some way of bringing disproportionately high premiums down to more affordable levels.

This bill would address both those concerns and would give product manufacturers and sellers a measure of flexibility in protecting themselves and their customers. Some firms which are without any insurance could set aside funds sufficiently to cover—at least partially—potential losses. Others could use the reserved funds for increased deductibles, allowing companies to lower their premium costs. A reserve of dollars accumulated over time which could be utilized only to pay product liability costs might well fulfill the requirement of a product seller's trading partners that they be able to cover adverse settlements. In general, the existence of a responsible alternative to conventional insurance coverage would act as a competitive device to bring current unreasonably high rates down to more affordable levels.

When the Department of Commerce

proposed this measure as the best short-term remedy for product liability in a 1978 options paper, it listed many of the arguments I have just mentioned as reasons for adopting the approach. But it enumerated another advantage as well. Consumers are likely to benefit from safer products. The Commerce Department pointed out that with their own funds directly at risk—rather than the risk being to a third party—manufacturers were likely to intensify their efforts to eliminate unsafe products. In addition, I might note, companies which pay exorbitant insurance rates for product liability, pass them on to their customers as higher prices. To the extent that this bill exerts a competitive pressure to bring the rates down, it can make at least a small contribution to our fight against inflation. It is significant, Mr. President, that when the Department of Commerce solicited comment on this kind of proposal from interested members of the public, a wide range of both business and consumer groups gave it strong support. It also won the backing of insurance brokers.

In closing, I wish to make clear that product liability coverage is not just a problem for isolated firms in a few industries. Sporting goods manufacturers, pharmaceutical companies, makers of industrial equipment, machine tool builders, producers of farm equipment, and manufacturers of products as diverse as outboard motors, ladders, and perfume have all felt its impacts—and that is an abbreviated list. Helping these kinds of businesses protect themselves and their customers better from financial or physical injury is the purpose of this legislation. I hope the Senate will give it prompt and close consideration.

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

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

S. 542

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this bill may be cited as the "Product Liability Partial Self-Insurance Act".

SEC. 2. (a) Section 165 of the Internal Revenue Code of 1954 (relating to losses) is amended by redesignating subsection (1) as (j) and by inserting immediately after subsection (h) the following new subsection:

"(i) Self-Insurance for Product Losses and Expenses.—

"(1) General rule.—In the case of a taxpayer engaged during the taxable year in a trade or business which involves the manufacture, importation, distribution, lease, or sale of a product or products with respect to which the taxpayer may incur any product liability, at the election of the taxpayer, there shall be allowed as a deduction under subsection (a) the sum of—

"(A) any amounts transferred by the taxpayer for such taxable year to his product liability trusts, including net income earned on the corpus of that trust and net gains realized from the sale or exchange of trust assets so transferred, and

"(B) any amounts paid by the taxpayer for such taxable year to a captive insurer with respect to the product liability of the taxpayer.

"(2) DETERMINATION OF AMOUNT.—

"(A) TAXPAYER WITH SEVERE PRODUCT LIABILITY INSURANCE PROBLEM.—In the case of a taxpayer who has a severe product liability insurance problem (as defined in paragraph (11)) for the taxable year, the maximum amount for such txapayer determined under paragraph (1) shall not exceed the smallest of—

"(i) 5 percent of the gross receipts of the taxpayer for such taxable year from the manufacture, importation, distribution, lease, or sale of such product or products with respect to which the taxpayer may incur any product liability.

"(ii) the amount which when added to the sum of—

"(I) the balance of the taxpayer's product liability trust, and

"(II) the net contributions of the taxpayer to his captive insurer, if any, equals 15 percent of the taxpayer's average yearly gross receipts from the manufacture, importation, distribution, or sale of such product or products during the base period, or

"(iii) $100,000.

"(B) OTHER TAXPAYERS.—In the case of a taxpayer who does not have a severe product liability insurance problem for the taxable year, the amount determined under paragraph (1) shall not exceed the smallest of—

"(i) 2 percent of the gross receipts of the taxpayer for such taxable year from the manufacture, importation, distribution, lease, or sale of such product or products with respect to which the taxpayer may incur any product liability,

"(ii) the amount which, when added to the sum of—

"(I) the balance of the product liability trust, and

"(II) the net contributions of the taxpayer to his captive insurer, if any,

equals 10 percent of the taxpayer's average yearly gross receipts from the manufacture, importation, distribution, lease, or sale of such product or products during the base period, or

"(iii) $25,000.

"(C) BASE PERIOD.—For the purpose of this paragraph, the term 'base period' means the shorter of—

"(i) the period beginning with the most recent preceding taxable year for which the taxpayer elected to have this subsection apply which is immediately preceded by a taxable year for which the taxpayer did not so elect and ending with the current taxable year, or

"(ii) the 5-fiscal-year period of the taxpayer which ends with or within the taxable year.

"(3) DISALLOWANCE OF DEDUCTION FOR CERTAIN LOSSES.—In determining the amount of the deduction allowable for the taxable year under subsection (a) to a taxpayer who has elected to have this subsection apply, no deduction shall be allowed for any product liability loss sustained by the taxpayer during the taxable year except to the extent that the aggregate amount of such losses during such year exceeds the sum of—

"(A) the amount in the product liability trust of the taxpayer at the beginning of such taxable year, plus

"(B) the aggregate amount of payments by the taxpayer to such trust within the taxable year which are allowable as a deduction under paragraph (1).

"(4) USE OF FUNDS OF TRUST FOR INAPPROPRIATE PURPOSE.—

"(A) IN GENERAL.—If any amount in a product liability trust is, during a taxable year, used for any purpose other than the purpose set forth in paragraph (9)(C)(iii)—

"(i) an amount equal to the amount so used shall be included in the taxable income of the taxpayer for the taxable year, and

"(ii) the liability of the taxpayer for the tax imposed by this chapter for such taxable year shall be increased by an amount equal to 10 percent of the amount so used.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to amounts paid out of any product liability trust not later than the 15th day of the third month following the close of such taxable year to the extent the amount of such payment is not more than the excess of—

"(i) the aggregate amount of payments by the taxpayer to such a trust for the taxable year, over

"(ii) the maximum amount of such payments which may be deducted under paragraph (2).

"(5) TIME WHEN PAYMENTS TO TRUSTS DEEMED MADE.—For the purposes of this subsection, a taxpayer shall be deemed to have made a payment to his product liability trust on the last day of the preceding taxable year if the payment is made on account of such taxable year and not later than the 15th day of the third month following the close of such taxable year.

"(6) PAYMENTS TO TRUST TO BE IN CASH OR CERTAIN OTHER ITEMS.—No deduction shall be allowed under paragraph (1) with respect to any payment to a taxpayer's product liability trust other than a payment in cash or in items in which the assets in said trust may be invested under paragraph (10).

"(7) SPECIAL RULE FOR CONTROLLED GROUPS.—

"(A) IN GENERAL.—For the purpose of paragraph (2)—

"(i) in the case of any taxpayer who, during a calendar year, is a member of a controlled group of corporations, only gross receipts properly attributable under section 482 to such taxpayer for such year shall be taken into account; and

"(ii) the aggregate deductions under this subsection taken by all of the members of a controlled group of corporations for each taxable year shall be limited to the amount that would be permitted under paragraph (2) if all the component members of such group were considered to be a single taxpayer.

"(B) DEFINITION OF CONTROLLED GROUP.—For the purpose of subparagraph (A), the term 'controlled group of corporations' has the meaning given such term by paragraphs (1), (2), and (3) of subsection (a) of section 1563, except that the determination of whether a taxpayer is a component member of a controlled group of corporations at any time during a calendar year shall be made on December 31 of such year.

"(C) CONTROLLED GROUPS CONTAINING PERSONS OTHER THAN CORPORATIONS.—Under regulation prescribed by the Secretary, principles similar to the principles of subparagraphs (A) and (B) shall be applied to groups of taxpayers under common control where one or more of such taxpayers is not a corporation.

"(8) Election termination, and withdrawal of funds.—

"(A) Making election; terminating account.—The Secretary shall prescribe by regulations—

"(i) the time, manner, and conditions under which the election under paragraph (1) shall be made by a taxpayer;

"(ii) the time, manner, and conditions under which a taxpayer may terminate his product liability trust, and the funds accumulated therein, if any, may be distributed to the taxpayer without being subject to the penalty under paragraph (4); and

"(iii) a taxpayer may withdraw all, or any portion of, the funds from his product liability trust without penalty under paragraph (4).

"(B) Special requirements.—The regulations prescribed by the Secretary regarding the election under paragraph (1) shall require the taxpayer to indicate whether he is

electing to transfer all, or any portion, of (i) the net income earned on amounts previously transferred to his product liability trust and (ii) the net gains realized on the sale or exchange of trust assets to that trust. Such amounts which the taxpayer does not elect to transfer to his product liability trust may be withdrawn from that trust without penalty under paragraph (4).

"(C) Withdrawal of funds.—The regulations prescribed by the Secretary regarding the withdrawal of funds from a taxpayer's product liability trust without penalty under paragraph (4) shall permit such withdrawals when the taxpayer has no outstanding product liability claims or lawsuits asserted against him and no reasonable expectation that any product liability claims and lawsuits will be asserted against him.

"(D) Inclusion in income.—Amounts distributed to a taxpayer from his product liability trust without penalty under this paragraph shall be included in the net income of the taxpayer in the taxable year in which the distribution is made.

"(E) Other regulations.—The Secretary shall prescribe such other regualtions as may be necessary to carry out the purposes of this subsection.

"(9) Definitions.—For purposes of this subsection—

"(A) Product liability.—The term 'product liability' has the same meaning as in section 172(i)(2).

"(B) Product liability loss.—The term 'product liability loss' means any loss attributable to the product liability of the taxpayer.

"(C) Product liability trust.—The term 'product liability trust' means any trust—

"(i) established in writing which is created or organized under the laws of the United States or of any State (including the District of Columbia) by the taxpayer;

"(ii) the trustee of which is a bank (as defined in section 581) or another person (other than the taxpayer or any component member of a controlled group of corporations, within the meaning of paragraph (7), of which the taxpayer is a member) who demonstrates to the satisfaction of the Secretary that the manner in which that other person will administer the trust will be consistent with the purposes for which the trust is established;

"(iii) the exclusive purpose of which is to satisfy, in whole or in part, the product liability losses sustained by the taxpayer and the expenses incurred in the investigation, settlement, and opposition of any claims for compensation against the taxpayer with respect to his product liability, and to pay the administrative and other incidental expenses of such trust in connection with the operation of the trust and the processing of claims against the taxpayer;

"(iv) the assets of which will not be commingled with any other property other than in a common trust fund (as defined in section 584) and will only be invested as permitted in paragraph (10); and

"(v) the assets of which may not be borrowed, used as security for a loan, or otherwise used by the taxpayer for any purpose other than those described in clause (iii).

"(D) Captive insurer.—The term 'captive insurer' means any insurer wholly owned or partially owned, directly or indirectly, by the taxpayer which is licensed to provide product liability insurance to the taxpayer under the laws of a State of the United States, including the District of Columbia, and which is, directly or indirectly, owned or controlled by the taxpayer or by an association of which the taxpayer is a member.

"(E) Net ocntributions of taxpayer to captive insurer.—The term 'net contributions of taxpayer to his captive insurer' means the sum of all premiums paid by the taxpayer to his captive insurer for product liability insurance, less all amounts paid by his captive insurer for claims against the taxpayer for compensation with respect to the product liability of the taxpayer.

"(10) Restrictions on investment of assets.—The assets of a product liability trust may not be invested in anything other than—

"(A) public debt securities of the United States,

"(B) obligations of a State or local government which are not in default as to principal or interest, or

"(C) time or demand deposits in a bank (as defined in section 581) insured by the Federal Deposit Insurance Corporation, a savings and loan association insured by the Federal Savings and Loan Insurance Corporation, or an insured credit union (as defined in section 101(6) of the Federal Credit Union Act) located in the United States.

"(11) Severe product liability insurance problem.—A taxpayer has a severe product liability insurance problem for a taxable year if, for such taxable year—

"(A) the taxpayer is unable to obtain a premium quotation for product liability insurance, with coverage of up to $1,000,000, from any insurer other than a captive insurer; or

"(B) the lowest insurance premium quotation for product liability insurance, with coverage of up to $1,000,000, obtained by the taxpayer was equal to more than 2 percent of the gross receipts of the taxpayer for such taxable year.

"(12) Deductibility of amounts paid to captive insurer as an ordinary and necessary business expense.—The deductibility, in whole or in part, of amounts paid by a taxpayer to a captive insurer for product liability insurance coverage under this subsection shall not affect the deductibility of such amounts under section 162 (relating to ordinary and necessary business expenses), except that such amounts shall not be deducted more than once.

"(13) Discharge of indebtedness of taxpayer by product liability trust.—For the purpose of section 61 (relating to gross income), the payment by the trustee of a taxpayer's product liability trust of product liability losses sustained by the taxpayer, expenses incurred in the investigation, settlement, and opposition of any claims for compensation against the taxpayer with respect to his product liability, or other expenses permitted to be paid by the trustee of such trust under paragraph (9), shall not be included in the gross income of the taxpayer.".

(b) Accumulated Earnings Tax.—Paragraph (4) of section 537(b) of the Internal Revenue Code of 1954 (relating to the accumulated earnings tax) is amended to read as follows:

"(4) Product liability loss reserves or insurance.—Amounts accumulated in a taxpayer's product liability trust and amounts paid by a taxpayer to his captive insurer for liability insurance shall be treated as amounts accumulated for the reasonably anticipated needs of the business of the taxpayer to the extent those amounts are deductible under the rules of section 165(i). The accumulation of reasonable amounts, in addition to amounts deductible under section 165(i), for the payment of reasonably anticipated product liability losses (as defined in section 172(i)), as determined under regulations prescribed by the Secretary, shall be treated as accumulated for the reasonably anticipated needs of the business.

(c) Effective Date.—The provisions of this Act apply to taxable years beginning after December 31, 1978.●

By Mr. WEICKER:

S. 543. A bill to establish a program to improve the commercial fisheries of the United States; to the Committee on Commerce, Science, and Transportation.

COMMERCIAL FISHERIES DEVELOPMET ACT

● Mr. WEICKER. Mr. President, I am pleased today to introduce the "Commercial Fisheries Development Act."

Similar to previous legislation that I have introduced, this bill addresses the growing need to build a strong and viable domestic commercial fishing industry.

Despite the fact we are blessed with the world's fourth largest continental shelf, and almost 20 percent of all the foodfish in the world, the commercial fishing industry has failed to grow over the past 25 years. During this period, U.S. fish catch remained static, while this Nation's consumption for fish products doubled, resulting in a trade deficit of $1.5 billion.

Now, with the enactment of the 200-mile limit law, the domestic industry has a tremendous opportunity to reach its full economic potential. Foreign catches have been dramatically reduced. For instance, the 1977 foreign catch, 1.7 million tons, was about 1 million tons less than the 1976 foreign catch and approximately half that of the peak year, 1974.

Even so, consumption of 70 percent of the seafood in this country is provided by imports. The trade deficit in fisheries alone was $2.5 billion this year. It is one of the largest deficits attributed to a single industry in the United States. This annual national trade deficit is a disgrace; it is both demoralizing and dangerous to the future of our country and must be attacked immediately.

The "200-mile law" will go a long way to help the domestic fishing industry to overcome some of these problems. It gives our fishermen first choice over the rich grounds of the U.S. Continental Shelf.

Indeed, there has been a resurgence of activity and interest in the industry. In New England, alone, 35 vessels were constructed in 1977. Recent studies project that, with the enforcement of the 200-mile limit, domestic fishing industry catches will double in 5 to 7 years.

Despite this favorable outlook, private lending institutions are still reluctant to invest. The risks and uncertainties associated with the industry will continue to dampen investments by the private sector. As Clinton Wynn, vice president of Rhode Island Hospital Trust National Bank, stated at a Senate Small Business Committee hearing:

> Although we envisioned increased investments in the fishing industry from the private sector, we think that these funds may not be adequate enough for the immediate and future needs of the industry.

As a result, I fear that the large, rich segments of the industry, those that can provide adequate capital, will dominate the industry. Additionally, foreign investors already threaten to dominate certain segments of the industry.

The great majority of commercial fishing has traditionally consisted of small businessmen. Most cannot easily raise capital and are considered high business risks. I believe that if the small fishermen is not helped he will succumb to the foreign and large U.S. interests.

Mr. President, it is clear that the Government has an important role to play in

insuring the orderly development of commercial fisheries in the United States. Today several Federal agencies, including the National Marine Fisheries Service, Department of Agriculture, and the Small Business Administration provide some form of financial assistance to the fishing industry. However, these have not proven to be adequate to help the industry grow.

Few funds are available for instance, to shoreside facilities, including processing plants, dockage, storage areas, and so forth. These all being key to the growth of the industry, most small fishing ports have inadequate facilities to support fishing.

This proposal is designed to meet the demands of the future and make the industry a strong, prosperous internationally viable enterprise.

In order to improve the productive capacity of our Nations commercial fisheries, it is essential that we develop the industry in a manner that will increase operational efficiency, boost the rate of return on investment, encourage the harvesting of underutilized species, and insure the perpetuality of the species. A strong fishing industry will mean jobs at home and a more favorable balance of payments situation.

To achieve these objectives, this legisation would authorize the creation of a new office—the Office of Commercial Fisheries within the National Oceanic and Atmospheric Administration—to administer a wide-ranging commercial fisheries development package. For the first time, the Federal Government would establish a coordinated and comprehensive approach to commercial fisheries development.

One part of this development package would consist of a fisheries loan guarantee program and a low-interest loan program to encourage development of underutilized species. Coupled with this, a research and development program would be established for new fisheries.

Mr. President, under the existing Merchant Marine Act, loan guarantees are presently available only for fishing vessel construction. A loan guarantee authority of $75 million is available for this limited purpose. In creating a comprehensive fisheries loan guarantee program, the legisation I have introduced would remove vessel construction from the merchant marine loan guarantee program.

Under this bill, the new Federal fisheries loan guarantees could be used for the construction or rehabilitation and purchase of shoreside facilities as well as fishing vessels. A maximum of $750 million of Federal loan guarantees would be available for fisheries with the Government authorized to guarantee up to 87½ percent of the principal on the loan.

The Merchant Marine Act would also be amended to include in its tax deferred capital construction funds, shoreside facilities. Thus, owners of processing plants would enjoy the same tax advantages as vessel owners. It would allow these owners to defer a portion of their income from taxation provided that the proceeds from such funds are used for construction or rehabilitation of shoreside facilities or fishing vessels.

Species such as cod, haddock, and flounder are not likely to provide growth in the industry. These species have been heavily fished for years by foreign and domestic fleets. The results have been significant decreases in their standing stocks.

We must turn to other species most of which are now sought by foreign interests and are underutilized in the United States.

Fishing for underutilized species is considered very high risk. Vessels and processing plants are not likely to be initially built by private investment to market these species unless some incentives are provided.

Many of our underutilized species are considered delicacies in Europe, Japan, Russia, and elsewhere. There is a great potential for domestic involvement in the international export market. This would involve the development of facilities to freeze blocks of fish for foreign consumption.

In recognition of these economic facts of life, this proposal would establish a low interest Federal loan program for harvesting or processing of underutilized species.

The interest rate on the loan would be no greater than the current borrowing rate and no less than 3 percent with a maturity of up to 25 years in the case of fishing vessels, and 30 years for loans pertaining to fisheries facilities.

Mr. President, as in any new venture, the development of new fisheries will require unique marketing and promotion techniques. New fish products will have to overcome consumer skepticism. Vessels and fisheries facilities will have to adapt in order to effectively handle underutilized species. To assist the industry in this adjustment period, this legislation would create title II, a fisheries research and development program. Title II would be designed to promote increased yields of fish products, create better ways of preserving and processing fish, particularly underutilized species and increase both domestic and foreign markets for U.S. fish products.

A Fisheries Development Board, consisting of industry members, including fishermen, producers, and processors, would be established to participate in the program. The Board would review and submit recommendations to the Secretary on development and research projects.

Industry must play a major role in any fishery development program. They have the knowledge and experience to keep such programs on the right track.

As well as meeting the immediate needs of new fisheries, the bill directs the Secretary, within 1 year, to enact a long-range research and development program through basic scientific research, the Secretary will seek to determine; the sustainable yield, life histories, behavioral patterns, and stock distribution of underutilized species.

The provisions of title II would be paid by expanding and transferring Saltonstall/Kennedy (S/K) funds to the research and development program. S/K funds are excise taxes on imported fish products and therefore funding of this program would not be a burden to the taxpayer. In addition S/K funds need to be strengthened in terms of fishery development. Recent proposals by the administration would eventually remove the funds from existing fishery development programs.

This legislation also would establish a 4-year pilot program to improve fishermen's cooperatives. By their very nature, fishermen are a diverse and independent group. However, by joining together for a common economic purpose, they would become a more effective force in the marketplace. The bill would provide management and technical assistance necessary for creating and maintaining cooperatives.

Mr. President, today the New York Times reports that despite favorable global weather patterns and resultant bountiful harvests of crops over the past few years, nations, such as the Soviet Union, China, India and Bangladesh, are still buying record amounts of wheat, corn and soybeans from the United States. It is obvious to me that food is going to play a far more important role in the future of this Nation. We simply must increase our future outlooks on food production, both for our own sakes and to assist in the welfare of the world's poor that face the horrors of global famine.

I believe that this legislation addresses a small but important segment of our future food production and would adequately assist the industry to properly grow.

In any event, I hope that Congress will meet the challenge before us and consider a comprehensive approach to assisting the commercial fish industry in this session.

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

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

S. 543

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 "Commercial Fisheries Development Act".

SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSES.

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

(1) the commercial fisheries of the United States are an important industry providing a significant number of jobs and revenue to the national economy;

(2) by more effectively utilizing resources in the Fishery Conservation Zone, the economic potential of this industry will be realized;

(3) the existing United States commercial fishing fleet and facilities are inadequate to meet the current and future national need and demand for fisheries products or to provide for full domestic utilization and resources in the Fishery Conservation Zone;

(3) Federal development programs for commercial fisheries are inadequate to meet present and future national needs and to stimulate full domestic utilization of re-

sources in the Fishery Conservation Zone; and

(4) many species in the Fishery Conservation Zone are commercially underutilized by the domestic fishing industry.

(b) PURPOSE.—It is the purpose of this Act—

(1) to increase the capability and efficiency of the commercial fisheries industry of the United States;

(2) to strengthen the competitive position of the United States commercial fisheries industry with respect to foreign harvesters and processors, thereby resulting in increased economic stability in the domestic industry and full domestic utilization of fish available in the Fishery Conservation Zone;

(3) to conserve and manage fish under United States jurisdiction in the national interest;

(4) to provide for increased financial assistance, including access to developmental capital, for the United States commercial fisheries industry;

(5) to encourage increased development of domestically underutilized species through research, development, and promotion:

(6) to provide for the institutional framework that will assist the commercial fisheries industries in solving its problems;

(7) to provide technical and consulting assistance to the United States fishing industry to establish fisheries cooperatives;

(8) to provide for effective coordination of Federal manpower training programs in commercial fisheries; and

(9) to provide a central office to effectively administer Federal commercial fisheries development programs.

SEC. 3. DEFINITIONS.

As used in this Act, the term—

(1) "Board" means the Fisheries Development Board established pursuant to this Act;

(2) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other chief executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth, or naturalization, and which has at least 75 percent of the interest therein owned by citizens of the United States. Seventy-five percent of the interest in the corporation shall not be deemed to be owned by citizens of the United States—

(A) if the title to 75 percent of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States;

(B) if 75 percent of the voting power in such corporation is not vested in citizens of the United States;

(C) if through any contract or understanding it is so arranged that more than 25 percent of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or

(D) if by any other means control of any interest in the corporation in excess of 25 percent is conferred upon or permitted to be exercised by any person who is not a citizen of the United States;

(3) "commercial fisheries industry" means all commercial aspects of taking, processing, handling, distributing, or marketing of fish and fish products;

(4) "fish" means any species of living aquatic resources excluding aquatic mammals and birds;

(5) "fish products" means any product which is made wholly or in part from any fish or portion thereof, except products which contain fish only in small proportions and which are exempted from definition as a fish product by the Secretary;

(6) "fishery" means the business, organized activity, or act of fishing for a particular stock or species of fish;

(7) "fisheries facilities" means new or used landing, receiving, processing, storage, and distribution facilities, together with all necessary equipment, including land where appropriate;

(8) "fishing" means the catching, taking, harvesting, or attempted catching, taking, or harvesting, of any fish for commercial purposes;

(9) "fishing vessel" means any new or used vessel, boat, ship, or other type of craft, together with all necessary gear and equipment, which is commercially used for, or of a type which is normally commercially used for—

(A) fishing, or

(B) aiding or assisting in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation, or processing of fish;

(10) "forced economic distress" means action caused by Federal regualtion, as promulgated by the Secretary of Commerce pursuant to the Fisheries Conservation and Management Act, that forces a fishery to cease or curtail operations on a long- or short-term basis;

(11) "Governments' cost of money" means, as determined by the Secretary of the Treasury, the average market yield on outstanding United States Treasury obligations of comparable maturity;

(12) "person" includes an individual, a public or private corporation, a partnership or other association, or a Government agency;

(13) "process", "processed", and "processing", with respect to fish or fish products, means to harvest, handle, store, prepare, produce, manufacture, pack, transport, or hold such products;

(14) "Secretary" means the Secretary of Commerce;

(15) "States" means any State of the United States, the District of Columbia, or any Commonwealth, Territory, or possession of the United States; and

(16) "underutilized species" means a fish species or group of fish species that are identified as available but either not domestically harvested or domestically harvested at insignificant levels pursuant to criteria set forth by the Secretary.

TITLE I—COMMERCIAL FISHERIES DEVELOPMENT FUND

SEC. 101. GUARANTEES OF OBLIGATIONS FOR COMMERCIAL FISHERIES

(a) COMMITMENTS.—(1) The Secretary may, subject to the provisions of this section, guarantee, or make a commitment to guarantee, the payment of interest on, and the principal amount of, any obligation issued by an obligor for any of the following purposes:

(A) The financing and refinancing (including reimbursement of amounts previously expanded) of the cost of constructing, reconstructing, or reconditioning commercial fishing vessels and fisheries facilities except that no reimbursement may be guaranteed under this section later than 5 years after the date of construction, reconstruction, or reconditioning.

(B) The financing of the acquisition of used vessels or fisheries facilities in connection with their reconstruction or reconditioning.

(C) The refinancing of any existing obligation issued for any of the purposes specified in subparagraph (A) whether or not guaranteed under this section, including any obligation incurred for the purpose of obtaining temporary funds.

(D) Guarantees and commitments to guarantee may be made under this section without regard to section 3679 (a) of the Revised Statutes of the United States (31 U.S.C. 665 (a)).

(2) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to both principal and interest, including any interest which may accrue between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(3) Any guarantee, or commitment to guarantee, made by the Secretary under this section shall be conclusive evidence of the eligibility of the obligation for such guarantee, and the validity of any guarantee, or commitment of guarantee, so made shall be incontestable.

(4) The aggregate unpaid principal amount of all obligations guaranteed under this section and outstanding at any one time shall not exceed $750,000,000.

(b) CONDITIONS OF OBLIGATION.—(1) Obligations guaranteed under this section—

(A) shall have an obligor approved by the Secretary as being responsible and possessing the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of the commercial fishing vessels or fisheries facilities;

(B) shall be in an aggregate principal amount which does not exceed 87½ percent of the actual cost, or the depreciated actual cost, as determined by the Secretary, of construction, reconstruction, or reconditioning;

(C) shall have maturity dates satisfactory to the Secretary, but not to exceed 25 years;

(D) shall provide for payments by the obligor satisfactory to the Secretary; and

(E) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such percentage per annum on the unpaid principal as the Secretary determines to be reasonable except that the Secretary may allow a rate of interest higher than otherwise allowable when the obligee conducts the basic economic feasibility and credit investigation for the Secretary's review and agrees to finance, on an unguaranteed basis, not less than 20 percent of the cost of construction, reconstruction, or reconditioning.

(2) No obligation shall be guaranteed under this section unless the obligor conveys or agrees to convey to the Secretary such security interest as the Secretary may require to reasonably protect the interests of the United States.

(c) FEES.—(1) The Secretary may charge a fee for any obligation guaranteed under this section, the amount of which shall be established by the Secretary by regulation but which may not exceed 1 percent per annum of the outstanding principal balance of the obligation. Fee payments shall be made by the obligor to the Secretary when moneys are first advanced under a guaranteed obligation and at least 60 days before each anniversary date thereafter.

(2) The Secretary shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of the application for any guarantee, for the appraisal of properties offered as security for any guarantee, and for the inspection of such properties during construction, reconstruction, or reconditioning. Such charges shall not aggregate more than one-half of 1 percent of the original principal amount of the obligation to be guaranteed.

(3) All fees and other amounts received by the Secretary under the provisions of this subsection shall be deposited in the Fund established pursuant to section 103.

(4) Obligations guaranteed under this section, and agreements relating thereto, shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of

taxes, and such other matters as the Secretary may prescribe.

(d) DEFAULT AND PAYMENT.—(1) In the event of a default, which has continued for 30 days, in any payment by the obligor of principal or interest due under any obligation guaranteed under this section, the obligee or his agent shall have the right to demand, at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 90 days from the date of such default, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of the obligation and unpaid interest thereon to the date of payment; except that the Secretary shall not be required to make such payment if before the expiration of such period he finds that there was no default by the obligor in the payment of principal or interest or that such default has been remedied before any such demand.

(2) In the event the obligee does not make a demand on a defaulted installment before 90 days from the date of such default, that portion of the guarantee which represents the defaulted installment shall be lost but the remainder of the guarantee shall continue in full force and effect.

(3) Payments required to be made by the Secretary under paragraph (1) shall be made by the Secretary from the Fund established pursuant to section 103.

(4) In the event of any payment by the Secretary under paragraph (1), the Secretary shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary may, under such terms and conditions as the Secretary prescribes or approves, complete, recondition, reconstruct, repair, maintain, operate or sell any property acquired by him pursuant to a security agreement with the obligor.

(5) After any default referred to in paragraph (1) the Secretary shall take such action against the obligor or any other parties liable thereunder that in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary may accept a conveyance of title to and possession of property from the obligor or other parties liable thereunder that, in his discretion may be, property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event the Secretary receives through the sale of property an amount of cash in excess of any payment made to an obligee under paragraph (1) and the expenses of collection of such amounts, he shall pay such excess to the obligor.

(6) Whoever, for the purpose of obtaining any loan or advance of credit from any person with the intent that an obligation relating to such loan or advance of credit shall be offered to or accepted by the Secretary to be guaranteed, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage relating to an obligation guaranteed by the Secretary, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of the Secretary under this section, makes, passes, utters, or published any publishers, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income shall be punished by a fine of not more than $25,000, or by imprisonment for not more than 2 years, or both.

(e) REGULATIONS.—The Secretary shall promulgate such rules and regulations as may be deemed necessary or appropriate to carry out the purposes and provisions of this section.

(f) DEFINITIONS.—For purposes of this section—

(1) the term "actual cost" of commercial fishing vessels or fishing facilities, as of any specified date, means the aggregate, as determined by the Secretary, of—

(5A) all amounts paid by, or for the account of, the obligor with respect to such facility on or before that date; and

(B) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such vessel or facility.

(2) The term "depreciated actual cost" means the actual cost depreciated on a straightline basis over the useful life of the property involved as determined by the Secretary.

(3) The term "obligation" means any note, bond, debenture, or other evidence of indebtedness issued for one of the purposes specified in subsection (a).

(4) The term "obligee" means the holder of any obligation.

(5) The term "obligor" means any person primarily liable for payment of the principal of or interest on any obligation.

(g) AMENDMENT TO MERCHANT MARINE ACT OF 1936.—Section 1104 of the Merchant Marine Act of 1936 is amended—

(1) in subsection (a)(1) by striking out "(D) in the fishing trade or industry; or (E)" and substituting "or (D)"; and

(2) by striking out subsection (d) and substituting the following:

"(d) No commitment to guarantee an obligation shall be made by the Secretary of Commerce unless he finds, at or prior to the time such commitment is made, that the property or project with respect to which the obligation will be executed will be, in his opinion, economically sound, and no obligation, unless made pursuant to a prior commitment, shall be guaranteed unless the Secretary of Commerce finds, at or prior to the time the guarantee becomes effective, that the property or project with respect to which the obligation is executed will be, in his opinion, economically sound.".

SEC. 102. HIGH-RISK LOANS FOR COMMERCIAL FISHERIES.

(a) AUTHORIZATION.—The Secretary is authorized to make long-term, low-interest loans—

(1) to provide capital for the construction, rehabilitation, purchase, or operation of fisheries facilities that enhance opportunities to harvest and process underutilized species;

(2) to provide capital for the construction, rehabilitation, purchase, or operation of fishing vessels for harvesting underutilized species, including vessels under 5 net tons; and

(3) to provide capital for the cost of vessel modifications and fishing equipment to be used for experimental fishing purposes.

(b) LIMITATION.—Loans pursuant to this Act shall be made only to citizens of the United States.

(c) INTEREST RATE.—Any loan made pursuant to subsection (a) shall be provided at an interest rate, to be determined by the Secretary in accordance with the purposes of this section, no greater than the Government's cost of money and no less than 3 percent depending upon the degree of risk inherent in the loan project. Minimum interest rates shall be employed as an incentive when the risk is highest. Loan maturities shall not exceed 25 years for loans pertaining to fishing vessels and 30 years for loans pertaining to fisheries facilities. The Secretary, subject to the specific limitations in this Act, may consent to the modification, with respect to the rate of interest or time of payment of any installment of principal, or the security, of any loan made pursuant to this title.

(d) Security Requirement.—Loans shall be approved only upon furnishing of such security or other reasonable assurance of repayment as the Secretary may require considering the objectives of this Act. The proposed collateral for a loan must be of such a nature that, when considered with the integrity and ability of the management, and the applicant's past and prospective earnings, repayment of the loan will be reasonably assured. The Secretary shall recognize that the risk assumed for loans made pursuant to this section will often be higher than ordinary.

(e) Before approving any loan pursuant to this title relating to a fishing vessel or a fisheries facility, the Secretary shall determine that the applicant does, or will, possess the ability, experience, resources, and other qualifications necessary to operate and maintain such vessel or facility.

(f) ECONOMIC DISTRESS LOANS.—The Secretary is authorized to make loans to provide financial assistance to commercial fishermen to alleviate forced economic distress. Such loans shall be made on the basis of regulations promulgated by the Secretary which will assure rapid and timely assistance where and when needed in the commercial fisheries industry.

(1) Such loans shall be made in accordance with criteria established by the Secretary for transferring vessel operations, temporarily or permanently, into alternative fisheries operations.

(2) The amount of such loans will be determined by the Secretary based on the extent of the economic distress and the needs of the Nation.

(3) The amount of interest, if any, on such loans shall be determined by the Secretary, but shall not be greater than the Government's cost of money.

SEC. 103. EXTENSION OF CAPITAL CONSTRUCTION FUND, MERCHANT MARINE ACT, 1936, TO FISHERIES FACILITIES

(a) CAPITAL CONSTRUCTION FUND.—Subsection (a) of section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177) is amended to read as follows:

"(a) AGREEMENT RULES.—Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)), or one or more fisheries facilities (as defined in subsection (k)(9)), may enter into an agreement with the Secretary of Commerce under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the 'fund') with respect to any or all of such vessels or fisheries facilities. Any agreement entered into under this section shall be for the purpose of providing—

"(1) replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States, or

"(2) replacement, additional, or reconstructed fisheries facilities in the United States, and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary of Commerce may by regulations prescribe or are set forth in such agreement; except that the Secretary of Commerce may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person's taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels or fisheries facilities or from the sale or marketing of fish or fish products (as defined in paragraphs (11) and (12) of subsection (k)).".

(b) CEILING ON DEPOSITS.—Subsection (b) of section 607 of such Act is amended—

(1) in subparagraph (A) of paragraph (1) by inserting "or which is attributable to the operation of the agreement fisheries facilities or from the sale or marketing of fish or fish products" before the comma at the end thereof;

(2) in subparagraph (B) of paragraph (1) by inserting "or fisheries facilities" after "vessels"; and

(3) in subparagraph (C) of paragraph (1) and in paragraph (2) by inserting "or fisheries facility" after "vessel" each place it appears.

(c) QUALIFIED WITHDRAWALS FROM THE FUND.—Subsection (f) of section 607 of such Act is amended—

(1) in subparagraph (A) of paragraph (1) by inserting "or a fisheries facility," after "vessel"; and

(2) in subparagraph (C) by inserting ", a fisheries facility," after "reconstruction of a qualified vessel".

(d) TAX TREATMENT OF QUALIFIED WITHDRAWALS.—Subsection (g) of section 607 of such Act is amended—

(1) in paragraphs (2) and (3) by inserting "fisheries facility," after "vessel," each place it appears; and

(2) in paragraph (4) by inserting "fisheries facilities," after "vessels,".

(e) DEFINITIONS.—Subsection (k) of section 607 of such Act is amended by adding at the end thereof the following new paragraphs:

"(9) The term 'fisheries facilities' means new or used landing, receiving, processing, storage and distribution facilities, together with all necessary equipment, including land where appropriate.

"(10) The term 'agreement facility' means any fisheries facility which is subject to an agreement entered into under this section.

"(11) The term 'fish' means any species of living aquatic resources excluding aquatic mammals and birds.

"(12) The term 'fish products' means any product which is made wholly or in part from any fish or portion thereof, except products which contain fish only in small proportions and which are exempted from definition as a fishery product by the Secretary.".

SEC. 104. COMMERCIAL FISHERIES DEVELOPMENT FUND.

(a) ESTABLISHMENT OF FUND.—There is established in the Treasury of the United States a Commercial Fisheries Development Fund (hereinafter referred to as the "Fund"). The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out, and administering this title The Fund shall consist of—

(1) any sums appropriated to the Fund;

(2) any fees received by the Secretary in connection with any guarantee made under section 101;

(3) recoveries and receipts received by the Secretary under security, subrogation, and other rights and authorities under sections 101 and 102; and

(4) moneys deposited pursuant to the last sentence of subsection (b) of section 101.

All payments made by the Secretary to carry out the provisions of this title (including reimbursements to other Government accounts) shall be paid from the Fund, only to the extent provided in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this title shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(b) FUND OBLIGATIONS.—If at any time the moneys in the Fund are not sufficient to pay any amount the Secretary is obligated to pay under subsection (d)(1) of section 101, the Secretary shall issue to the Secretary of the Treasury notes or other obligations (only to such extent and in such amounts as may be provided for in appropriation Acts) in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury prescribes. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations to be issued hereunder and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury at any time may sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Seretary of the Treasury of such notes or other obligations shall be treated as a public debt transaction of the United States. Moneys borrowed under this subsection shall be repaid by the Secretary from the Fund.

SEC. 105. AUTHORIZATION FOR APPROPRIATIONS.

(a) GUARANTEES.—There is appropriated to the Fund, without fiscal year limitation, $10,000,000 to provide ihitial capital to carry out the provisions of section 101 of this title, including its administrative costs.

(b) LOANS.—There is hereby appropriated to the Fund, without fiscal year limitation, $25,000,000 as initial capital to carry out the provisions and administrative costs of section 102 of this title and there are authorized to be, without fiscal year limitation, further sums for such purpose not to exceed $100,000,000.

SEC. 106. ADMINISTRATION.

There shall be in the National Oceanic and Atmospheric Administration a Director for an Office of Commercial Fisheries Development. Such Director shall be a qualified individual who is, by reason of background and experience, especially qualified to carry out the implementation and administration of this Act and such other provisions of law relating to commercial fisheries as the Secretary determines appropriate. There shall be in such Office a fisheries financing unit which shall administer title I of this Act.

SEC. 107. REPEAL AND TRANSFER OF EXISTING PROGRAMS.

(a) REPEAL.—Section 4 of the Fish and Wildlife Act of 1956 (16 U.S.C. 743c) is repealed. All outstanding loans shall be administered under the jurisdiction of the Office created by section 106.

(b) TRANSFER OF PROGRAMS.—(1) The Secretary shall transfer the existing Fishing Vessel Capital Construction Fund program from the National Marine Fisheries Service to the jurisdiction of the Office created by section 106.

(2) All assets and liabilities of the programs terminated pursuant to subsection (a) shall be transferred to and become a part of the Fund.

TITLE II—FISHERIES RESEARCH AND DEVELOPMENT PROGRAM

SEC. 201. PROGRAM.

The Secretary shall establish within 1 year after the date of enactment of this Act a fisheries research and development program for the purpose of research, development, and promotion of commercial fisheries which shall include but not be limited to—

(1) increase markets for fish and fish products both nationally and internationally, particularly for underutilized species;

(2) increase yields of fish products, to make underutilized species more appealing to the consumer, and to create better ways to preserve and process fish and other similar purposes;

(3) upgrade existing fish markets;

(4) encourage changes in markets from overutilized species to less utilized species;

(5) carry out demonstration fishing and demonstration processing and marketing of underutilized species;

(6) develop new catching, handling, and processing techniques for underutilized species; and

(7) carry out all such other economic, scientific, and commercial research, development, and promotion as is necessary to encourage full and optimum domestic use of fisheries resources.

SEC. 202. GRANTS AND CONTRACTS.

(a) AUTHORIZATION.—The Secretary is authorized to make grants and enter into contracts with any citizen of the United States in accordance with rules and regulations promulgated by the Secretary in order to conduct the provisions of this title.

(b) RULES AND REGULATIONS.—Such rules and regulations shall include provisions for—

(1) solicitation of proposals for the purpose of carrying out this title;

(2) selection of proposals consistent with the purposes of this Act;

(3) review of the proposals by the Board with recommendations to the Secretary; and

(4) Federal grants up to 75 percent of the total cost of conducting such research, development, and promotion.

(c) APPROVAL.—This Secretary shall approve or disapprove, funds, contracts, and administer applicable research, development, and promotion projects with a potential near-term commercial benefit which have been submitted by the Board.

(d) EFFECT UPON OTHER PROGRAMS.—Nothing in this title shall conflict with any other Federal, State, or local government programs established for the purposes of conservation, protection, or management of living or nonliving marine resources.

SEC. 203. FISHERIES DEVELOPMENT BOARD.

(a) ESTABLISHMENT OF BOARD.—The Secretary shall establish within 90 days after the date of enactment of this Act a Fisheries Development Board composed of commercial fishermen and producers, handlers, and processors of fisheries products each of whom shall have an alternate, selected by the Secretary, in such a way that all regional interests are fairly represented. The regions and member States for purposes of this title shall be identified by the Secretary.

(b)(1) BOARD MEMBERSHIP.—Any person

selected to be a member of the Board by the Secretary shall qualify by submitting a written acceptance to the Secretary.

(2) If a member of the Board is absent from a meeting of the Board, the alternate shall act in his place. In the event of death, removal, resignation, or disqualification of a member his alternate shall act for him until a successor for a member is selected and qualified.

(3) The members of the Board and alternates when acting as members shall be reimbursed for necessary expenses as approved by the Board and shall receive compensation at the daily rate for GS–18 of the General Schedule.

(4) The members of the Board shall be appointed for 3-year terms on a staggered schedule with one-third of the members replaced each year, except that such replacement shall begin 3 years after the establishment of the Board.

(5) The Secretary may appoint, and assign duties to, an Executive Director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(A) Upon the request of the Board, and after consultation with the Secretary, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to assist in the performance of the functions under this Act.

(B) The Secretary shall provide such administrative and technical support services as are necessary for the effective functioning of the Board.

(C) The Administrator of General Services shall furnish the Board with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

SEC. 204. POWERS.

The Board shall have the following powers:

(1) to select from among its members as pursuant to this title;

(2) to make bylaws and operating procedures, with the Secretary's concurrence, to effectuate the terms and provisions of this title that pertain to the administration and operation of the Board.

SEC. 205. DUTIES.

The Board shall have the following duties:

(1) to select from among its members a Chairman and such other officers as may be necessary;

(2) to carry out the provisions of section 201 by organizing, evaluating, and submitting research, development and promotion projects to the Secretary;

(3) to review and submit recommendations to the Secretary on any research, development, and promotion plans or projects pursuant to the provisions of this title;

(4) to assist with the contracting of projects approved by the Secretary;

(5) to keep and maintain such books and records as are necessary to administer its duties;

(6) to cause its books and records to be audited by a public accountant at least once each fiscal year; and

(7) to submit an annual report to the Secretary and the Congress of its activities pursuant to this Act during the previous fiscal year; including recommendations and suggestions concerning the provisions of this title.

SEC. 206. LONG-RANGE DEVELOPMENT PLAN.

(a) ESTABLISHMENT OF PLAN.—The Secretary shall establish within 1 year after the date of enactment of this Act, a long-range plan for the domestic development of underutilized fisheries resources, including research, development, and promotion carried out by the Secretary.

(b) RESEARCH AND DEVELOPMENT.—The Secretary shall carry out with the advice of the Board, a long-range program of basic research, development, and promotion with emphasis on underutilized species.

SEC. 207. TRAINING PROGRAMS STUDY AND REPORT.

The Secretary is authorized and directed to conduct a comprehensive study regarding the adequacy of existing Federal and State training programs designed specifically to train individuals regarding the commercial fisheries industry. The Secretary shall submit to the President and the Congress, within 1 year of enactment of this Act, a final report on the findings, conclusions, and recommendations of the study. Such report shall include—

(1) a recommended national commercial fisheries industry education program;

(2) future manpower needs of the Nation in various sectors of the commercial fisheries industry;

(3) recommendations for changes in the organization and involvement of Federal departments and agencies needed to effectively implement the national commercial fisheries industry education program; and

(4) recommendations concerning additional legislation required to effectively implement the national commercial fisheries industry education program.

SEC. 208. MARKET STUDY AND REPORT.

The Secretary is authorized and directed to conduct a comprehensive study concerning the marketing, processing, distribution, and sale of fish and fish products. Within 1 year of enactment of this Act, the Secretary shall submit to the President and the Congress a report on the findings, conclusion, and recommendations of the study. Such report shall contain recommendations regarding means to improve the operations of such marketing, processing, distribution, and selling mechanisms.

SEC. 209. AMENDMENT OF THE SALTONSTALL-KENNEDY ACT.

(a) AMENDMENT.—(1) The Saltonstall-Kennedy Act (15 U.S.C. 713c–3) is amended to read as follows:

"SEC. 2. (a) There shall be appropriated for each fiscal year, beginning with the fiscal year commencing October 1, 1979, an amount equal to 75 percent of the gross receipts from duties collected under the customs laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products during the calendar year which includes the first day of the fiscal year involved. Such amounts shall be maintained in a separate fund of the Treasury of the United States which shall be available for the purposes of carrying out the provisions of title II of the Commercial Fisheries Development Act.

"(b) There shall be further appropriated to such fund for each fiscal year, beginning with the fiscal year commencing October 1, 1979, an amount equal to the fees, penalties, fines, and forfeitures assessed pursuant to sections 308, 309, and 310 of the Fishery Conservation and Management Act of 1976 collected during the calendar year which includes the first day of the fiscal year involved. Such amounts shall also be used for the purposes of carrying out the provisions of title II of the Commercial Fisheries Development Act.".

(2) The amendment made by paragraph (1) of this subsection shall take effect October 1, 1979.

(b) EXCEPTION.—Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c) is amended by striking out the period at the end of the first sentence and substituting the following: "; except that, beginning with the fiscal year commencing October 1, 1979, the provisions of this section shall not apply to duties collected under such laws on fishery products (including fish, shellfish, mollusks, crustacea, aquatic plants and animals, and any products thereof, including processed and manufactured products.".

(c) The amendments made by this section shall not be construed to indicate any intent on the part of the Congress to reduce the amounts of funds appropriated annually for the use of the National Marine Fisheries Service.

SEC. 210. SANITARY SEAFOOD PROGRAM.

(a) The Secretary shall submit to the President and Congress within 1 year from the enactment of this Act a plan to establish a national health and sanitary program for the control of handling, processing, marketing, and sale of seafoods.

(b) Such plan shall make specific recommendations concerning the extent of the program; head agency to administer the program and the extent of consolidation or termination of present programs.

(c) Such plan shall recommend regulations to insure that all seafood in the United States reaches the consumer in the best possible sanitary condition and of the highest quality.

TITLE III—FISHERIES COOPERATIVE SERVICE ASSISTANCE

SEC. 301. FISHERIES COOPERATIVE SERVICE PROGRAM.

(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary in consultation with the Secretary of Agriculture, shall establish within 60 days after the date of enactment of this Act a pilot program of comprehensive service for the purpose of assisting fishing interests in the planning, administering, and formulating of fisheries cooperative organizations.

(b) PLAN IMPLEMENTATION.—The Secretary shall authorize the Office of Commercial Fisheries Development to develop plans and conduct actual field operations to implement fisheries cooperative services for a period of 4 years.

SEC. 302. SERVICES BY THE SECRETARY.

For the purposes of this title, the Secretary is authorized and directed to—

(1) provide research, management, marketing, and education assistance to cooperatives to strengthen the economic position of fishermen and related occupations;

(2) direct consultation with fisheries cooperative leaders and Federal and State agencies to improve organization, leadership, and operations and to give guidance to further development;

(3) assist fishermen to obtain supplies and services at lower cost and to get better prices for the products they sell;

(4) advise fisheries cooperatives on improving services and operating efficiency in order to benefit their members and communities;

(5) encourage international fisheries cooperative programs; and

(6) provide research planning and advice on the establishment of new fisheries cooperatives.

SEC. 303. REPORT.

The Secretary, in collaboration with the Secretary of Agriculture, shall submit an annual report on the activities conducted pursuant to this title to the President and to the Congress. A final report shall also be submitted to the President and to the Congress at the end of the 4-year program with specific recommendations for the establishment of a permanent fisheries Cooperative Service to be administered by the Secretary.

SEC. 304. FISHERIES DEVELOPMENT PROGRAM REPORT.

The Secretary shall submit to the President and Congress within 180 days after the enactment of this Act a report on the status of all existing federally funded programs relating to the objectives and purposes of this Act. The report shall include, but not be limited to—

(1) recommendations for increasing the effectiveness of such programs; and

(2) recommendations for additional means and measures necessary to implement and effectuate a comprehensive, coordinated, and effective United States fisheries development program.

SEC. 305. AUTHORIZATION FOR APPROPRIATIONS.

(a) There is authorized to be appropriated to the Secretary sums not to exceed $500,000 to carry out the provisions of section 210.

(b) There are authorized to be appropriated to the Secretary without fiscal year limitation the sum of $1,000,000 to provide funds to carry out a 4-year pilot fisheries cooperative service program pursuant to this title.

(C) There are authorized to be appropriated to the Secretary without fiscal year limitation the sum of $300,000 to provide funds to carry our the provisions of section 304.●

By Mr. KENNEDY (for himself, Mr. SCHWEIKER, Mr. WILLIAMS, Mr. RANDOLPH, Mr. PELL, Mr. CRANSTON, Mr. RIEGLE, and Mr. JAVITS):

S. 544. A bill to amend titles XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development; to the Committee on Human Resources.

HEALTH PLANNING AMENDMENTS OF 1979

● Mr. KENNEDY. Mr. President, I rise to reopen a very significant matter—that of reauthorization and extension of the health planning and resource development Program as established by Public Law 93-641 in 1975. I know of no greater opportunity this Congress will have—early in its first session—to improve and support one of the most impressive cost containment programs in the health field: The very effective local and State planning effort. The 205 health systems agencies and the 56 State health planning agencies, which seemed to make good conceptual sense when authorized 4 years ago, are now vividly demonstrating their work—in containing costs and reallocating resources. As we discovered in last year's hearings, the practice of health planning is maturing, and we now have enough data to document its very positive impact. The time to strengthen and extend that act is now.

In 1977, the Congress gave a 1-year extension to Public Law 93-641. That 1-year extension gave us the needed time last year to do a thorough examination of the way the program was developing, to consider many possible amendments, and to agree on the best course for the next 3 years.

The Senate used that time well. The Human Resources Health Subcommittee held comprehensive hearings on the matter, developed and refined a good bill, after soliciting the views of over 400 organizations and individuals, and reported it out unanimously. On July 27, 1978, the full Senate debated it on the floor, accepted some good amendments, and by unanimous voice vote, passed S. 2410, the Health Planning Amendments of 1978.

Unfortunately in the heavy crush of business at the conclusion of the last Congress, the full House was not able to consider the companion bill to S. 2410 and thus the renewal process was carried over to this new Congress.

With particular pride, and strong personal commitment, I am pleased now to introduce S. 544, which is cosponsored by Senators SCHWEIKER, WILLIAMS, JAVITS, RANDOLPH, PELL, CRANSTON, and RIEGLE.

This bill is very similar to the bill that passed the Senate last July. The modifications include changes in relevant dates and a modification in the requirements for State certificate of need programs regarding the acquisition of expensive capital equipment. These latter changes are in sections 136, 142, and 153. The bill I present to you today is highly significant in three essential dimensions:

First, it will further strengthen local decisionmaking in the allocation of health care resources; it keeps the major decisions in the hands of those most affected—consumers, providers, local and State government officials, the third-party payors—in short, all those who ultimately foot the bill for quality health services, or pay the price of untreated illness if the services are not there.

Second, it will help contain the still too rapidly rising costs of health care resources.

And third, it is a prelude and adjunct to the kind of national health insurance program I believe we can all support—one which assures the availability and accessibility of quality health services to all populations in this country, at a cost we can afford.

I would like now to clarify the reasons why I believe the Congress should act on this bill with all dispatch and also highlight the major objectives of the bill.

First, let us put the matter of health planning in some perspective. Last year, this country spent approximately $180 billion on health care, including all capital investment, health services, drugs, equipment, research, manpower training, et cetera. That came to about $830 per capita. This year those figures will be significantly higher, approaching $1,000 per capita.

Also last year, this country spent approximately $165 million on health planning, including funds from all sources—Federal, State, local, private, et cetera. That comes to about 77 cents per capita. In short, we spent significantly less than $1 per capita to improve decisions on the expenditure of more than $800 for every man, woman, and child in this country.

When I say "improve decisions, I mean several things, things that are the very essence of what the health planning program is about:

I mean a local decision structure in which every one has an opportunity to participate—indeed it is dependent upon the effective participation of citizen volunteers;

I mean decisions that are made within the framework of a community-wide and community-developed, long-range plan for sensible investment decisions;

I mean a plan that recognizes real constraints on resources—a reality-based plan that will not condone every added expenditure desired by every hospital and every physician;

I mean a program which keeps most regulatory powers needed to enforce the plan in the hands of State government, not the Federal Government.

You might then ask: What has that improved decisionmaking process accomplished? Although the health planning agencies were established and "conditionally designated" by the HEW Secretary less than 3 years ago, it is now becoming possible to see the results of their efforts.

A recent survey of the planning agencies' performance in reviewing new capital investment projects covered the 2-year period from the summer of 1976 to the summer of 1978. The first report of that survey, which analyzed data on the first 139 health systems agencies surveyed, provides some interesting statistics:

These 139 HSA's, which cover about 60 percent of the population of the country, reviewed more than $7 billion in proposed capital investments, in spite of the fact that many of these agencies did not begin such review until 1977.

Of that $7 billion, one quarter was deemed unnecessary and was not allowed to go forward. In other words, more than $1.8 billion of unneeded capital investment expenditures was prevented.

Pitting the cost of these HSA's and the relevant State agencies against the result, we find that for each dollar spent on health planning, $8 in proposed capital investments were denied—an impressive rate of return indeed.

If we further consider the operational costs that will not now be incurred in conjunction with $1.8 billion of unneeded capital projects, the savings are magnified many times again. For we know that annual operating costs approximate 50 percent of the capital costs.

It should be noted that these savings have occurred in the absence of any supportable claim that the quality of health care has suffered in any way.

In fact, many people have expressed concern that the health systems agencies are too "dominated" by hospital and physician interests on their governing boards even though those provider interests are numerically in the minority. If that is true, we can look forward to even better performance as the consumer participants become more experienced, knowledgeable, and develop a better understanding of the very complex world of medical care.

As I indicated earlier, the bill that I am introducing today modifies sections 136, 142, and 154 of the bill that passed the Senate during the last session. These changes concern the requirements for State certificate-of-need programs.

Mr. President, as you know, the thrust of certificate-of-need programs is to provide a mechanism for representative citizen committees to restrict the development of costly, unnecessary, or duplicative health resources within a community through a review of capital expenditures of institutional health

care facilities. There is clear and unquestionable evidence indicating that there are approximately 100,000 more hospital beds in the United States than are needed and also that there is surplus capacity of certain other hospital services.

Even though there was no evidence in 1974 to indicate excessive or duplicative HMO capacity, the original health planning legislation included a requirement that certificate of need extend to all facets of health maintenance organization development.

The HMO, as an organized health care system, provides a comprehensive range of prepaid health services to its members often at costs 20 to 40 percent below traditional fee-for-service providers. HMO's are at the forefront of innovation in health care delivery and have led in providing preventive health services and using health care resources efficiently.

The Federal Trade Commission, the Department of Health, Education, and Welfare, and various university-sponsored studies have provided evidence that the success of group practice prepayment programs has even resulted in innovative responses from traditional health care insurers and providers in broader benefit packages, reduced premiums, discounted hospital rates, and new organizational delivery modes.

By mandating that States include the review of HMO's under their certificate-of-need programs, the Congress intended to encourage the development and expansion of HMO's as a cost-effective health resource. Contrary to congressional intent, the CON process has been used by anti-HMO interests to block the initial establishment of HMO's and to delay the growth of enrollment by restricting the modernization or construction of prepaid group practice physician offices for ambulatory health care services.

The CON has been used to protect the status quo and thwart HMO development. Unlike their fee-for-service counterparts, HMO physicians in certain States must seek CON approval for parking lots, administrative computer capacity, leased office space, expansion of services or indeed any facet of HMO operation.

Last session this inequity was partially corrected with the passage of Public Law 95-559. This law amended section 1122 of the 1972 Social Security amendments. That new law requires the review of HMO hospital expenditures in the same manner as the review for non-HMO hospital capital expenditures, and deletes the requirement for the review of non-hospital-based capital expenditures such as HMO establishment and development of ambulatory care facilities.

This provides for a consistent Federal policy with respect to fee-for-service and HMO providers. The provisions included in the bill I am introducing today would conform the planning efforts mandated by Public Law 93-641 to those in section 1122 by requiring that in order for a State certificate-of-need program to be in compliance, it cannot cover the establishment of ambulatory facilities of an HMO. This provides for consistent Federal policy in the 1122 and certificate-of-need programs. It does not affect the requirement for the review of proposed use of Federal funds for HMO's.

In those instances of Federal subsidies through the HMO grant and loan programs, HAS's would still be required to review and then recommend approval or disapproval funds for development. The proposal also requires State certificate-of-need programs to include provisions for the review and approval for the purchase of noninstitutionally based diagnostic and therapeutic equipment valued at over $150,000 if the equipment is to be used for inpatients of hospitals.

Mr. President, the purpose of this amendment is to eliminate the discrepancy in the requirements for State certificate-of-need programs, where the private establishment of an HMO and its development of outpatient facilities and services are required to be covered, but that for the similar fee-for-service noninstitutional services are not. It recognizes the past abuses of the planning process. The development of HMO's and the elimination of the discriminatory provisions of current law have the support of labor, big business, the health insurers, many legal and university researchers, consumer groups, and provider groups.

Mr. President, I want to emphasize further that the return from health planning in terms of its cost effectiveness, while very impressive in itself, is not the whole story. We can be very proud of the gains made by these agencies, and the citizens who guide them, in creating positive changes in the character of the health care systems in their communities:

In promoting the development of new resources where there are none, as in medically underserved areas;

In raising the public consciousness as to the need for preventing illness, through better immunizations, better nutrition, increased physical fitness, and so on;

In bringing together the many fragmented parts of a community health care system through cooperative linkages between and among these parts, such as sharing of resources, arrangements between ambulatory care centers and nearby hospitals, and closer linkages between the mental health care systems and the rest of the health care delivery system.

This bill is intended to support and extend the basic character and structure of the health planning program. It is working well, and we should be very wary of any alterations that might disrupt its progress, inadvertently or otherwise.

Mr. President, the many amendments in the bill go a long way toward improving the planning process; and the most significant nontechnical changes we are proposing would accomplish the following:

Assure that the role of HEW in developing national guidelines is restricted to offering guidance and suggestions, and does not permit mandating the outcome of a local planning process.

Enhance the effective participation of the States' Governors in the further development of the program.

Direct more explicit attention and resources to the planning needs of rural areas—where the planning task is more often one of developing new capacities rather than, as in most urban areas, modifying existing capacities.

Assure that States' certificate-of-need decisions are made consistent with the plans developed by the local and State planning agencies—not by the Federal Government.

Promote increased and more effective participation of citizen volunteer members of planning agency governing boards by providing technical assistance and staff resources to these members as well as providing added liability protection from groundless suits.

Assure meaningful comparison of competing projects by allowing simultaneous consideration of similar projects, rather than the current "first come, first served" method.

Provide grants to States to support the voluntary closure, conversion, or merger of unneeded services and facilities.

Assure that State certificate-of-need programs do not discriminate against health maintenance organizations.

Develop better integration of planning for mental health, alcohol, and drug abuse programs into the overall health planning effort.

Assure that the local processes of HSA board selection and decisionmaking do not allow for self-perpetuation or the development of conflicts of interest in considering new projects.

Changes in the law designed to achieve those objectives, and many other more technical changes as well, grew out of the extensive hearings we held on this program last spring. There is a lengthy written record available to describe and explain each of them. I invite every one of my colleagues to examine that record, to ask any questions that appear to remain unanswered, and to join with me in pressing for prompt action by the full Senate.

Prompt enactment of this legislation is a compelling matter, not simply to avoid unnecessary confusion at the State level and within State legislatures, but more importantly because the best means we now have must be applied to combat the astounding increases in health care costs and to assure that all Americans will have access to high-quality health care. The Senate will undoubtedly be considering other approaches to pursuing some of the same objectives, but here, in the health planning program, we already have an effective mechanism that is working—and we need to send a message of confidence and support to the many thousands of citizens who are spending their countless hours of efforts in making this work as well as it is. With more support from us it will work even better.

Mr. President, I ask unanimous consent that a section-by-section summary of this bill be printed in the RECORD.

The material follows:

SECTION-BY-SECTION ANALYSIS

S. 544 amends titles XV and XVI of the Public Health Service Act to revise and extend the authorities and requirements under those titles for health planning and health resources development.

Section 1. Provides that the bill may be cited as the Health Planning Amendments of 1979, and that references in this act to amendment or repeal of a section or other provision will refer to a section or other provision of the Public Health Service Act.

TITLE I—REVISION AND EXTENSION OF NATIONAL HEALTH PLANNING AND DEVELOPMENT AUTHORITY

National Council on Health Planning and Development

Section 101(a). Amends section 1503(b)(1) to expand the membership of the Council from 15 to 20 members, to include as an ex officio member of the Council the Assistant Secretary for Rural Development of the Department of Agriculture, and to provide that at least 8 Council members will be consumers, including members of urban and rural medical underserved populations.

Section 101(b). Amends section 1511(a) to permit the Governor of any State involved in an interstate health systems agency to request redesignation of an interstate health service area made up of an entire standard metropolitan statistical area (SMSA). Present law requires that all Governors involved must agree to split the SMSA if it is to be split. The Secretary of HEW retains the final authority.

Section 101(c). Amends section 1501(b)(1) to insure that the National Guidelines for Health Planning include standards for supply, distribution, and organization of health resources that reflect the unique circumstances and needs of medical underserved populations including rural communities.

Redesignation of health service area boundaries

Section 102. Amends section 1511(b)(4) to direct the Secretary to review on his own initiative, or at the request of any Governor or health systems agency, the boundaries of health service areas and to redesignate those boundaries if he finds that they no longer meet the requirements of section 1511(a) or if the boundaries for a revised health service area meet the requirements of section 1511(a) in a significantly more appropriate manner in terms of the efficiency and effectiveness of health planning efforts. Provides that when the Secretary acts on his own initiative, he is to consult with the Governor of the appropriate State or States, the chief executive officer or agency of the political subdivisions affected by the revision, the appropriate health systems agency and Statewide Health Coordinating Council. Requires similar consultation among affected parties when the boundary redesignation request originates with a Governor or HSA and further stipulates that in such cases, the request include comments on the proposed revision made by such affected individuals and entities. No proposed revision of the boundaries of a health service area shall comprise an entire State without the prior consent of the Governor. Before making any change, the Secretary is required to give notice and an opportunity for a hearing on the record by all interested persons and must make a written determination of his findings and decision. Further requires that the Secretary, by January 1, 1979, establish by regulation criteria for revision of health service area boundaries.

Section 103. Repeals section 1511(c) which gives priority for designation of health service areas which formerly had an area wide Comprehensive Health Planning Agency under previous health planning authority.

Conflict of interest

Section 104(a). Amends section 1512(b) to expand and clarify conflict of interest provisions for HSA members and staff. Direct HSA's to adopt procedures (in accordance with regulations of the Secretary) to insure that no member, employee, consultant, or agent participate in any matter regarding any persons, institutions, organizations, or other entity with which such individual has or has had within the past three years any substantial direct or indirect employment, fiduciary, competitive, medical staff, ownership, or other financial interest.

Section 104(b). Amends section 1524(b) to provide conflict of interest provisions for SHCC members and staff on same basis as that set forth above for HSA's.

HSA staff

Section 105(a). Amends section 1512(b)(2)(A) to add requirements for HSA staff to assure expertise in financial and economic analysis, public health and disease prevention, mental health planning and development, and use of mental health resources. Further provides that HSA's must have staff meeting these and other existing requirements to the extent practicable.

Section 105(b). Amends section 1512(b)(2)(A) by expanding the requirements that the functions of planning and of development of health resources include mental health resources.

Section 105(c). Amends section 1512(b)(2)(A) to add a new requirement that at least one HSA staff member be assigned responsibility for providing the consumer members of the HSA governing body with such assistance as they may require to effectively perform their functions.

Selection process for HSA members

Section 106. Amends section 1512(b)(3) to set forth the broad outlines for the process to be used by the HSA in selecting members of its governing body and subarea councils. The selection process that assure that members are selected in accordance with the requirements of subparagraph (C) pertaining to composition of the governing body, that there is opportunity for broad participation by residents of the health service area and that such participation will be encouraged and facilitated, and that HSA members do not select other members of the HSA. The selection process is to be made public and reported to the Secretary.

Responsibilities of public HSA's

Section 107(a). Amends section 1512(b)(3)(A) to provide that an HSA that is a public regional planning body or unit of general local government not be required to delegate to a separate governing body for health planning the exclusive authority to appoint and with cause remove members of the governing body for health planning or establish personnel rules and practices for staff or approve the agency's budget or any combination of those activities.

Public officials on HSA's

Section 107(b). Amends section 1512(b)(3)(C)(iii)(I) to revise requirement that HSA's include public elected officials and other representatives of governmental authorities by providing that HSA's must include public elected officials and other representatives of units of general purpose government. In the latter case, individuals would have to be appointed by a unit of general purpose government or a combination thereof.

Reimbursement of HSA members for expenses

Section 108. Amends section 1512(b)(3)(B)(vi) to allow HSA's when appropriate to make advances to HSA members for their reasonable costs incurred in attending meetings and performing any other duties and functions of the health systems agency.

Confidential meetings and records pertaining to personnel issues

Section 109(a). Amends section 1512(b)(3)(B)(viii) to exclude from the open meeting requirement meetings or portions thereof called to discuss the performance or remunerations of an HSA employee which, if public, would constitute a clearly unwarranted invasion of the personal privacy of such individual. Extends similar scope of protection to HSA personnel records and data.

Section 109(b). Amends section 1512(b)(6)(A) to restrict the Secretary's access to HSA personnel records and data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Section 109(c). Amends section 1522(b)(6) to extend to employees of the State health planning and development agency the same kind of protection afforded HSA employees under section 109(a) above.

Section 109(d). Amends section 1532(b)(10) to provide that procedures and criteria for reviews of proposed health system changes restrict public access to HSA and State agency personnel records and data.

HSA governing body composition

Section 110. Amends section 1512(b)(3)(C)(i) to remove the stipulation that consumers on HSA boards cannot have been providers of health care within the 12 months preceding appointment. Also clarifies that major purchasers of health care include but are not limited to unions and corporations.

Section 111(a). Amends section 1512(b)(3)(C)(ii) to permit HSA participation by providers whose principal place of business is within the respective health service area, although their residence may be elsewhere.

Section 111(b). Amends section 1512(b)(3)(C) to clarify that providers or consumers of health care also include providers or consumers of mental health care.

Section 112(a). Amends section 1512(b)(3)(C)(ii) to clarify that the term physician includes both doctors of medicine and osteopathy.

Section 112(b). Amends section 1531(3)(A) to clarify that the term physician includes both doctors of medicine and osteopathy.

Section 112(c). Amends section 1531(3) to redefine provider of health care to include provider of health or mental health care.

Section 113. Amends sections 1512(b)(3)(C)(ii) to broaden the provider of health care definition pertaining to HSA governing body composition by adding two additional provider categories for "non-professional health workers" and "other providers of health and mental health care."

Section 114(a). Amends section 1512(b)(3)(C)(iii)(II) to provide flexibility (but not mandate) for increased nonmetropolitan representation on HSA boards by assuring that the percentage of representatives from nonmetropolitan areas is "at least" equal to the percentage of residents in such nonmetropolitan areas.

Section 114(b). Amends sections 1512(b)(3)(C)(iii)(III) to clarify that "ex officio" means nonvoting.

Section 115. Amends section 1512(b)(3)(C)(iv) to mandate that subcommittees or advisory groups of HSA boards have a consumer majority.

Liability suits

Section 116(a). Amends section 1512(b)(4) to revise and broaden scope of protection against personal liability suits and to provide protection for consultants and agents of the HSA, as well as members and employees. Provides that no such individual will be considered liable if he could have reasonably believed he was acting within the scope of official duties and acted without gross negligence or malice toward any person affected by it.

Section 116(b). Amends section 1524 to provide protection against person liability suits for SHCC members, employees, consultants, and agents identical to that provided under section 116(a) above to HSA's.

Requirements for executive committees

Section 117. Amends section 1512(b)(6) to add requirements that any executive com-

mittee of the HSA or any other entity appointed by the governing body or executive committee of the HSA and any subarea council shall conduct its business meetings in public (except for meeting or portions thereof called to discuss the performance or remuneration of an individual employee which, if public would constitute a clearly unwarranted invasion of the personal privacy of such employee), give adequate notices of its meetings to those persons who have requested such notice, and make its records and data available, upon request, to the public (other than personnel records and data regarding an individual employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of such employee).

Requirements for health plans of HSA's and State agencies

Section 118(a). Amends section 1513(b)-(2) to increase the material to be included in the health systems plan (HSP) of an HSA. In addition to other requirements, the HSP must include a description of institutional health services needed for the well-being of persons receiving care within the health service area, including at a minimum, the number and type of medical facilities, rehabilitation facilities, nursing homes, beds and equipment needed to provide acute inpatient, psychiatric inpatient, obstetricial inpatient, neonatal inpatient, long term care, and treatment for alcohol and drug abuse, and the extent to which existing medical facilities, rehabilitation facilities, nursing homes, beds, and equipment are in need of modernization or conversion to new uses, and the extent to which new facilities and equipment need to be constructed or acquired. Similar information would have to be provided on other noninstitutional health services, specifically the number and type of health maintenance organizations, outpatient (including primary care) facilities, rehabilitation facilities, facilites for treatment of alcohol and drug abuse, and other medical facilities, and home health agencies and equipment needed to provide public health services and outpatient care.

Section 118(b). Amends section 1523(a)(4)(B) to require that certificate of need decisions be consistent (except in emergency circumstances that pose a threat to public health) with the State health plan.

Section 118(c). Amends section 1524(c)(A) to require that the State health plan prepared by the SHCC have the concurrence of the Governor.

Section 118(d). Amends section 1524(c)(2) to require that the State health plan contain information similar to that set forth above for the plans developed by HSA's. Stipulates that the State health plan must be coordinated with the State mental health plan developed pursuant to the Community Mental Health Centers Act, the State alcohol abuse plan developed pursuant to the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act, and the State drug abuse plan developed pursuant to the Drug Abuse Office and Treatment Act of 1972. The State health plan is also to address the resource requirements of manpower, facilities, equipment, and funds necessary to provide access, availability and quality services at reasonable cost to persons receiving care within the State, including at a minimum, the types of facilities and services enumerated above the HSA's.

Section 118(e). Amends section 1524(c)(2) to stipulate that until a State health plan is in effect, the Secretary may not make any grant to the State health planning and development agency pursuant to section 1525.

Section 119(a). Amends section 1513(b)(2) to expand the public hearing requirement of HSA's for amending as well as establishing the health systems plan.

Section 119(b). Amends section 1513(b)(3) to extend the public hearing requirement to the establishment, review, and amendment of the annual implementation plan, as well as the HSP.

Section 119(c). Amends section 1513(b)(2) to require that the HSP include identifiable alcohol abuse, drug abuse, and mental health components, and address specifically the needs of all medical underserved populations in the health service area.

Section 119(d). Amends section 1513(b)(2)(C) to delete the requirement that the HSP is consistent with the national guidelines issued by the Secretary under section 1501.

Section 119(e). Amends section 1513(b) to require that the HSA shall submit to the SHPDA, the SHCC, and the Secretary a detailed statement of the reasons for any inconsistencies between its HSP and AIP and the national guidelines.

Technical assistance

Section 120. Amends section 1513(c)(2) to mandate HSA's to provide technical assistance in obtaining and filling out necessary forms to applicants applying for projects needed to achieve the HSP. Permits HSA's to also provide other technical assistance.

Carryover of grant funds

Section 121(a)-(d). Amends sections 1513(c)(3), 1516(a), 1525(a), and 1526(c)(1) to allow for carryover of grant funds for HSA's and State agencies and for area health services development funds and State rate regulation projects. Provides that in the event a grant is renewed, it may be carried forward to the subsequent grant period without being deducted from the subsequent grant award.

Coordination HSA/State agency activities

Section 122(a). Amends section 1513(d) to provide that an HSA will also coordinate its activities with entities which review rates and budgets of health care facilities in the health service area and with appropriate area agencies on aging, local and regional alcohol abuse, drug abuse, and mental health planning agencies.

Section 122(b). Amends section 1522(b)(7)(A) to provide that the State agency coordinate its activities with such rate and budget review entities in the State.

Appropriations review

Section 123(a). Amends section 1513(g) to clarify that HSA appropriateness review should, at a minimum, address the issues of accessibility, financial viability, cost effectiveness, costs and charges to the public and quality of services provided.

Section 123(b). Amends section 1513(e)(1)(B) to clarify that grants or contracts under titles IV, VII, or VIII of the PHS Act should not be reviewed by the HSA's unless they are to be made, entered into, or used to support the development of health resources or the delivery of health services that would make a significant change in the health services offered within the health service area.

Section 124. Amends section 1513(g)(1) to focus but not limit the scope of mandated HSA appropriateness review to at least those services included in the State health plan.

Technical assistance

Section 125. Amends section 1514 to require the Secretary to provide technical assistance to agencies that have the potential to become HSA's as defined in the law.

Section 126(a)-(b). Deletes the last sentence of section 1515(b) and the last sentence of section 1515(c)(2) in order to eliminate the priority for HSA designation of former 314(b) agencies and regional medical programs formerly authorized under title IX.

Extension of full designation periods for HSA's

Section 127(a)-(d). Amends sections 1515(c)(1) and 1515(c)(3) to extend the period of full designation agreements of HSA's from 1 year to 3 years, and to permit the Secretary, if he finds an HSA has not been performing satisfactorily, to terminate it or return it to a conditional status for 1 year, after which time the agency must either be automatically terminated or returned to full designation after appropriate consultation.

Section 128. Amends section 1515(d) to provide a conforming amendment pertaining to HSA designation agreements.

HSA funding levels

Section 129(a)-(b). Amends sections 1516(b)(2)(A)(i) and 1516(b)(3) to provide that minimally funded HSA's shall receive at least $250,000 in the fiscal year ending September 30, 1980, $270,000 in fiscal year 1981, and $290,000 in any succeeding fiscal year.

Section 129(c). Amends section 1516(c)(1) to authorize appropriations of $150 million for fiscal year 1980, $175 million for fiscal year 1981, and $200 million for fiscal year 1982.

Section 129(d). Amends section 1516(d) to provide that, of the amounts appropriated under section 129(c), the Secretary may use not more than 5 percent of such amounts to increase grants in such fiscal year to a health systems agency to assist it in meeting extraordinary expenses including but not limited to those that may occur when HSA's are located in more than one State or serve a large health service area or a large rural or urban medical underserved population.

Section 129(e). Amends section 1516(c)(2) to conform with sections 129 (a) and (b).

Section 130. Amends section 1516(b) to allow minimally funded health systems agencies to be eligible for federal matching funded as are other HSAs.

Extension of full designation periods for State agencies

Section 131(a)-(b). Amends section 1521(b)(3) and 1521(b)(4) to change designation requirements for the State agencies from annually to every 3 years and to permit the Secretary the option of either terminating or returning a fully designated SHPDA to conditional status for a 1-year period for nonperformance of its functions. After the 1-year period, the Secretary must either fully designate the SHPDA or terminate its agreement after appropriate consultations.

Penalty for States not in compliance

Section 132. Amends section 1521(d) to provide that a State without a State agency designation agreement in effect by September 30, 1980, would be subject to a 25-percent reduction in the amount of any allotment, grant, loan, loan guarantee, and any contract under this act, the Community Mental Health Centers Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 for the development, expansion, or support of health resources until such time as an agreement is in effect. Such amounts would be reduced by 50 percent if no agreement were in effect by September 30, 1981, by 75 percent after September 30, 1982, and by 100 percent after September 30, 1983.

Judicial review of State agency decisions

Section 133(a). Amends section 1522(b) to provide for judicial review of a final decision rendered by a State agency under a certificate of need or appropriateness review. Any person adversely affected by such a decision may within a reasonable period of time after the decision is made and any review is made by the State reviewing agency (other than the SHPDA) designated by the Governor, obtain judicial review of such a decision in an appropriate State court. The State agency decision is to be affirmed unless it is found

to be arbitrary or capricious, or was not made in conformity with the applicable law.

Section 133(b). Amends section 1522(b)(13)(A) to require that appeals of State agency decisions be performed in a timely manner.

Section 134. Amends section 1522(c) to effect a conforming change proposed under section 131 changing annual designation of the SHPDA to triannual.

Technical assistance

Section 135(a). Amends section 1523(a) to require SHPDA's to provide technical assistance in obtaining and filling out the necessary forms to individuals and public and private entities for the development of projects and programs.

State health plan

Section 135(b). Amends section 1523(a)(2) to require that the preliminary State health plan include an identifiable alcohol abuse, drug abuse, and mental health component to be prepared by the respective alcoholism, drug abuse, and mental health authorities, respectively, designated by the Governor. The alcohol abuse, drug abuse, and mental health components of the HSP's submitted by HSA's for inclusion in the State health plan may, as found necessary by the respective State authorities, contain revisions of such components to achieve their appropriate coordination or to deal more effectively with statewide alcohol abuse, drug abuse, and mental health needs. The remainder of such preliminary State plan may, as found necessary by the State agency, also contain revisions of such HSP's to achieve their appropriate coordination or to deal more effectively with statewide needs. The preliminary State health plan will be submitted to the SHCC for approval or disapproval and for use in developing the final State health plan.

Certificate of need

Section 136(a). Amends section 1523(a)(4) to clarify the Secretary's role in approving certificate of need programs by revising the current provision calling for a program satisfactory to the Secretary and substituting a requirement that the program be consistent with standards established by regulations of the Secretary. Requires the certificate-of-need program to provide enforcement procedures and penalties. Further requires the program to conduct a periodic review at least every 24 months of the progress being by an institution granted a certificate of need. Requires a certificate of need to be withdrawn if (in the absence of unforeseen and unavoidable circumstances) substantial progress is not being made toward making the service or facility for which the certificate was issued available for use. Also requires that issuance of a certificate of need be based solely on the record established in administrative and judicial proceedings (as provided for in this title) held with respect to an application.

Provides that no certificate of need program shall have provisions for the review and determination of need of services, facilities, equipment, and organization of health maintenance organizations and the entities through which their services are provided except for new institutional health services of hospitals controlled directly or indirectly by health maintenance organizations and diagnostic or therapeutic equipment (as that term is used in section 1531(5)) of health maintenance organizations.".

Section 136(b). Amends section 1523 to require that:

(1) State certificate of need programs shall provide for review and determination of need prior to the acquisition of diagnostic or therapeutic equipment (as that term is used in section 1531(5) which will not be owned by or located in a health care facility if—

(A) the notice required by paragraph (2) is not filed in acccordance with that paragraph with respect to such acquisition, or

(B) the State Agency finds, within 30 days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the equipment will be used to provide services on a regular basis for inpatients of a hospital.

(2) Before any person enters into a contractual arrangement to acquire such diagnostic or therapeutic equipment which will not be owned by or located in a health care facility, such person shall notify the State Agency of the State in which such equipment will be located of such person's intent to acquire such equipment. Such notice shall be made in writing and shall be made at least 30 days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given.

Section 132. Amendments section 1523(a)(5) to provide a technical and conforming amendment which clarifies the role of the HSA in States with approved certificate-of-need programs. Would, in effect, delete requirements of section 1523(a)(5) once there is an acceptable certificate of need program in place.

Statewide Health Coordinating Council (SHCC)

Section 13(a)–(b). Amends sections 1524(c)(1) and 1513(b)(2) to direct the SHCC to establish in consultation with the HSA's and the State agency a uniform format for HSP's and AIP's.

Section 13(c). Amends section 1524(b)(1) to clarify that consumers and providers of health care include consumers and providers of mental health care, for purposes of SHCC composition. Further amends section 1524(b)(1)(D) to provide, for ex officio representation of the Veterans' Administration on the SHCC when the State has at least one VA facility, rather than at least two such facilities as currently provided.

Section 13(d). Amends section 1524(c)(6) to mandate that the SHCC review State plans pursuant to section 409 and 410 of the Drug Abuse Office and Treatment Act.

Section 138(e). Amends section 1524(b)(1) to require that the SHCC include consumer members who are members of rural and urban medically underserved populations, if such populations exist in the State.

Authorization levels for State agencies

Section 139. Amends section 1525(c) to increase authorization levels for grants to State health planning and development agencies. Authorizes $40 million for fiscal year 1980, $45 million for fiscal year 1981, and $50 million for fiscal year 1982.

Section 140. Amends section 1526(e) to extend authorizations for grants for State rate regulation experiments as follows: $6 million for fiscal year 1980, $7 million for fiscal year 1981, and $7 million for fiscal year 1982.

Definitions

Section 141(a). Amends section 1531(3)(A) by striking "substance" and inserting in lieu thereof "alcohol and drug" and by including rehabilitation facilities among the institutions included in the "provider of health care" definition.

Section 141(b). Amends section 1531(3)(B)(i) to allow consumers who serve on governing boards of other health organizations and agencies to be considered as consumers, rather than indirect providers, for the purposes of this act.

Section 142. Amends section 1531(5) to broaden State certificate-of-need requirements by redefining "institutional health services" to mean health services provided through health care facilities as defined in regulations of the Secretary, including but not limited to private and public hospitals, rehabilitation facilities, and nursing homes if such services entail annual operating costs of $50,000 or more; and diagnostic or therapeutic equipment, acquired through purchase, rental, lease, or gift, valued at the time of acquisition in excess of $150,000, used in the delivery of health care services by a health care facility. In determining whether diagnotic or therapeutic equipment has a value in excess of $150,000, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment will be included.

Procedures and criteria for review

Section 143. Amends section 1532(a) to stipulate that procedures and criteria for review by HSA's and State agencies must provide that applications be submitted in accordance with established timetables, that reviews be undertaken in a timely fashion, and that applications for similar types of services and facilities be considered in relation to each other no less often than twice a year. Reviews of similar types of institutional health services affecting the same service area must be considered in relation to each other. This section also provides that HSA's and State agencies must cooperate in the development of procedures and criteria to the extent appropriate to the achievement of efficiency in their reviews and consistency in criteria for such reviews.

Section 144(a–b). Amends sections 1532(b)(2) and section 1524(c) to clarify that failure of a HSA or State Agency or SHCC to complete a review within the period prescribed for the review may not be deemed by such an entity to constitute a negative finding, recommendation, or decision with respect to the subject of such review.

Section 144(c). Amends section 1532(b) to provide that for HSA and State agency reviews of certificate of need applications and reviews of appropriateness of services, and where appropriate for other reviews, each participant may present evidence and arguments orally and/or by written submission; each participant may cross-examine any other participant who makes a factual allegation relevent to such review; a hearing record is to be maintained; HSA and State agency decisions are to be based solely on the hearing record; and there will be a prohibition on ex parte contracts with individuals voting on the review process.

Section 145. Amends section 1532(b)(1) to require timely written notification to all affected parties at the beginning of a review and to require that all persons who have asked to be placed on a mailing list maintained by the HSA or SHPDA be notified of certain reviews by such agencies.

Section 146. Amends section 1532(b)(7) to provide for a timely notification of providers of health services and other persons of certain information.

Section 147. Amends section 1532(b)(8) to specify that public hearings are to be held prior to any decision made in the course of HSA or State agency review if requested by persons directly affected by the review.

Section 148(a). Amends section 1532(c)(9)(B) to provide that in the case of a construction project, HSA and State agency review will consider the probable impact of the project on the costs and charges of providing health services not only by the person proposing such construction project (as currently provided) but also "on the costs of providing health services by other persons."

Section 148(b). Amends section 1532(c) to provide that in addition to existing criteria the HSA and State agency must consider, in the case of existing services or facilities, the quality of care provided by such services or facilities in the past and the extent to which such proposed services will be accessible to

all the residents of the area to be served by such services.

Section 148(c). Amends section 1532 to establish criteria under which the certificate of need applications of HMO's will be reviewed and approved. Applications of Federally qualified HMO's for new institutional health services must be approved by the State agency if it finds (in accordance with criteria prescribed by the Secretary) that approval is required to meet the needs of present HMO members and new members who can reasonably be expected to enroll, and if the HMO is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner consistent with the basic method of operation of the HMO and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

Centers for health planning

Section 149(a)–(b). Amends section 1534 (a) and 1534(b)(1) to require the Secretary to enter into grants with the Centers for Health Planning, rather than allowing the existing option of grants or contracts.

Section 149(c). Amends section 1534(c)(2) to require the types of assistance and dissemination of information to HSA's and State agencies explicitly set forth in subsections (a) and (c) of section 1534 in order to be eligible for grants from the Secretary. Adds a requirement that Centers develop and disseminate methodologies to educate new HSA board members and staff and continuing education for present HSA members and staff and State agency staff.

Section 149(d). Amends section 1534(d) to extend the authorization for the Centers for Health Planning as follows: $12 million for fiscal year 1980, $15 million for fiscal year 1981, and $18 million for fiscal year 1982.

Comment authority

Section 150. Amends section 1535 to broaden the comment authority to any interested party. This would pertain to the process undertaken by the Secretary to review in detail at least every 3 years the structure, operation, and performance of each HSA and SHPDA. The Secretary is directed to consider the comments of any interested person.

Coordination with mental health activities

Section 151(a)–(b). Amends section 2(a)(3)(B) of Public Law 93-641 and section 1502 in order to insure more effective coordination of the planning efforts at the local and State level between the planning entities designated under the Community Mental Health Centers Act and the Health Planning and Resources Development Act of 1974 and to insure the more effective coordination of health and mental health services. Adds a Congressional finding that lack of effective coordination between the mental health care system and the physical health care system, both by providers and planners, has promoted fragmentation, lack of continuity, and inappropriate utilization of health resources. Further notes the lack of attention to and emphasis on the behavioral aspects of physical health care and status. Adds to the list of national health priorities the following:

Promotion of those health services which are provided in a manner cognizant of the emotional and psychological components of the prevention and treatment of illness and the maintenance of health;

The elimination of inappropriate placement in institutions of persons with mental health problems and improvements in the quality of care provided to persons with mental health problems for whom institutional care is appropriate; and

The assurance of access to community health centers and other mental health care providers for needed mental health services and the emphasis on outpatient care as a less restrictive alternative to inpatient mental health services.

Indian self-determination

Section 152(a). Amends section 1513(e) to provide for Indian self-determination as related to health planning by inserting after the term "Indian tribe" the phrase "(as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act.)"

Review of Federal funds

Section 152(b). Amends 1513(e) to require that when an HSA is requested to review a proposed use of Federal funds, other than those specified in section 1513(e)(1)(A), to support the development of institutional health services intended for use in the health service area, the health systems agency must, within 60 days of receiving such a request, submit its views on such proposed use to the Federal department ro agency involved and to the appropriate committees of Congress.

Indian self-determination

Section 152(c). Amends section 1513(e) to add a new requirement for HSA's having an Indian tribe or intertribal Indian organization located within such agencies health service areas. HSA's are directed to carry out their functions in a manner that recognizes tribal self-determination and are to seek to enter into agreements with the tribes or organizations on matters of mutual concern, as defined in regulations of the Secretary.

Definitions of health maintenance organization, medical underserved population, and rehabilitation facility

Section 153. Amends section 1531 to add new definitions of the term "health maintenance organization" for purposes of this act. The term "health maintenance organization" means an entity which has had an approved application for assistance under section 1304, or a public or private organization organized under State laws, which (1) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive service, and out-of-area coverage; (2) is compensated (except for copayment) for the provision of the basic health care services listed in paragraph (1) to enrolled participants on a predetermined periodic rate basis; and (3) provides physicians services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis). Provides that for purposes of section 1532(d), as added by section 148(c) above, a health maintenance organization means an entity determined by the Secretary to be a qualified health maintenance organization pursuant to section 1310(d) of the PHS Act.

Further provides that the term "medical underserved population" has the same meaning as such term has under section 330(b)(3) of the PHS Act.

Defines the term "rehabilitation facility" as follows: a facility operated for the primary purpose of providing rehabilitation services to handicapped individuals and providing singly or in combination one or more of the following services for handicapped individuals: (A) rehabilitation services which shall include, under one management, medical, psychological, social, and vocational services, (B) testing, fitting, or training in the use of prosthetic and orthotic devices, (C) prevocational conditioning or recreational therapy, (D) physical and occupational therapy, (E) speech and hearing therapy, (F) psychological and social services, (G) evaluation of rehabilitation potential, (H) personal and work adjustment, (I) vocational training with a view toward career advancement (in combination with other rehabilitation services), (J) evaluation or control of specific disabilities, (K) orientation and mobility services to the blind, and (L) extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market, except that all medical and related health services must be described by, or under the formal supervision of, persons licensed to prescribe or supervise the provision of such services in the State.

Section 154. Amends section 1513(b)(2)(A) to clarify the phrase "healthful environment" by adding "(primary with regard to health care equipment and health services provided by health care institutions, health care facilities, and other providers of health care and other resources)".

Effective dates

Section 155. Provides that amendments made by this title will take effect on the date of enactment of this Act, except for the following: amendments made by section 104, 105(a), 105(b), 106, 107, 113, 114(a), 118, 119(c), 134(b), 135, 137(a), 137(b), 137(c), and 148(a) will take effect one year after the date of enactment and the amendments made by sections 143 and 148 take effect six months after enactment, except that on or that the date of enactment of this Act health systems agencies, State agencies, and SHCCs may make the organizational and related changes required and may act in accordance with the changes in their functions made by such amendments.

TITLE II—REVISION AND EXTENSION OF HEALTH RESOURCES DEVELOPMENT AUTHORITY

State medical facilities plan

Section 201. Amends section 1603(3) to require that the Governor as well as the SHCC approve the State medical facilities plan.

Authorization levels

Section 202. Amends section 1613 to provide that the Secretary may make funds appropriated for use in fiscal year 1976 under this section but not expended available through September 30, 1980, to carry out the purposes of section 1625(d) pertaining to special project grants for public hospitals with safety hazards or accreditation problems.

Section 203. Amends section 1622(e)(2) to authorize for appropriations such sums as may be necessary for fiscal year 1980, fiscal year 1981, and fiscal year 1982 for loans and loan guarantees.

Section 204. Amends section 1625(d) to authorize appropriations for grants for construction or modernization projects under section 1625 as follows: $75 million for fiscal year 1980, $100 million for fiscal year 1981, and $125 million for fiscal year 1982.

Section 205. Amends section 1640(d) to authorize appropriations for grants for area health services development funds under section 1640(a) as follows: $40 million for fiscal year 1979, $70 million for fiscal year 1980, and $130 million for fiscal year 1981.

Voluntary discontinuance of unneeded hospital services

Section 206. Amends title XVI to add at the end the following new part:

Part G—Program to Assist and Encourage the Voluntary Discontinuance of Unneeded Hospital Services

New section 1641. Provides that the Secretary will, by April 1, 1980, establish a program under which financial assistance and encouragement will be provided for the consolidation of duplicative hospital services and the discontinuance of unneeded hospital services.

Assistance under the program

New section 1642(a)(1). Permits any hospital in operation on the date of enactment of this part to apply for a debt payment and an incentive payment if it intends to discontinue providing inpatient health services, for an incentive payment if it intends to discontinue an identifiable unit of the hospital providing inpatient health services, or for a conversion payment if it intends to convert an identifiable part of the hospital into providing ambulatory care services, long-term care services, or any other services designated by the Secretary. In the case of conversion, the State agency which would have jurisdiction over such services must determine, after considering recommendations of the appropriate HSA, that such services are needed.

New section 1642(a)(2). Provides that the incentive payment authorized above may be used for (A) the planning, development (including the cost of construction and acquisition of equipment), and delivery of ambulatory care services, home health care services, long-term care services, or other services (designated by the Secretary) for the community served by the applicant for such payment, which services the State agency has determined are needed, after considering the recommendations of the appropriate HSA; (B) if the applicant has merged with another hospital, preparation of that hospital to serve patients of the closed hospital; (C) reasonable (as determined under guidelines prescribed by the Secretary) termination pay for personnel who lose employment because of discontinued inpatient services, or for retraining of such personnel, and assisting them in securing employment; or (D) any combination of these activities.

New section 1642(b). Provides that an application of a hospital for such assistance must include the following information:

Description of the service (or services) to be discontinued or the part of the hospital to be converted;

an evaluation of the impact of such change on the provision of health care in the health service area where the hospital is located;

if the services of a hospital unit or all hospital services are to be discontinued or converted, an estimate of the change in the applicant's revenues resulting from such change;

with respect to incentive payments for discontinuance of all hospital services, a description of the activities for which such payment is intended, the means with which (including any Federal financial assistance the applicant intends to apply for) and the manner in which the applicant will carry out such activities, the amount to be expended, and identification of the person (if it is not the applicant) responsible for making expenditures;

with respect to incentive payments for discontinuing identifiable hospital units, a description of the use the applicant will make of such payment;

an evaluation of the impact of such discontinuance or conversion on the employees of such hospital; and

such other information as the Secretary may by regulation require.

Provides that a hospital having an application under this subsection approved by the Secretary is entitled to receive the payments applied for.

New section 1642(c). Provides that the health systems agency for the health service area in which the applicant is located will determine the need for the service proposed to be discontinued or part of the hospital to be converted. The HSA will make a recommendation to the State agency respecting approval by the Secretary of such applicant's application. HSA determinations will be based on criteria developed pursuant to section 1532(c).

New section 1642(d). Provides that the State agency, after considering the HSA's recommendation under subsection (c) above, will make a recommendation to the Secretary regarding approval by the Secretary of such an application. A State agency recommendation will be based on the need for the service to be discontinued or part of the hospital to be converted, and other criteria the Secretary may by regulation prescribe, and will be accompanied by the HSA's recommendation with respect to approval of such application.

New section 1642(e). Directs the Secretary to consider recommendations of the State agency and HSA and prohibits him from approving an application which a State agency has recommended against.

New section 1642(f). Directs HSA's and State agencies, in considering the need for the services to be discontinued, to give special consideration to the unmet needs and existing access patterns of urban or rural poverty populations.

New section 1642(g). States that for purposes of this title, the term "hospital" means an institution (including a distinct part of an institution participating in the program established under title XVIII of the Social Security Act) which satisfies paragraph (1) and (7) of section 1861(e) of such act, but does not include a Federal hospital.

Amount of payments

New section 1643(a). Provides that the amount of a debt payment for discontinuance of all inpatient services is the sum of the lesser of (A) the total outstanding financial obligation attributable (as determined under regulation) to the acquisition of equipment and facilities of the hospital, or (B) the amount of unexpended depreciation attributable (as determined by regulation) to such equipment and facilities, less the fair market value (as defined by the Secretary) of the equipment and facilities, plus any other expenses (as defined by regulation) resulting from the financial obligation of the applicant being satisfied before due.

New section 1643(b). Provides that incentive payments to a hospital for discontinuance of all of its services would include an amount not in excess of the amount reported by the hospital under section 1642. If a hospital is discontinuing a unit, the incentive payment would equal an amount not in excess of 30 percent of the charges reported as attributable to that unit in the previous hospital accounting fiscal year pursuant to generally acceptable accounting principles prescribed by regulations of the Secretary.

New section 1643(c): Provides that conversion payments would equal 50 percent of the reasonable (as determined by criteria established in regulations) cost of the conversion approved in the application.

New section 1643(d). Provides that the debt, incentive, and conversion payment to which a hospital is entitled will be paid in a single payment.

New section 1643(e). Precludes the Secretary from making a payment under this section until the Secretary of Labor has certified that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against worsening of their positions with respect to their employment including but not limited to, arrangements to preserve the rights of employees under collective-bargaining agreements; continuation of collective-bargaining rights consistent with provisions of the National Labor Relations Act; reassignment of affected employees to other jobs; retraining programs; protecting pension, health benefits, and other fringe benefits of affected employees; and arranging adequate severance pay, if necessary. Procedure for certification by the Secretary of Labor shall conform to standards established by him by regulation.

New section 1643(f). Authorizes appropriations for payments under this part in the following amount: $50 million for fiscal year 1980, $100 million for fiscal year 1981, and $150 million for fiscal year 1982.

Study

New section 1644. Directs the Secretary to make a study of the first 25 applications approved under section 1642 to determine their effect on the elimination of unneeded hospital services. The Secretary will report the results of such study to the Congress together with his recommendations for any revisions in the program which he determines to be appropriate, including any revision in the authorization of appropriations for such program.

Effective date

Section 207. Provides that, except as provided in section 206, the amendments made by this title will take effect on the date of enactment.

TITLE III—MISCELLANEOUS AMENDMENTS

Section 301. Amends section 314 of the PHS Act by repealing subsections (a), (b), and (c).

Section 302. Repeals title IX in its entirety.

Section 303. Provides that the amendments made by this title will take effect on the date of enactment of this act.

● Mr. SCHWEIKER. Mr. President, I am today joining with Senator KENNEDY in introducing a bill to amend the Health Planning Act of 1974, Public Law 93–641. As ranking Republican of the Human Resources Committee and its Subcommittee on Health and Scientific Research, I am committed to an integral planning process whose strength lies at the State and local levels. I firmly believe that only through the joint participation of consumers, providers, and pertinent governmental agencies in the planning process can we begin to achieve quality health care at a reasonable cost.

As you know, Mr. President, the Senate passed a similar bill, S. 2410, last session. This bill updates and modifies that legislation. In developing these amendments, a bipartisan effort coalesced to address the problems we identified. We worked long and hard to insure that all those groups involved with or affected by the health planning process could express their views. We received over 300 responses to our letter containing questions on the effectiveness of the existing planning structure to meet local health needs.

In addition, we held extensive meetings with various interested groups. In February 1978, the Subcommittee on Health and Scientific Research held 3 days of hearings on this legislation. Testimony was received from legislators, the administration, providers, consumers, union leaders, government leaders, and planning professionals. Moreover, written statements from scores of additional witnesses were included in the record.

Several of the initial provisions of S. 2410 met with concern and even opposition. Amendments were introduced, debates were waged, and everyone's voice was heard before the final bill was passed. While the House failed to produce similar legislation, the efforts of the last session were not in vain. With minor modifications, we now have a set of amendments to the health planning

law which have withstood the scrutiny of our Senate colleagues.

The amendments build upon and strengthen rather than tear down the planning mechanisms currently in place. We were mindful of the progress made in the original act's implementation and have done little to disrupt HSA operations. Nevertheless, substantial changes in the structure of the planning process are made.

First, we have rightfully reinforced the role of State government in controlling health planning. The Governor will have final veto power over the State health plan. He may also request changes in existing HSA boundaries. The State plan will not be bound by Federal guidelines nor will the Department of Health, Education, and Welfare have authority to approve the plan. Response to the Federal guidelines proposed in 1977 demonstrated that the public will not tolerate Federal control or intervention when it comes to planning local health needs.

Second, certificate of need decisions must conform to the State health plan. Planning, unless it is tied to certificate of need, is of little value. Periodic review of certificate of need decisions is established to monitor their progress. Moreover, several procedures and criteria have been stipulated to tighten the States' control. I am convinced these steps are essential to maintain the integrity of the planning process.

Third, a positive incentive toward realining our health care resources was added to the bill. For the first time HSA's will be asked to identify unneeded services and facilities. The act provides authorization for grant moneys to be made available to those institutions who agree to eliminate such facilities or convert inpatient services to ambulatory or long term care activities. The grant funds are intended to compensate for the costs involved in the terminations or conversions. I think it is important to note that this is a voluntary program which carries no authority to "condemn" property.

Fourth, I am pleased to note that the bill contains improved provisions to better integrate the health maintenance organization concept with the principles of health planning. These are a slightly modified version of the language approved by the Senate last session carefully tailored to meet certain objections we encountered in discussion with the House. Under existing law, HMO's are subject to certificate-to-need requirements for virtually all phases of their operation. The activities of fee-for-service providers, on the other hand, are seldom covered by CON laws. This situation has increasingly frustrated the growth of HMO's, despite the fact that their internal cost containment incentives ideally equip them to meet many of the problems the Planning Act was designed to solve, and despite a clear congressional policy to encourage the availability of HMO's to the American public. The bill's provisions would go a long way toward equalizing the treatment of HMO's and fee-for-service providers under the Planning Act. They represent the final step in full enactment of the legislative package introduced last year as the Schweiker-Kennedy Health Maintenance Act amendments of 1978.

There are other significant provisions in the legislation. Planning efforts for mental health, alcohol and drug abuse have been coordinated to avoid duplication. Criteria have been developed which assure representation and emphasize the particular health needs of rural and medically underserved areas on HSA's. Certificate-of-need requirements have been extended to medical equipment valued over $150,000. Acquisition of medical equipment by any health care institution is covered by this provision whereas equipment in a physician's office is subject only if used to provide services for inpatients of a hospital on a regular basis. A tougher provision passed the Senate last year covering all medical equipment over $150,000 regardless of location. The amended version in this bill I believe is a realistic approach which addresses itself to duplication of expensive medical equipment for inpatient services.

In summary, Mr. President, I believe the amendments contained in this bill move the integrity of the planning process well ahead and alleviate some of the glaring problems of the current system. Perhaps more importantly, the bill protects and enhances the principle of local planning. I think it is in the best interests of this country to give the planning process at the local level an opportunity to work. I urge my colleagues to join Senator KENNEDY and me in supporting this important legislation.●

ADDITIONAL COSPONSORS

S. 32

At the request of Mr. PRESSLER, the Senator from Mississippi (Mr. COCHRAN), the Senator from Wyoming (Mr. SIMPSON), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 32, to modify the method of establishing quotas on the importation of certain meat, and for other purposes.

S. 52

At the request of Mr. BENTSEN, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 52, the Regulatory Conflicts Elimination Act of 1979.

S. 53

At the request of Mr. BENTSEN, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 53, the Independent Agencies Regulatory Improvements Act of 1979.

S. 54

At the request of Mr. BENTSEN, the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 54, the Regulatory Cost Reduction Act of 1979.

S. 55

At the request of Mr. BENTSEN, the Senator from Wyoming (Mr. WALLOP) was added as a cosponsor of S. 55, the Meat Import Act of 1979.

S. 79

At the request of Mr. BAKER, on behalf of Mr. HELMS, the Senator from Texas (Mr. TOWER), the Senator from Michigan (Mr. RIEGLE), and the Senator from Montana (Mr. MELCHER) were added as cosponsors of S. 79, a bill to restore the gasoline tax deduction.

S. 104

At the request of Mr. SCHMITT, the Senator from Iowa (Mr. JEPSEN) was added as a cosponsor of S. 104, the Regulatory Reduction and Congressional Control Act.

S. 210

At the request of Mr. RIBICOFF, the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 210, a bill to establish a Department of Education.

S. 262

At the request of Mr. RIBICOFF, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 262, the Reform of Federal Regulation Act of 1979.

S. 268

At the request of Mr. DURKIN, the Senator from South Dakota (Mr. PRESSLER) was withdrawn as a cosponsor of S. 268, the Soft Drink Bottlers' Protection Act of 1978.

S. 414

At the request of Mr. BAYH, the Senator from Rhode Island (Mr. CŒAFEE) was added as a cosponsor of S. 414, the University and Small Business Patent Procedures Act.

S. 421

At the request of Mr. TALMADGE, the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 421, to provide for demonstration projects for training and employment of recipients of benefits under programs of aid to families with dependent children, as homemakers and home health aides.

S. 505

At the request of Mr. TALMADGE, the Senator from Georgia (Mr. NUNN) was added as a cosponsor of S. 505, the medicare-medicaid administrative and reimbursement reform bill.

SENATE JOINT RESOLUTION 1

At the request of Mr. BAYH, the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of Senate Joint Resolution 1, to provide for the direct popular election of the President and Vice President of the United States.

SENATE RESOLUTION 49

At the request of Mr. SCHMITT, the Senator from South Carolina (Mr. THURMOND) and the Senator from Alabama (Mr. STEWART) were added as cosponsors of Senate Resolution 49, a resolution to disapprove Amtrak route terminations.

SENATE RESOLUTION 78

At the request of Mr. HATFIELD, the Senator from New Hampshire (Mr. DURKIN), the Senator from New Mexico (Mr. SCHMITT), and the Senator from Massachusetts (Mr. TSONGAS) were added as cosponsors of Senate Resolution 78, with respect to the immediate need for energy preparedness in the United States, in light of world oil supplies and the situation in Iran.

SENATE RESOLUTION 89—SUBMISSION OF A RESOLUTION DESIGNATING THE HUGH SCOTT ROOM IN THE U.S. CAPITOL

Mr. HATFIELD submitted the following resolution, which was referred to the

Committee on Rules and Administration:

S. RES. 89

Resolved, that Room S-120 in the U.S. Capitol is designated as the Hugh Scott Room.

SENATE RESOLUTION 90—SUBMISSION OF A RESOLUTION RELATING TO THE NATIONAL SCHOOL LUNCH PROGRAM AND THE CHILD NUTRITION ACT OF 1966

Mr. McGOVERN (for himself and Mr. DOLE) submitted the following resolution, which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. RES. 90

Whereas the programs administered under the National School Lunch Act and the Child Nutrition Act of 1966 have grown steadily since their creation;

Whereas the programs administered under the National School Lunch Act and the Child Nutrition Act of 1966 have never been comprehensively studied and assessed;

Whereas there has been insufficient evaluation of the programs success in meeting their statutorily established goals;

Whereas there are limited national data upon which to project the potential consequences of modifications in the programs administered under these Acts;

Whereas the General Accounting Office has, on several occasions, recommended the development of an adequate analytical capability at the Department of Agriculture to evaluate the child nutrition programs;

Whereas the President has proposed significant reductions and redistributions in his budget request for these programs for fiscal year 1980 that would require legislation; and

Whereas the General Accounting Office after months of analysis testified before the Committee on Agriculture, Nutrition, and Forestry on February 27, 1979, that "The Department had little convincing evidence to support their proposed modifications in the school lunch program": Now, therefore, be it

Resolved, That the Secretary of Agriculture is hereby requested to conduct a study of the programs administered under the National School Lunch Act and the Child Nutrition Act of 1966. The study is to include, but not be limited to, consideration and assessment of (1) program costs, including procedures to implement uniform accounting methods for full cost accounting; (2) actions necessary to develop a national survey data base on these programs suitable for making projections of program participation and cost through simulation or other techniques; (3) the composition and income of families participating in the programs; (4) the effect of program participation, by income category, on the participants' nutrient intake and health; (5) whether the existing levels of program benefits are appropriate for the participants' needs; (6) whether the statements of policy contained in the National School Lunch Act and the Child Nutrition Act of 1966 should be modified; (7) the feasibility of using the school lunch room as a nutrition education classroom; (8) the contribution of the programs to the agricultural economy, including commodity by commodity and regional analyses; (9) the options for dissemination of information on successful school food service operating procedures; and (10) the need for legislative changes on the items specified for consideration herein.

SEC. 2. The Secretary is requested to report on the progress of the study to Congress by January 31, 1980, and submit a final report to Congress by March 21, 1981.

SEC. 3. The Secretary of the Senate shall transmit copies of this resolution to the President and the Secretary of Agriculture.

AMENDMENTS SUBMITTED FOR PRINTING

TAIWAN ENABLING ACT—S. 245

AMENDMENTS NOS. 72 THROUGH 78

(Ordered to be printed and to lie on the table.)

Mr. HELMS submitted seven amendments intended to be proposed by him to S. 245, a bill to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

NOTICES OF HEARINGS

INITIATIVES TO REDUCE U.S. DEPENDENCE ON IMPORTED OIL

● Mr. JACKSON. Mr. President, on Monday, March 12, 1979, the Committee on Energy and Natural Resources will hold a hearing on possible initiatives to reduce U.S. dependence on imported oil. The committee's letter of invitation to the Secretary of Energy indicates several measures to reduce energy consumption and increase energy supply which will be analyzed. I ask unanimous consent that a copy of this letter be included in the RECORD at the conclusion of my remarks. Note that the time and place of the hearing has been changed from that indicated in the letter. The hearing is now scheduled for 9:30 a.m. in room 318 of the Russell Senate Office Building.

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

U.S. SENATE,
Washington, D.C. March 2, 1979.

HON. JAMES R. SCHLESINGER,
Secretary, Department of Energy,
Washington, D.C.

DEAR MR. SECRETARY: On Monday, March 12, the Committee on Energy and Natural Resources will hold a hearing to discuss possible initiatives to reduce the dependence of the United States on imported oil. This hearing will begin at 10:00 a.m. in Room 3110 of the Dirksen Senate Office Building.

The purpose of this hearing is to provide an overview of the potential for increased domestic production of oil and alternate fuels, substitution of alternative fuels for petroleum in existing uses, and energy conservation in the near term as well as the prospects for additional measures to reduce our oil import dependence over longer time periods. At the hearing we would like you to present

(1) your estimates of the magnitude of energy supply increases or demand reductions, and the lead time associated with specific initiatives;

(2) identify any institutional or other obstacles to the realization of increased energy supply security; and

(3) indicate your recommendation as to the priority to be assigned actions which could be taken to accomplish early reductions in oil import dependence.

Attached is a list of measures which your testimony should discuss. Please feel free to include discussion of any additional measures you think appropriate. You will note this list omits nuclear energy initiatives. This has been done because the Committee assumes that the administration will submit legislation addressing Federal policy for nuclear energy.

In accordance with the standing rules of the Committee, it is requested that you provide the Committee staff with at least 10 advance copies of your remarks by close of business Friday, March 9, and 100 copies at the time of your appearance. Questions about this hearing should be addressed to D. Michael Harvey, Chief Counsel to the Committee, at 224-0611.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

MEASURES

NEAR TERM

Substitution of natural gas for oil;
Substitution of coal for oil;
Variances for use of higher sulfur fuel oil;
Wheeling of electric power based on coal, hydro or nuclear to regions where electricity is produced by burning oil;
Mandatory energy conservation;
Use of MMT in leaded gasoline;
Deferral of planned phasedown in the lead content of gasoline;
Production of crude oil from Federal leases at the maximum efficient rate of production or at the temporary emergency production rate (as defined in sec. 106 of P.L. 94-163);
Diversion of crude oil shipments designed for the Strategic Petroleum Reserve;
Pumping of oil stored in the Strategic Petroleum Reserve;
Shipment of Alaska and/or California crude oil on foreign flag VLCC tankers to Caribbean refineries for ultimate use on the U.S. East Coast;
Swaps of Alaska and/or California crude oil with Mexico or Japan;
Demonstration of short term energy conservation in Federal facilities and reduction in transportation use by Federal employees;
Accelerated weatherization of residences.

OTHER

Increased crude oil production from the Alaska North Slope;
Increased crude oil production from the Naval Petroleum Reserves;
New price incentives for marginal wells, oil from tertiary recovery and newly discovered oil;
Gasoline decontrol;
Substitution of gasohol;
Increased imports of natural gas and crude oil from Canada and/or Mexico;
Additional subsidies for energy conservation and use of solar heating and cooling in residential and commercial buildings;
Demonstration of solar energy and energy conservation in Federal buildings;
Accelerated leasing on the Outer Continental Shelf and other Federal lands;
Development of Naval Petroleum Reserve-4 in Alaska;
Demonstration of oil shale, coal liquefaction and solvent refined coal technologies;
Expedited energy production and transportation facilities siting at Federal, State and local levels;
Bio-gas from existing sources of urban, municipal, and agricultural waste.●

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on Armed Services may meet during the session of the Senate on Wednesday, March 7, beginning at 2 p.m. to hold a hearing on fiscal year 1979,

Department of Defense supplemental military authorization request. This has been cleared on both sides of the aisle.

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

SUBCOMMITTEE ON SURFACE TRANSPORTATION

Mr. ROBERT C. BYRD. Mr. President, I have two other unanimous-consent requests that have been cleared on both sides of the aisle.

I ask unanimous consent that the Subcommittee on Surface Transportation of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate today to consider Amtrak authorization and route restructuring legislation.

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

SUBCOMMITTEE ON PARKS AND RECREATION

Mr. ROBERT C. BYRD. I ask unanimous consent that the Parks and Recreation Subcommittee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate today to consider the National Park Service proposal to increase entrance and visitor fees in fiscal year 1980.

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

SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. GLENN. Mr. President, on behalf of the majority leader, I ask unanimous consent that the Select Committee on Indian Affairs be authorized to meet during the session of the Senate today to consider the Bureau of Indian Affairs budget.

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

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

● Mr. TALMADGE. Mr. President, I wish to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will meet Wednesday, March 7, at 10 a.m. for its regular committee business meeting in room 324, Russell.

The committee agenda will include consideration of the nomination of Dale Ernest Hathaway to be Under Secretary of Agriculture for International Affairs and Commodity Programs. This is a new position created by Public Law 95–501, the Agricultural Trade Act of 1978, to emphasize the significance of increasing American agricultural exports. Mr. Hathaway has been serving as Assistant Secretary of Agriculture for International Affairs and Commodity Programs since April 6, 1977, and with the passage of Public Law 95–501 his position has been upgraded.

The committee will also consider pending business.

Anyone wishing to submit testimony on Mr. Hathaway's nomination should contact Denise Alexander, committtee hearing clerk, at 224–0014.●

SUBCOMMITTEE ON ANTITRUST AND MONOPOLY

● Mr. METZENBAUM. Mr. President, the Judiciary Subcommittee on Antitrust and Monopoly will hold 2 days of hearings to investigate the debit insurance industry. The hearings are scheduled for March 12 and March 16, 1979, and will begin at 9:30 a.m. in room 2228, Dirksen Senate Office Building on both days.●

SUBCOMMITTEE ON CHILD AND HUMAN DEVELOPMENT HEARING POSTPONEMENT AND CHANGE

● Mr. CRANSTON. Mr. President, the hearing on domestic violence that was scheduled by the Subcommittee on Child and Human Development for Wednesday, March 7, has been postponed until further notice. On that date, however, the subcommittee will continue hearings on the ACTION Agency reauthorization (S. 239 and S. 374) in room 4232, Dirksen, beginning at 9:30 a.m.●

ADDITIONAL STATEMENTS

THE SMALL FARMER IN AMERICA

● Mr. CULVER. Mr. President, for too long we have heard pessimists forecasting the demise of the small farmer. Now things are looking up for the two-thirds of American farmers classified as small, meaning that they sell less than $20,000 worth of agricultural products per year. Among other developments, the U.S. Department of Agriculture has made help to the small farmer one of its top 1979 priorities.

An editorial from a recent issue of Agricultural Research magazine describes some steps being taken to meet the needs of the small farmer and protect him from the ravages of developers, high costs, low market prices, and other hazards. Technology is also being developed specifically for the special conditions affecting small agricultural operations, many of which are carried out by retirees, 40 hours-per-week jobholders, the otherwise unemployed, handicapped, and home gardeners.

This past summer a total of more than 400 farmers and spouses served as delegates to five regional small farm conferences sponsored by USDA, the Community Services Administration, and ACTION. Among topics discussed at the workshops were access to capital and credit, marketing, production and management, land and water, additional income, farm family living, and alternate energy sources. Following the conference, priority decisions were reached based on concerns voiced at the meetings.

The Agricultural Research editorial summarizes the small farmer's position in America and I ask that it be printed in the RECORD.

The editorial follows:

AN ENDANGERED SPECIES?

(By Robert W. Deimel)

Once the mainstay of American economic, social and family life, the small farmer today occupies a space on a precipice. He stands between a proud heritage and his own uncertain future—an oracle demanding big farms, big machinery, and big production to feed an insatiable country and world.

The number of American farms had remained approximately stable between 1900 and 1940—about 6.4 million. Since 1940, that number has dwindled to 2.7 million. Within the agricultural sector, large operations have come to assume consistently greater importance. In 1950, 103,000 of the largest farms produced 26 percent of this counrty's agricultural production. Today, the largest 155,000 operations produce nearly 60 percent of our total agricultural sales.

About two-thirds of the farmers in America are classified as small; that is, they sell less than $20,000 worth of agricultural products per year. Collectively, these farmers control 31 percent of all farm assets, and they use those assets to produce about 11 percent of the nation's farm output.

The needs of the small farmer are different from those of the larger producers; to recognize and then to serve those needs requires a sensitivity to the differences in methods of management, availability of resources and other parameters within which the small farmer must operate. This magazine has reported, within the last year, research which can specifically help the small farmer. For example; a low-cost pecan harvester for small orchards; a new variety of blueberry specifically suited to small acreages and pick-your-own operations; a new, disease-resistant tomato; and a new, dwarf apple tree which requires less pesticides than a normal size tree. These developments are all especially applicable to the small operator. Pilot extension programs (in which paraprofessionals work with small farmers) in several states are reaching these people with research information in production, management and marketing.

But far more significant than these fruits of SEA's research and extension activity is the renewed commitment this Department has made to the small farmer. Over the last three months, USDA officials have been meeting with small farmers from every state in an effort to develop proposals for programs to aid the small operator.

Is the American small farmer an endangered species? Hardly. At a time when no one is entirely independent, he is the most nearly autonomous representative of American agriculture. Perhaps the self-sufficiency of the original farmers who comprised much of this country two centuries ago exists in some farmers today. And, given the vicissitudes inherent in a changing society, that same desire for self-determination is a part of the most nearly independent of these, America's small farmer.●

EXPLOSIVES TAGGING PROGRAM VITAL TO ANTITERRORISM

● Mr. JAVITS. Mr. President, Senator RIBICOFF and I recently reintroduced S. 333, a bill to combat the serious problem of international and domestic terrorism. On February 8, Senator DURKIN, joined by seven colleagues, entered a statement in the RECORD supporting the bill, but expressing strong opposition to one of its provisions, requiring the tagging of black and smokeless powders.

I welcome their support of the bill, but wish to set the record straight on the issue of tagging black and smokeless powder. The concept and purpose of tagging is straightforward. The bill would authorize the Secretary of Treasury to require each manufacturer of explosive materials—including black and smokeless powder—to utilize a tracer element in his product which can be used to identify explosives after detonation (identification taggant). In the event of a terrorist incident, the identification taggant would enable law enforcement authorities to trace the distribution chain of any explosive used in the incident, thus providing valuable assistance in apprehending those responsible. It also would require the insertion of taggants which

would allow the presence of explosives to be detected prior to detonation (detection tagging).

In his statement, Senator DURKIN makes the following arguments aimed at exempting black and smokeless powders from the tagging requirements:

First. Tagging represents a regulatory burden on gun owners who use black and smokeless powder.

Second. Tagging will have little impact on law enforcement, while requiring complex recordkeeping.

Third. The technology for tagging is inadequate.

Fourth. Tagging will significantly raise the cost of black and smokeless powder.

Mr. President, these points are not valid objections for the following reasons.

1. REGULATORY BURDEN ON GUN OWNERS

To the extent that tagging may pose a regulatory burden, it would be on the manufacturers of black and smokeless powder—not the consumers. Currently, licensed manufacturers, distributors, and dealers are required to keep records for 2 years on all ammunition, including smokeless powders they manufacture, distribute or receive for sale. Only minor modifications to existing recordkeeping would be required to accomplish the objectives of the tagging program.

Manufacturers of explosives, or any other product that is potentially hazardous, must act in a socially responsible manner. I see nothing wrong with requiring those who profit from the sale of explosives to take reasonable steps to minimize the dangers from the product.

As to gun owners and others who might purchase black and smokeless powders, however, the bill imposes no burdens. Not one extra form need be filled out, and not one extra procedure need be complied with. But, should any black and smokeless powder be used in a terrorist incident, the law enforcement authorities will have a powerful investigating tool at their disposal.

2. IMPACT ON LAW ENFORCEMENT

Tagging black and smokeless powders will have a real effect on law enforcement. Even the de minimus recordkeeping requirements that would be necessary to implement a tagging program might not be justifiable if there were no demonstrable law enforcement benefit from such a program. But a review of the available statistics clearly demonstrates that tagging of black and smokeless powders has the potential of becoming a critical element of any effort to reduce terrorist bombings.

Black and smokeless powders account for approximately 1 percent of the total explosives manufactured in the United States. Yet, in the years 1975-77 black and smokeless powders were used in 21 to 26 percent of all criminal bombing incidents, and were responsible for 18.8 percent of the casualties and 19.3 percent of the fatalities from these incidents. These casualty and fatality figures, which are so much greater than the relatively small supply of black and smokeless powders would lead one to expect, clearly indicate that these substances are critical to a tagging program. Further, it is not unreasonable to expect that if they were exempted from a tagging program terrorist bombers would shift from other types of tagged explosives to the easily available black and smokeless powders.

TECHNOLOGY

A word needs to be said about the safety of a tagging program. Obviously, no tagging program should go forward if it endangers law abiding users of black and smokeless powders. But there is no reason to expect that tagging will harm either the user or his equipment. Thus, suitable indentification taggants for black and smokeless powders have already been established. In the case of black powders, tests are essentially completed.

These tests establish conclusively that no manufacturing or environmental problems result from tagging, nor does the inclusion of a taggant make the slightest difference in the way the guns using tagged powders, function. In the case of smokeless powders, contracts for similar tests have been entered into, and I would expect results to be the same.

In the case of detection taggants, more work is underway. But we should provide the Secretary of the Treasury now with the authority to develop and implement a program of detection taggants when they become available, so that delay will be minimized. It should be noted that a provision of S. 333, section 303(t), requires the Secretary to take into account the availability and environmental and safety effects of taggants before implementing a tagging program.

Finally, much has been made of the alleged cost of a tagging program, and the resulting inflationary impact. The figures I have seen on identification tagging, however, lead to just the opposite conclusion—that identification tagging is very cost effective. In March 1978, a report prepared for the Department of the Treasury estimated the total annual cost of placing an identification taggant in black and smokeless powders at $500,000. Even if this figure were assumed to be conservative, it does not take a sophisticated cost-benefit analysis to establish that the taxpayer will be better off with a tagging program than without one when one examines the costs associated with bombing incidents. For example, the FBI and New York City Police have spent more than 1,000,000 manhours investigating the infamous Laguardia Airport bombing, which cost 11 lives, and have yet to determine what kind of explosive was used, who made it, or who sold it. Tagging could make much of this information instantly available.

One incident like the LaGuardia bombing, and the program more than pays for itself.

Further, there is nothing more valuable and priceless than a human life. If tagging black and smokeless powders costs $500,000 but saves the live of even one innocent bystander, then it is worth every penny. If a potential terrorist knows there is a strong possibility his black or smokeless powder bomb could be traced back to him via explosives taggants, then we will go far to prevent senseless terrorist destruction and slaughter.

Mr. President, opponents of this measure have sought to label it as a "gun control" provision. It is in no sense such a provision. It does not restrict the availability of weapons, nor does it reduce the availability of black and smokeless powders. Its effect on the law-abiding user of black and smokeless powders is nil.

What this provision does accomplish, however, is crucial. It provides a tool to apprehend terrorists who use any explosive in bombing incidents. Since black and smokeless powders are used in such a significant percentage of bombing incidents, its deletion from the tagging program would undermine efforts to bring terrorist bombings under control. In fact, it is unusual to find any piece of legislation where the benefits so clearly outweigh the costs as they do here. I urge my colleagues to support me in keeping this important provision in the bill.●

TWISTED HISTORY

● Mr. McGOVERN. Mr. President, after the last Congress had adjourned, the December issue of the Churchman magazine published a very interesting article reporting on remarks by former Army Chief of Staff William C. Westmoreland. The article was written by Prof. John Fried, an authority on the legal aspects of our involvement in Vietnam. He examined remarks made by General Westmoreland at the Humanist Society of Metropolitan New York.

I was particularly interested in Professor Fried's systematic dismantling of General Westmoreland's rather absurd conclusions regarding the Christmas bombing of Vietnam in December of 1972. In one of the wildest leaps of historical misinterpretation I have ever seen, General Westmoreland alleged that the bombing caused Hanoi—at last—to begin negotiating seriously. The truth is that the bombing gained nothing, that it was conducted as a last stop to President Thieu of South Vietnam, and that its one accomplishment was to increase the amount of reconstruction aid that President Nixon was obliged to promise in order to compensate for the additional damage.

I have long been concerned about the fact that we have been so anxious to put this painful experience behind us that we have tended to ignore the lessons it has to teach us. That concern is especially acute now, when even normally rational voices have been suggesting that a spasm of violence would somehow repair our prestige in the world. Therefore, I commend Professor Fried's article to the attention of my colleagues, and I ask that it be printed in the RECORD.

The article follows:

REWRITING THE VIETNAM WAR

(By John H. E. Fried)

After a period of "forgetting" Vietnam, various signs indicate a new debate about the war and its lessons. Recently, a leading revisionist, William C. Westmoreland, 1968–1972 Army Chief of Staff and from April 1964 to

March 1968 our Field Commander in Saigon, under whom U.S. forces peaked to 549,000, presented his interpretation of the meaning of Vietnam to the Humanist Society of Metropolitan New York (a chapter of the American Humanist Association). These views, he underlined, were based on "considerable introspection by the military." His talk was reproduced in edited form in the October 1978 issue of *The Retired Officer Magazine* (circulation 250,000).

"Some day, but not soon," the retired four-star general began, "history will put that tragic affair into proper perspective. Those of us who fought there were in the main proud to have fought for what we believed was the principle of freedom . . . but our honorable country betrayed and deserted that little country, after we had enticed it to our bosom: a shabby performance for America, a blemish on our history, a possible blot on our future. Our international credibility has been damaged . . . there are lessons to be learned."

Our "post-World War II concern for unchecked Communist movement into insecure and unstable areas around the world" led, he explained, from the Truman doctrine to Kennedy's famous inaugural. And Kennedy "greatly increased our military effort with advisers and Green Berets and American-manned helicopters and fighter aircraft."

But then, he said, Johnson missed an ample opportunity to extricate us from the still semi-covert war. After Diem's overthrow, "political chaos prevailed in South Vietnam for over two years . . . We could in my opinion have justifiably withdrawn our support at that time [late 1963 into 1966] in view of a demonstrated lack of leadership and unity in South Vietnam."

Instead, Johnson "expanded our military efforts to avoid inevitable defeat," into overt war. However—Westmoreland's leitmotif—thereupon "the war was controlled by a 'no-win' policy" to accommodate a "misguided minority opposition . . . masterfully manipulated by Hanoi and Moscow." Thus, it came about that "smokescreens were thrown up weekly by partisan politicians, intellectuals, the media and crusading groups"; "cliches such as 'illegal war' and 'immoral war' were spread; and draft resisters and anti-war demonstrators showed 'unconscionable conduct'." All this "unwittingly encouraged the enemy to hang on," until he would "win the war politically in Washington."

Particularly after the January 1968 Tet offensive (which, he indignantly insisted, the media distorted) there was a "lack of resolve, of understanding of warfare, a blissful ignorance of the language the Communist understand." The proof was that "in late 1972" when "B-52's with so-called 'smart bombs' were used for the first time in North Vietnam" (the Christmas bombings of Hanoi and Haiphong) Hanoi's delegates "came to the conference table and actually wept" and "for the first time in 1973 negotiated seriously." Before that, the conference "sat in Paris for over four years and decided one thing, and one thing only: the size of the conference table!"

He concluded with some broad statements:

"First, we over-extended ourselves in the post-World War II period, economically, militarily, psychologically and politically. A day of reckoning was inevitable."

"Our policy-makers should have perceived the problems involved in trying to impose our political and economic concepts on an alien society," which society should have been "systematically studied beforehand."

"We must be leery of undeclared wars."

"If we go to war . . . we need heed the old Oriental saying, 'It takes the full strength of a tiger to kill a rabbit' and use appropriate force to bring the war to a timely end." (In his memoirs, A Soldier Reports, Westmoreland is more concrete: During the great Khe Sanh battle he commanded in early 1968, "and even more so now" (writing in 1976), he though it "a mistake" not to consider the use or even threat of "a few small tactical nuclear weapons" although "no one could say so with certainty" that it would have ended the war quickly.)

When in the debate, veteran war-protester Roger Baldwin exclaimed, "I don't buy this line. We had agitators and dissenters in every war since Washington's time!", Westmoreland replied, "You are known as a wise man, and deservedly so. I agree with you."

Westmoreland's analysis contains unbridgable contradictions which is charactertistic of an influential school of thought. But it admits that we established ourselves in that area uninvited ("We chose Vietnam. They did not choose us!"); that the purpose of our 20-year intervention was to impose our ideology on a faraway people, of whom we knew nothing; that the war was undeclared; that we should at least have quit after a decade when our Diem client regime (cynically called "fascistic" by CIA expert General Lansdale who helped in setting it up) had bequeathed only chaos; that the war was unwinable as our global over-extension was bound to come to an end. If all this is true (plus the omitted cardinal fact that we broke our pledge not to disturb by force the 1954 Geneva Agreement) would it have been proper for any country through such methods as search-and-destroy actions, napalm, chemical defoliation, Phoenix program, uprooting of millions of peasants, and automatic battlefield techniques, to impose its own ideology abroad?

Westmoreland's clinching argument is that, just as the Christmas bombings ended four years of frivolity in Paris, "we could have put that type of pressure on Hanoi after we defeated them in the Tet offensive and the enemy would then [1968] have been forced to negotiate on our terms, and thousands of lives could have been saved."

The reasoning, possibly seductive to the uninitiated, is faulty on several grounds. (1) If Le Duc Tho wept over the unprecedented Christmas bombings, so did the world; but it is untrue that they made him negotiate seriously only in 1973. They left virtually unchanged the agreement arrived at in October. (2) The protraction of the talks until then was due, first, to our absurd insistence to exclude from them Saigon's rival regime, the PRG, although it held large parts of the South, and Saigon/PRG settlement was the central issue; and our refusal to replace Thieu by anybody else, although he had vowed never to stop fighting the PRG, regardless of any settlement. (3) Westmoreland is not sure that even nuclear weapons would have worked. (4) Above all, the proposition still hides the war's crowning tragedy that even long before 1965, when President Johnson put our war dead at "some 400," we could have had a treaty essentially similar to that of 1973. In the early 1960's, the NLF and Hanoi announced their readiness to accept our principal war aim: a separate South Vietnam state (with reunification indefinitely postponed) under a Saigon/NLF coalition regime. We sacrificed most of 55,000 war dead and $150 billion in war costs to maintain a Thieu or Thieu-type client regime in parts of the South.

An analogous hidden secret answers Westmoreland's charge that we finally allowed those areas to be "gobbed up" by the North because the U.S. Senate's "instrument of surrender" refused funds for resumption of combat activities by U.S. military forces in the area two years after the cease-fire. The regret is that we did not open a new Vietnam war—which might still go on? Even when our man Thieu's forces crumbled under the final counter-offensive to Thieu's "bloody war in violation of the Paris accords" (Senator McGovern's words), the PRG and Hanoi, through French Premier Chirac, again offered, and Washington again rejected, a separate South Vietnam state. (For details, see Saigon CIA man Frank Shepp's book *Decent Interval.*)

General Westmoreland underlined his conclusion that lessons must be drawn. Hence his assertion that Vietnam is "a blot on our future" and damages our "credibility" in the world bodes ill.●

ECONOMIC POLICY: CONFUSING DEMANDS WITH REALITY

● Mr. GARN. Mr. President, there has been a lot of discussion in the press recently about the lack of U.S. foreign policy. With many actions that the administration does take turning out counterproductive, perhaps inaction may not be all bad. Some policies are worse than nothing.

Unfortunately, Mr. President, U.S. economic policy has taken a similar pattern. The practice of trying to be all things to all people has resulted in economic policies that seek all things for everyone, but which are likely to produce nothing for anyone, except greater economic hardship. On the one hand, the President declares inflation the greatest domestic problem, while on the other hand the administration proposes a Federal budget with a $29 billion deficit and calls it "austerity." Words just do not mean what they used to. I still have difficulty understanding the concept of "voluntary controls."

I hope, Mr. President, that my colleagues mean what they say when they so firmly announce themselves opposed to wage-price controls. Former Labor Secretary and Director of the Cost of Living Council, John Dunlop, had some experience with wage-price controls. This is what he wrote in the latest issue of Regulation magazine:

With nine years of experience administering wage and price controls in the United States, I am simply not an advocate.

This is what I hear said all over town. I hear it from the White House; I hear it in the Congress. Wisdom would suggest that we learn our past lessons without having to repeat them.

What makes me doubtful, Mr. President, is that I have learned a few things as a Senator. I have learned that there are campaign speeches and that there are actions once in office, and that the two do not always coincide. I have learned that it is difficult for many legislators to resist putting their hands into the Federal purse and rewarding their constituents for their wisdom in putting them in office. I have learned that a Federal debt ceiling is something that the Congress raises whenever it is about to mean anything. I have learned that it is much easier to legislate dreams than to deal with the problems of economic reality. That is why I am doubtful, Mr. President, of the willingness of the Congress to apply meaningful fiscal restraint. To quote from former Secretary Dunlop again, I agree with him that—

No one confuses demands with reality to

the extent that politicians do in the economic arena.

Mr. President, I have not just spoken about governmental restraint, but I have exercised my vote as a U.S. Senator in the sometimes successful effort to bring about that restraint. I challenge all who were elected on such a platform to carry out their mandate.

Mr. President, I ask that the article by John Dunlop be printed in the RECORD, and I commend it to my colleagues.

The article follows:

NEW APPROACHES TO ECONOMIC POLICY

(By John T. Dunlop)

It was the best of times. From 1900 to the 1970s there was unprecedented economic growth and unprecedented improvement in the living standards of the common man in advanced democratic countries. Real wages were increased three to five times, weekly hours of work were reduced by 25 to 35 percent, and life expectancy went up sharply. Average years spent in education grew substantially. These countries became welfare states offering a spectrum of public and private policies designed to protect workers, employees, and citizens from the risks of illness, retirement, accidents, disabilities, and involuntary idleness, and to facilitate access to housing, education, and training. Collective bargaining and worker participation in the decisions of the work place grew to major importance.

Then suddenly, in comparison, it seemed the worst of times. The advanced democratic societies confronted markedly higher energy costs, adverse impacts from the insistent aspirations of developing countries, conflicts and incongruities among their economic plans, slow growth, and continuing inflation and unemployment. In the eight years from 1970 to 1977 consumer prices in the United States rose at 6.5 percent per year and unemployment averaged 6.3 percent. The fact that real hourly earnings in the private sector had not recovered by 1977 to the 1973 levels created doubt that the economy or economic policy-makers could ever again produce a doubling of living standards every generation.

Perhaps the experience of the 1970s—this climateric, watershed, or aberration as you like—has its roots in the premise that economic policy is somehow capable of determining and, by its own will, producing desirable results with regard to growth, unemployment, and inflation. In any event, the premises of government's role in economic policy require brief comment.

POLITICS, POLICY, AND GOVERNMENT PENETRATION

A prime role of the political process is to aritculate the common aspirations of the people. This function is not to be demeaned by technicians or administrators, but neither are the aspirations to be confused with reality or with the possible. In collective bargaining, the parties each develop their bargaining proposals or dream books, but in mature relations no one confuses demands with reality to the extent that politicians do in the economic arena.

Economic policy has been historically conceived in the main as concentrated upon fiscal and monetary measures. Economic growth, unemployment, and inflation have been assumed to be shaped through these classical policy instruments, while the rest of the economy has been assumed to be dominated by private decisions adapted to the general economic environment shaped by general government policies.

The economy of the 1970s, however, has been characterized by significant growth in direct government involvement in individual markets and in the decisions of enterprises and groups. The detailed involvement of public agencies in pricing (as in agriculture, in public utilities, and through incomes policies), the vast expansion of regulation in the areas of health, safety, pensions, environment, standards of service, and discrimination, the detailed negotiations of international trade arrangements, and the regulation of wages and working conditions now far exceed previous experience. Given this unparlleled expansion in the scope and detail of government penetration into private decisions, including collective bargaining, previous assumptions about government and economic policy are probably no longer valid.

At least two features of this new penetration, at any rate in the United States, deserve attention. First, there have come to be so many new political and legal centers of decision-making, uncoordinated by the market or by a central political force, that they have created vast uncertainties that private parties have been unable to comprehend or incorporate into viable plans. Consider the state of legislation, regulation, and litigation relating to energy or to the environment, and it becomes clear that the uncertainty of private decisions has been enormously increased. Second, the deep penetration of government regulation introduces a short-term perspective, reflecting the tendency for political considerations to change frequently and for government policy officials to have a short tenure in office.

Since government economic policies today (beyond general fiscal and monetary measures) include a host of specific measures and regulations, without central direction, the notion that government is a single or coordinated decisionmaker defies reality, at least in the United States. The result is a new, strange, and often hostile economic environment for growth, employment, and price stability.

The traditional tools of macroeconomic analysis do not suit a world of pervasive and penetrating government. When product and labor markets already reflect governmental interventions, they do not readily respond to general fiscal and monetary policies. Indeed, the whole complex of internal and external governmental interventions so complicates analysis that prediction of the consequences of general policies becomes hazardous, and the general economist, whether attached to the Treasury, a central bank, or an economic planning agency, becomes less useful.

NEW APPROACHES TO ECONOMIC POLICY-MAKING

The approach of the last generation has been dominated by aggregate technical economic concepts—among them the Philips curve and Okun's law. But in the 1970s aggregate quantities and relationships have often proved misguided, if not treacherously misleading.

To put it briefly, economic policy-making would do well to adopt an approach characterized by five somewhat neglected elements. This approach should supplement, not displace, appropriate fiscal and monetary policy.*

(1) Analysis needs to be sectoral as well as aggregative. Agriculture, energy, housing, industrial goods, and health services, for instance, must be understood not only separately but in their reactions upon other sectors. The elements of wage and benefit setting, price determination in various sectors, and the consequences of direct governmental regulations and tax measure must be incorporated in the analysis.

(2) The approach must be institutional as well as analytical. To prescribe regarding wages without an understanding of collective bargaining and the policy-making processes of large nonunion enterprises and all small businesses is to invite wide errors, unreality, and unnecessary hostility.

(3) The approach must be political, to a degree, as well as economic—"political" in the sense of being grounded in the art of the possible, and particularly the possible consensus among large elements of the relevant groups. This is not to rule out an occasional good fight but to emphasize that the political process can tolerate relatively few serious contests.

(4) The approach must involve both domestic concerns and, as never before, an international perspective. Inflation in some major elements has been a worldwide phenomenon; economic growth in many countries is significantly affected by the domestic and trade policies of trading partners.

(5) There must be less resort to direction ("command and control") and regulation and more to consensus building and persuasion. Consensus building requires not merely broad general public support but participation and de facto acceptance by major interest groups—including large and small businesses, labor, and others. The politics of the electoral process (including television) may yield vote pluralities but only consensus building with major groups can produce the capacity to govern in the field of economic policy.

POLICY AND PROGRAM AREAS

There is an enormous world of studies, reports, and pronouncements on the subject of growth, unemployment, and inflation in our times. My present purpose is to give a view on these issues which reflects my experience, without being unduly concerned as to the general acceptablilty of these judgments.

Inflation is not just a single malady with a single treatment. Each period of rising prices and wages in the postwar world has been quite distinctive. In 1946–48, there was a pent-up surfeit of liquid assets searching for scarce goods in the aftermath of war. In 1950–51, there was a sudden change of price expectations in world primary markets as a consequence of the sudden onset of the Korean War. In the late 1950s, there were cost pressures arising from large wage settlements that carried over to periods of soft demand and higher agricultural prices. In the late 1960s, there was insufficiently tight fiscal policy in the face of large expenditures associated with the Vietnam War. In 1972–73, there was a variety of factors including agricultural developments, monetary policy, the oil embargo, and the dollar devaluation. The basic point is that policy must recognize the special features of each period of inflation. A single prescription is not likely to be appropriate.

There are important structural respects in which the economy has now entered a period of greater inflationary pressures. It has been recognized for some years that money compensation always moves upward in the modern society, the social costs of downward adjustments being too great. But it has not so clearly been recognized that periodic bursts of inflation in agricultural prices, housing costs, and local taxes get more and more "baked in" with higher property values rather than being generally reversible. Lower rates of productivity (arising from a variety of factors including changes in the composition of the labor force), social charges for environmental and other concerns, higher energy prices, and low capital formation all contribute to compensation increases being translated into higher prices.

I agree that governments should regularly discuss basic issues (the course of prices and wages, unemployment, economic growth, and appropriate policies) with the organizations

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* As George P. Shultz has noted. "The great vice of wage and price controls is not so much that they work poorly or that they are an inappropriate response to inflation as it actually occurs in our economy, but rather that they induce government to relax monetary and fiscal policy" (in George P. Shultz and Kenneth W. Dam, *Economic Policy beyond the Headlines*).

representing business and labor—though I have difficulty with the 1977 statement of the OECD committee of experts that links the discussions with a target or guideline for wages and prices, which I oppose. But whatever that maligned term "incomes policy" may mean in the United States, there appears little likelihood—in the absence of a genuine emergency—of policy agreement among labor, management, and government in the foreseeable future. Moreover, if incomes policies simply try to reduce wages or price increases, leaving everything else the same, little if anything can be accomplished. The successful voluntary programs are those that induce changes in the underlying factors, something that requires consensus.

In the United States, formal government controls with a tripartite board are a more likely course of development than the sort of structural changes that would be required in the national levels of labor and management organizations to make an incomes policy based on these organizations at all administrable. With nine years of experience administering wage and price controls in the United States, I am simply not an advocate.

Rather, on the wage and benefit side, we should seek to bring about (1) reform in the structure of bargaining so as to reduce rivalries and "leapfrogging," (2) the elimination of outdated work rules, practices, and manning requirements, (3) reform in methods of wage payment, (4) the improving of productivity in other ways, (5) the recasting of fringe benefit packages and their financing, (6) improvements in labor supply and training, and (7) specialized agreements to meet the problems of particular branches or plants in an industry. Programs of this sort take time to develop and require cooperation and trust and personnel with detailed sectoral knowledge. They cannot be imposed by government jawboning or armtwisting. They can be developed only by persuasion and by imaginative and patient leadership.

On the price side, the future course of prices can be affected by (1) giving early attention to capacity needs, as revealed by discussions of potential bottlenecks; (2) encouraging government programs that enhance rather than restrict supply; (3) stimulating investment and cost-reducing outlays; (4) attending to the "interface" areas where manufacturing, transportation, and finance meet; and, particularly, (5) attending to government activities and regulations which create uncertainty and increase costs unnecessarily.

Let me turn briefly to other areas. The last decade has certainly demonstrated that unemployment is not a simple target of policy. The labor force is susceptible to a variety of short-run and long-run influences that make prediction and policy prescription most difficult. No single aggregate unemployment figure is appropriate as a guide to economic policies. Instead, we will need to look at labor market conditions by age, skill, locality, industries, and degree of disadvantage. It is not the aggregate measures but the wealth of detail that is relevant to appraising potential shortages and inflationary pressures arising within the relatively few decisive markets.

The targeting of public programs on particular categories of the labor force may be appropriate policy, but greater involvement of the private sector in job creation is necessary if good, continuing jobs are to be developed. Existing public service programs are in the main unsatisfactory, save as a method of income maintenance. We need new forms of nongovernmental organizations to provide training and to encourage job creation for the hard-to-employ.

With respect to growth, the stagnation of the economy since 1973 reflects, no doubt, many short-term and structural factors. The two elements that appear most significant to me are uncertainty in government policies on a variety of fundamentals (including energy, the environment, and regulatory conditions) and the resulting tendency for low levels of investment in modern plant and for concentration of investment outlays on machinery and equipment rather than on longer-run plant and developmental expenditures. In this climate of uncertainty, government economic policies, including fiscal stimulus, cannot have the favorable effects on the economy they have been presumed to produce.

Finally, I would note the unusual amount of controversy over international trade policy in the United States, reflecting deep concern over, first, trade involving Asian and Communist countries (particularly with regard to shipping and advanced technology items with security implications) and, second, trade involving labor-intensive items which threaten to displace large groups of relatively low-paid workers. The U.S. labor force includes very large numbers of low-productivity workers who cannot easily be converted to more productive activity and who are not willing to settle for displacement pay in various forms. Economic policy in this area requires imaginative attention to work out problems with those affected, not to mention skillful negotiations with our trading partners abroad. I fear we do not well understand how explosive these issues are.

THE WATERSHED

The 1970s, in my view, constituted a watershed of economic policy, the difference in the United States deriving from the new and pervasive role of government and its adverse effects on growth and inflation. While there was, no doubt, "an unusual bunching of unfortunate events unlikely to be repeated on the same scale" (in the words of the 1977 OECD report), my judgment is that the difficulties are more fundamental. They relate to (1) the methods of making economic policy and (2) the substance of the decisions derived from the political process and from its massive new penetration into all manner of heretofore private economic activities. Neither private businesses nor collective bargaining agents nor governments have yet adapted—together or separately—to this new state of affairs: they seem to believe it is still the "best of times." ●

THE PRESIDENT'S STANDBY PLAN FOR RESTRICTING WEEKEND SALES OF AUTOMOBILE GASOLINE

● Mr. CANNON. Mr. President, last week, President Carter submitted to the Congress three standby energy conservation plans and a standby gasoline rationing plan. Over the past several weeks, I have been particularly concerned over the development of the plan for restrictions of gasoline sales on weekends.

This standby plan was authorized pursuant to the Energy Policy and Conservation Act of 1975, Public Law 94–163, to meet the emergency needs of petroleum supply interruptions here and abroad. At his press conference on Tuesday of last week, the President said that he had "no present intention" of implementing any of the four standby plans and that their eventual enactment was dependent on the Iranian situation and any future energy supply crises.

The weekend restriction of gasoline sales in Nevada would simply decimate my State's economy, which depends overwhelmingly on our No. 1 industry: tourism. In 1978, more than 20 million tourists visited Nevada by automobile, most of them on weekends; 69 percent of the 5.4 million visitors to Las Vegas from southern California last year arrived by automobile; 52.4 percent of all Las Vegas visitors arrived by auto. For Reno, this figure for the entire visitor population arriving by car was even higher, 79.8 percent. The economic analysis prepared by the Department of Energy on this proposal states:

> Historical sites of the East, ski areas in many states, and the resort areas of Nevada and New Jersey all depend on weekend visitors to contribute a substantial portion of their sales. Many of these areas are over 200 miles round trip from metropolitan areas; the plan would almost completely eliminate customers traveling by automobile.

I am gratified that the Department of Energy has recognized this reality by building exemptions into the plan for States with a comparable savings program or where "special circumstances" exist. This action, of course, reflects the geographical considerations required by Congress in the formulation of energy conservation and contingency plans under Public Law 94–163, specifically 42 U.S.C. section 6262(b).

This exemption is crucial to maintaining the healthy economy of Nevada and provides the flexibility for State energy planning efforts, as I have been stressing to the Department over the past several weeks. The plan will permit States to implement conservation programs without straitjacketing them into mandatory weekend closures. Other universal closings or gas sale restrictions on a weekday could be in force. Alternate fill-up days depending on even and odd license plate numbers could be adopted. If "special circumstances" exist, a complete exemption might be appropriate as long as alternative energy conservation actions have been take by the State.

This is not to say that an exemption should be sought in order to shirk individual State responsibility for energy conservation. There is no question but that we, as a nation, are in this together and sacrifices will have to be made whenever the world's oil pipelines are running slow or not at all. But there is no need to stop weekend gas sales in every region and State in the Union in order to conserve fuel, provided that equivalent savings steps are taken. Conservation need not wreak economic havoc on any particular region of our country to be effective. In actuality, weekend gas sale restrictions would be a small fraction of energy savings. The 246,000 barrels of oil saved per day represents only 13 percent of our Nation's total daily appetite of 19 million barrels. With such small savings, it would be eminently unfair to place a disproportionate share of the burden of that savings upon one industry.

Many Americans and Senators east of the Mississippi may not fully appreciate the severe travel demands of the wide-open spaces of the West, particularly in a rural State such as Nevada. While the major urban areas of our country, such as New York City, may not be severely impacted by weekend visitors who arrive by auto, these weekend travelers are the lifeblood of Nevada's tourist industry. The nearest urban areas to Nevada are

hundreds of miles away in California. For example, 48 percent of the visitors to Las Vegas last year came from southern California, 3.7 million people. A weekend visitor to Las Vegas must travel 724 miles round trip from San Diego or 580 miles round trip from Los Angeles, the nearest population centers to that southern Nevada city. Reno's urban neighbors in the San Francisco Bay Area face up to a 442-mile round trip.

In its study of this standby plan, DOE acknowledges that most cars in the United States could not complete a 300-mile trip on one tank of gas. It is plain to see that most of our California visitors could get to Nevada's resort cities, but could not get out when they would normally head home on Sundays. Rather than becoming Nevada residents, I suspect that most, if not all, of these weekend travelers would simply stay home in the first place. DOE admits as much:

A basic assumption in the present report is that nearly all weekend round trips for social and recreational purposes in excess of 300 miles would be eliminated as a result of the plan. Trips over 300 miles are generally outside the range of a full tank of gas for most automobiles in the U.S. (Economic Analysis, 2.4.1).

The economc analysis of this measure, as prepared by the Department of Energy, readily admits the dire consequences of weekend closures in Nevada and other tourist States. Among its other conclusions:

It is expected that the Weekend Gasoline Sales Restrictions Plan would sharply curtail weekend auto travel over 300 miles. (Economic Analysis, 4.2);

The total drop in person-nights spent in indoor commercial lodging due to the proposed restrictions is estimated at 92.7 million person-nights per year. . . . (meaning) annual gross revenue losses to the industry of $1.391 million or 10.5 percent of estimated gross 1981 revenues. (4.2.1);

Rather than being spread evenly across the entire lodging industry, the brunt of the reductions would be borne by lodging establishments concentrated geographically along major interstate highways and in resort/recreation areas, for which weekend lodgers constitute a much larger proportion of the total business. In extreme cases during the 1973–74 limitations on Sunday gas sales, motels along the major interstates and primary highways reported weekend occupancy as low as three to five percent of normal levels. (4.2.1);

In an industry that in 1976 employed over a million full- and part-time workers, a proportional cutback in employment would mean some 100,000 additional unemployed. (4.2.1);

The reduction in weekend driving is estimated to cost the restaurant industry approximately $3.7 billion in revenues. . . . Restaurants that cater to weekend travel or recreation areas will undoubtedly experience substantial losses. (4.2.2);

Tourist expenditures for recreation and entertainment while on weekend automobile trips are estimated to have been about $2 billion in 1976. . . . (and) would decline by about $1 billion in a 1981 economy. (4.2.3);

Exhibit 5.2 displays information on the importance of tourism to state economies. In addition to being strongly impacted by an oil supply restriction, states with high percentages of travel-generated employment will be additionally damaged by weekend restrictions on gasoline sales. (5.2.2). Exhibit 5.2 reveals that Nevada has the second largest percentage of state taxes generated by travel in the United States;

Nevada is listed first among the "states most dependent on tourism. (5.2.2);

Many of the states that depend on tourism for employment and sales revenue also depend on tourism for state tax receipts. Nevada is listed second among the states "most likely to lose significantly (that) depend heavily on travel generated taxes to support local public services. (5.2.2).

Seldom have I read a Government analysis that so eloquently damns its own proposal. The cumulative impact of this DOE analysis clearly illustrates and concedes the tremendous impact on the State of Nevada of mandatory weekend closures of gasoline outlets. This is a frightening prospect that has thousands of my constituent worried.

I have no doubt that, should an exemption be sought from this plan, Nevada will meet the challenge and need for energy conservation by other means. The people of Nevada, as with many of their fellow westerners, fully appreciate the need to conserve our precious natural resources. Nevadans met this challenge during the oil embargo of 1973–74 and are prepared to sacrifice again.●

A CLOSE LOOK AT MULTILATERAL TRADE NEGOTIATIONS

● Mr. McGOVERN. Mr. President, the Department of Agriculture and the Office of the Special Trade Representative have appeared in the Congress to tell us of their work over the past few years in MTN negotiations. Generally they have displayed great enthusiasm for so-called concessions which would benefit the agricultural community. I questioned Ambassador Woelff carefully when he appeared before the Senate Agricultural Committee and found that the claimed $3.8 billion for agriculture included $770 million which Japan will not levy on soybean exports. Japan has not levied any import duties on soybeans for 4 years, but the fact that they had given up their right to levy was classed as a $770 million gain. Closer questioning indicated that the concessions gained would not conceivably result in greater agricultural exports.

It seems only prudent that the Congress look on these trade proposals with a critical eye and I am one of those who intends to give the proposals the closest scrutiny. In this regard I was impressed with the testimony of Mr. Robert Lewis of the National Farmers Union given on February 21, 1979, submitted to both the House and Senate subcommittees dealing with international trade questions. Mr. Lewis is a respected economist and puts the questions with regard to MTN in a very readable and understandable statement.

Mr. President, I ask that the statement of Robert G. Lewis entitled "Trade Agreements Raise Questions" be printed in the RECORD.

The statement follows:

STATEMENT OF ROBERT G. LEWIS

Presenting a statement of our views on the trade agreements now being negotiated poses a troubling problem for me, and for the Farmers Union.

The Farmers Union throughout its history has championed the Reciprocal Trade Acts and the other international economic policies and programs which, interacting together, lifted the world out of the collapse of the 1930's, sustained our country and our allies through World War II, and then propelled victors and vanquished alike into the longest and richest era of rising and spreading economic prosperity the world has ever known. Trade agreements were not the prime movers in this achievement, but they took some of the sand out of the economic and commercial gears and facilitated the great economic growth of the era.

I think the most important thing about these past trade agreements was that they constituted a commitment of spirit and will on the part of the "market economy" countries, and demonstrated their confidence in the evolving system of global cooperation and advancing welfare that they shared.

Today there are three aspects of the current trade negotiations that are troubling.

PROVISIONS NOT YET PUBLICIZED

First, we do not yet know what the agreements will provide.

Secret negotiations are still underway, and from all that we can learn, many crucial decisions are still up in the air. The content of the agreements has not yet been made public. We think that the Administration is premature in rushing concerned parties, through its advisory committee system and otherwise, into endorsing agreements that are not yet completed so as to further its campaign for approval by Congress.

We will not be rushed to judgment, and we urge that the Congress do likewise. The Trade Act permits ample time for scrutiny by the public and deliberation by the Congress. If necessary, Congress can act to extend the time. The trade agreements will make far-reaching changes in existing laws and procedures that are of fundamental importance to many farmers and other citizens, and there should be full disclosure and full debate before decisions are made.

Secondly, some of what we do know about the pending agreements is disquieting, to say the least.

Despite bold claims down through the past several years that this negotiating round would be "agriculture's turn", much less appears to have been achieved in comparison to what is being paid to expand the volume and value of farm product exports from the United States.

"BENEFITS" HAVE THEIR PRICE

Let's examine some of the claims, and measure them against the price:

Spokesmen for the Administration make much of the idea that the agreements will "affect" about $3 billion a year in agricultural trade.

For one thing, that is a small fraction of the roughly $27 billion-a-year volume of present U.S. agricultural exports.

Even more important, "affected" does not mean at all that additional exports would be created. It means only that the procedures by which trade is conducted would be altered in some way, possibly without any perceptible effect upon the volume being traded or the price that will be paid to the American farmer who produced the commodity.

JAPAN WON'T TAX SOYBEANS

For example, one of the most valuable "concessions" being negotiated relates to our exports of soybeans to Japan. Japan has charged no duty on U.S. soybeans imported into that country for the past four years. The American negotiators appear to have won a "concession" from the Japanese that the no-duty admittance of soybeans will be continued permanently. This one "concession", counts for $770 million (one-fourth) in the $3,000 million total, because it "af-

fects" that yearly volume of U.S. soybeans sold to Japan.

Another big set of "concessions", with "affected" trade valued at $400 million, is fruits and vegetables. Citrus—produced by only 30,000 farmers in four states—is the biggest "winner" among these commodities.

"Affected" trade in livestock and products is valued at $900 million, but the only actual potential increases in exports so far identified is a projected 34,000 ton per year increase in sales of high quality beef in Japan and Europe. That is barely one-third as much as the increase in beef imports into the United States ordered by President Carter last year.

MILK PRODUCERS PAY "PRICE"

These examples measure up short in terms of actual change in trade flow in comparison to the outstanding "price" that it is contemplated would be paid for the agreements—by dairy farmers.

When the trade negotiations are completed later this year, the waiver of the American countervailing duty law is scheduled to expire. The federal courts held shortly before the waiver was adopted as an amendment to the Trade Act of 1974 that this law means what it says and must be enforced. Enforcement of that law will require the United States to impose a "countervailing duty" upon any imported articles if the country of export has paid a subsidy to get it exported.

Almost all imports of cheese into the United States except those from New Zealand and Australia are subsidizes. Farmers in other exporting countries get more for their milk and cheese made there costs more than in the United States. It is impossible for exporters in those countries to sell much cheese in America, other than small quantities of high-quality "specialty" cheeses, unless the country government pays subsidies of 40 to 60 cents per pound. Enforcement of the countervailing duty law would stop all such imports.

The United States government has reported that imports of cheese from New Zeland and Australia and of the types of "specialty" cheese that could be imported without subsidies totals about 53 million pounds per year. That or a little more is all the imported cheese American dairy farmers would need to face if the countervailing duty law were enforced.

But the agreements being negotiated provide for making the countervailing duty law practically a dead letter. Enforcement of the law would be suspended unless and until "proof of injury" to American farmers could be made to the government's satisfaction.

Moreover, the import quota for cheese would be set at a new higher level about 500 percent greater than the probable level of imports of cheese if the countervailing duty law were in effect.

The net "price" would cost to American dairy farmers would be annual imports of around 190 million pounds of competing cheese each year above what they could expect if the agreements were rejected and the waiver of the countervailing duty law expired. The new "quota" for cheese imports would be 32 million pounds larger than the present quota plus non-quota imports while the waiver of countervailing duties is in effect.

IS AGREEMENT WORTH COST?

Although the actual effect on increasing exports has not yet been estimated and probably can never be measured accurately, the "concessions" being negotiated for soybeans, citrus fruits, high quality beef, tobacco, and other agricultural commodities have significant value to their producers and to farmers generally. Approval of the trade agreements has even greater value to the general public, for a turn-down would be a shattering blow to the world's economic and political psychology. The question is whether the benefits outweigh the costs, and whether dairy farmers are being tapped to pay more than their share.

Almost any importation of dairy products directly displaces an equivalent volume of milk and its products into the price support purchase program, and is thus directly related to the level of producer prices that the government will be willing to maintain. We content that any subsidized importation of cheese would constitute an "injury," and should thus be barred.

But we have no confidence that an "injury test" would be administered faithfully and rigorously. We consider that any such concession in the trade agreements would be all but tantamount to negation of the countervailing duty statute, and that dairy farmers should be compensated accordingly.

The direct and practical means for compensating dairy farmers for the cost to them of admitting subsidized dairy products into our market should be to guarantee that domestic milk prices will not be permitted to be depressed unfairly. This can be done under the price support program, by raising the minimum level of support from 80 percent of parity to 90 percent.

If the Agreements are approved, enforcement of the countervailing duty law, the function of which relates directly to the purposes and operations of the dairy price support program, should be administered in the U.S. Department of Agriculture by the same agency charged with responsibility for administering the price support program.

FARMERS GET NO "ADJUSTMENT" AID

In considering the compensatory benefits to be provided for dairy farmers if the agreements now under consideration should be approved, account should be taken of the fact that farmers whose incomes are reduced by import competition are not eligible for any of the trade adjustment allowances, payments, training and relocation aid, low interest loans, and the like that are offered to businessmen and workers who are injured by import competition.

Firms damaged by import competition may receive loans at low interest rates of up to $3 million. Workers who lose their jobs can receive allowances of up to 70 percent of their normal pay for as long as a year and a half, plus allowances and services for training, seeking a new job, and relocating to a new community.

GRAIN "GIVE-AWAY" CONTINUES

Another disquieting aspect of the agreements as we understand them is that there appears to be no provisions for ending the sale in export of American grain at artificially-low prices below the farmer's cost of production.

We are selling our wheat for the cheapest price in the world.

More than three-fourths of the wheat that is produced and consumed in all the world brings higher prices to its producers than the "world market" price that we get paid for our exports. Some get prices four or five times as high.

Consumers in all the countries that buy American wheat pay these higher prices for all that their own farmers produce. Then if they need more, their governments buy some from us and mark up the price to the higher level their own farmers get when they resell it to their own consumers.

This senseless policy is forced upon all of the grain exporting countries by the United States by virtue of our predominant size in the grain export market. More than half of all the grain that moves into world trade comes from the United States. Canada, next biggest, ships one-fourth as much. Australia and Argentina combined ship only one-fourth as much.

The big winners, albeit inadvertent, are our leading economic rivals in Europe and Japan, and the Soviet bloc countries which buy our grain on the cheapest real terms in history while we spend hundreds of billions on military defenses against them. Japan makes a profit for its national treasury of $5 per bushel on all the American wheat it buys when it re-sells to its own flour millers. The Europeans skim off nearly $4 per bushel.

"WORLD MARKET" PRICE ARTIFICIAL

Even the one-fifth of the world's wheat crop that is produced in the United States, Canada, and Australia cannot be produced at the "world market" price, and the governments take special steps to pay their farmers something extra, either out of their national Treasuries, or by charging their domestic consumers higher prices.

Just a few weeks ago, Canada raised the minimum price of wheat for domestic consumption to $3.40 a bushel. Australia charges flour mills $3.67 per bushel for wheat to be consumed at home—$1.30 a bushel more than the advance payment that is made to Australian farmers for wheat to be exported.

In the United States, it is commonly believed that wheat producers receive deficiency payments to raise their total receipts from wheat to $3.40 per bushel. The truth is that farmers are required to keep 20 percent of their wheat land out of work in order to get the payments, so that the payments are really "unemployment compensation" for their set-aside acreage. Even so, the system provides somewhat more in total take-home pay than the "world market" would yield by itself.

That leaves Argentina—the only place on earth where farmers probably live and die on nothing more than the "world market" price for their wheat.

That is just a shade over one percent of the world's wheat! And if it can be said that the Argentina farmers and their poverty-blighted rural workers receive their full "cost" out of what they get, they are the only producers on earth whose cost of production is covered at the "world market" price at which the United States government unwisely forces our own farmers and those in other exporting countries to sell their grain.

Apparently there is no significant change to be made in the anamalous "world market" for grain. There will be no significant dent made in the barriers that prevent American grain from competing in every country. Nor will there be any agreement for raising and maintaining grain prices in world trade to fair levels adequately compensating farmers for their production costs.

This is the biggest disappointment, and the biggest failure, of the trade negotiations.●

THE OMNIBUS ANTITERRORISM ACT OF 1979

● Mr. RIBICOFF. Mr. President, I join with my distinguished colleague in strongly supporting that title of the Omnibus Antiterrorism Act of 1979 (S. 333) which requires an explosives tagging program.

That provision would be terribly incomplete and ineffective without the requirement for taggants in black and smokeless powders.

We are not talking about "big brother" government here. Were talking about life and death, security and destruction. It is that simple an issue. To exempt black and smokeless powders from a tagging program would be to drop one out of every five bombings in the "unsolved" file. Our law enforcement personnel would be left virtually powerless to investigate and trace these bombings to their terrorist origins.

If we mandate the tagging of all explosives but open a loophole for black

and smokeless powders, we will not be attacking terrorism at one of its roots. Soon thereafter, all would-be terrorists will know their chances of being tracked down after using black and smokeless powders in bombs will be very poor.

I think the explosives tagging provision of the bill is one of the most important. It will be one of the foundations of a strong, effective antiterrorism policy. I intend to work to make certain all explosives are covered.●

MUSKIE DEFENDS ENVIRONMENTAL REQUIREMENTS

● Mr. CULVER. Mr. President, I would like to draw my colleagues' attention to the speech by Senator EDMUND S. MUSKIE, chairman of the Senate Subcommittee on Environmental Pollution, which he delivered February 14, 1979 at the University of Michigan.

As you know, the distinguished Senator from Maine has had a long and outstanding association with development of our Nation's efforts to protect the environment. In fact, most of our major environmental laws and programs were established under his guidance. These statutes have been based on extensive hearings throughout the country and formulated after serious debate and consideration in committee and on the floor.

In his speech last month, Senator MUSKIE discerningly documented a new attack on our environmental laws that is being proposed under the guise of regulatory reform. This new threat comes from the proposed requirement that cost-benefit analyses be done on all environmental regulations, regardless of their justified health basis or congressional requirement. Controlling pollution has costs that can be easily quantified in dollars, but the costs of pollution in lost jobs, health problems, and wasted resources cannot be easily calculated in monetary terms.

The Senator from Maine has set this issue in realistic context and demonstrates that some budgetary policy and environmental programs are not in inevitable conflict.

Recently, numerous unprotected hazardous waste dumpsites have been identified in several States, including my own State of Iowa. The cost of preventing similar problems and developing the appropriate controls may not be insignificant. Any purely economic review of proposed regulations would not identify the attendant health threats and could well conclude that the necessary protection is not justified from an economic standpoint.

There is no other Member of the Senate more concerned than Senator MUSKIE that regulations be developed only when necessary and in a fair and equitable manner. In this regard, he has reintroduced Sunset legislation, which I have cosponsored, to require a periodic review of the purpose and effectiveness of current programs. We cannot let the urgent need for cost-effective regulations and regulatory reform ignore the benefits of a cleaner environment.

Mr. President, I ask that this address be printed in the RECORD.

The address follows:

REMARKS OF SENATOR EDMUND S. MUSKIE

I would like to speak with you tonight about what I believe is the principal threat to the environment, as we close in on the environmental decade of the 1970's.

It is not a new pollutant.

It is not a new industry.

It is not a new interest group.

It is a new mood.

It is the mood of the anti-regulators who claim it is too costly and burdensome to protect people from the hazards of pollution.

No one supports regulation for its own sake. But the mood of antiregulation seems to make no distinction betweeen good and bad regulations. The actions flowing from this attitude are often blind and negative. The mood is having two principal effects:

First, it may undo much of the environmental progress resulting from tough regulations that flow from strong laws.

Second, it may divert attention away from new, important environmental problems—problems which need legislation.

I am glad to have a chance to focus on this issue today, because you can help. You can help document environmental values and the benefits of environmental protection. In some cases, you may be able to help quantify those values.

The environment is under attack from people who only believe numbers and figures. To counter their efforts, we will need better evidence of health effects, better evidence of trends in environmental degradation, and better techniques to measure pollution and its impact.

I

A current problem demanding such attention is the dumping of hazardous waste materials. New legislation appears to be necessary to provide the proper controls and enforcement powers for the government to halt this destructive practice. The Environmental Protection Agency has discovered hundreds of abandoned hazardous dump sites around the country. In most cases the government does not have the authority to take action against the owners of these sites.

Burying hazardous wastes has proved unwise and foolish. We must develop procedures and techniques to render hazardous wastes harmless prior to disposal.

This is an issue that Congress should be addressing with vigor this year, but the mood of anti-regulation may provide too great an obstacle unless the mood is subdued.

EPA has estimated that 46 million tons of waste each year can be designated as hazardous—and 90 percent, or 41 million tons, are subject to improper disposal. One site at Montague, Michigan, will cost anywhere from $50 to $300 million dollars to clean up.

The most startling new revelation of uncontrolled dumping of hazardous substances in an area in Kentucky, now called, "The Valley of the Drums." It is only one of 800 abandoned chemical dump sites nationwide. A businessman who took liquid wastes from chemical companies and filled the valley with thousands of drums of deadly chemicals. An estimated 100,000 drums may be scattered in the valley which drains into the Ohio River.

The companies whose drums are oozing into this valley include many who should know better: The Washington Post recently listed Union Carbide, Ford Motor Company, Cellanese Polymar Specialties Company, Monsanto, DuPont, Ashland Chemical Company, and Chevron Oil Company as contributors.

The Congress enacted the Resource Conservation and Recovery Act in 1976. The Environmental Protection Agency has recently proposed rules required by that law to guard against dumping of poisonous chemicals. Those rules have gone through a two-year development in the Environmental Protection Agency. They have been scrutinized for costs, for practicality, and for effectiveness in providing environmental protection.

II

But a new and troublesome event has occurred in the development of these and other regulations.

A group of economists has been set up in the White House to second-guess such regulations. Chemical companies are clearly disturbed at the possible costs that may result from efforts to regulate hazardous wastes. A key issue is whether substantial exemptions will be created, so that some sites will not have to comply with safe practices, and companies producing those wastes will not bear the costs of the proposed regulations.

Yearly we face new opponents of environmental efforts. This is the year of the anti-regulators. They are cloaked in the language of narrow, academic, cost-benefit analysis.

Perhaps the best example of the assault on regulations is occurring in the form of a draft bill being circulated by Federal agencies. The draft legislation is called a "Regulatory Reform" bill.

The draft would require the Environmental Protection Agency to develop a new economic review for every significant regulation, rule, policy, or practice now in existence. That alone would stop the Agency from doing anything else—from providing any new protection, even where new rules are required by existing laws. The draft bill would override every existing environmental statute.

It would set aside public health standards.

For example, the Clean Air Act currently requires that levels of acceptable air quality must be established solely on the basis of health. These standards establish a national goal. States and communities adopt steps to attain that goal, with cost-effectiveness used as one of the criteria in choosing the steps to be taken.

But under this draft legislation, that would no longer be the case. The health standard itself would be eliminated. Instead, a standard would be established on the basis of a cost-benefit analysis. This standard would have to be based on the "least burdensome" alternative.

There is no mention of whether that alternative would be enforceable, whether it would be a practical alternative, or whether it would put less burden on the public than on a polluting industry.

The draft bill requires the creation of a new bureaucracy in every agency—a bureaucracy to second-guess and water down Congressionally-mandated regulations.

This draft bill is a bone tossed to industry by bureaucraitc economists. In this case, the bone appears to be the environmental health of the nation.

Already in place, now awaiting this draft legislation, is the President's new Regulatory Council. The Council is an obvious symbol of the new anti-regulation, anti-government attitude. Ironically, it creates another new government bureaucracy.

All through the White House and in all the agencies which develop regulations, "cost-benefit analysis" is probably on every memo and everyone's mind.

The new Regulatory Council will develop lists of the "most significant" upcoming regulations from all the agencies which might have significant economic impact. But the Council is only one of a number of new bureaucracies spawned by the White House to look at environmental regulations. Also in existence is the Regulatory Analysis Review Group, operating out of the White House Office of the Economic Advisers. This Group will make its own studies on proposed regulations which are estimated to cost $100 million or more. That's not all. The White House also has the Council on Wage and Price Stability, which will study and comment on regulations before they are implemented.

It gets confusing.

All too often the discussion of environmental pollution and economic well-being are plagued by a distorted concept of costs. A key problem is that the investment costs of economic projects are emphasized, while the damage of environmental degradation is discounted.

Controlling pollution has costs that can be measured in dollars and cents—and you can bet industry will always magnify these costs.

Pollution itself, however, has costs that can only be measured in lost jobs, lost health, lost recreation, and fewer options for the future. How do we measure these in dollars and cents on an economist's graph?

These new regulatory reviews have been used as an economic veto of environmental, health and safety regulations—regulations which have already completed full reviews. Next week my Subcommittee on Environmental Pollution will hold hearings to determine the merit, legality, and political ramifications of intervention by White House economists in the development of environmental regulations.

Let me make it clear that I encourage cost-effective programs and regulations. I have introduced Sunset legislation again this year in order that we might review the purpose and effectiveness of on-going programs and terminate them if they do not measure up.

But I don't believe Congress has ignored its responsibility to take costs into consideration during the long debates on environmental legislation. That is one reason why we have stressed performance standards in the laws instead of design standards—so the laws could be carried out in the most effective manner . . . as long as they are actually carried out. These laws do not need to be second-guessed by bureaucratic economists.

Congress determined that public health required certain levels of environmental control. Congress made the health balancing judgment. Congress gave the program administrative flexibility as to method of achievement—not as to deadline and not as to the basic goal.

The battle created by attempts to choke off environmental regulations threatens the success of old laws and the hope for new and necessary statutes.

I am concerned that all these efforts to second-guess, and third-guess, environmental rules may have a "chilling" effect on aggressive efforts to curb pollution.

We must not allow the attacks of analysts who emphasize industry costs and ignore broad societal values to deter efforts to provide needed environmental programs.

The people of Love Canal lived above a burial ground of toxic waste near Niagara Falls. Extemely high rates of miscarriage and birth defects in the area are being blamed on contact with these leaked chemicals. High rates of liver cancer, hyperactivity, and seizure-inducing nervous diseases are also linked to the hazardous waste.

Environmental hazards can be as close as one's own backyard.

It is staggering to know that 90 percent of this State's population, 8 million people, are carrying toxic PBB chemicals that have caused death in cattle and liver cancer in rats.

At the beginning of the environmental movement in 1970, the task before us was the identification of our most urgent ecological and health problems. Almost a decade later, the harder job remains. We must implement the laws we wrote to solve those problems.

III

Clear examples exist where the use of narrowly defined economists could have a negative impact on environmental protection and enhancement.

Last month, Douglas Costle, Administrator of the Environmental Protection Agency, announced that he would relax the oxidant, or ozone standard. It is a decision which will affect the health of millions of Americans.

One of the most important health standards established in the Clean Air Act is the level of oxidant, which is the key element of smog. The Act requires that the EPA Administrator establish a public health standard for air pollution which is solely, I *repeat* solely, based upon medical evidence of the effects of these pollutants.

It seems that Mr. Costle, under pressure to ease the standard, was also influenced by the economic voices from within the Administration, who believe that the easier-to-determine costs of implementing the ozone standard are more important than the less specific public health benefits.

So, the allowable level of smog was raised by 50% last month. This still did not please the petroleum industry, which filed a suit to raise the allowable level even further. General Motors warned that employee layoffs and widespread inflation will result if an even weaker standard is not adopted.

This is the same company which, in 1967, said before my Subcommittee that the controls they were developing would solve the air pollution problem, and said that by 1980, they could have atmospheric levels of pollution "back where they were in 1941."

Some say that Mr. Costle has opened Pandora's Box. Why, they argue, should *any* environmental law be implemented when standards might be lessened at a later date?

Recently there have been calls by industry to reopen the Congressional debate on the entire Clean Air Act. The Act was amended in 1977, and only now have some of the most important provisions begun to be implemented. Yet, various segments of industry and labor gathered in San Francisco last month to begin an exerted effort to further delay the implementation of the Act.

Bleak pictures have been painted of the incapacity to deal with a law which allows each State to create its own plan for meeting the national ambient air standards by 1982. A false impression is given of an environmental law which is unbending and unflexible.

The 1970 Act was examined and re-examined and, in 1977, Congress did several things to make the Clean Air Act more flexible.

First, we extended deadlines to give communities more time in which to develop clean-up plans.

Second, more time was given to the auto industry to achieve statutory standards, overcome technical problems and deal with fuel economy problems.

Third, more time was given to the stationary sources of air pollution in order to achieve applicable emission limits.

I see no reason to reopen the legislative debate on the Clean Air Act when its implementation is just getting underway.

IV

Pressure from the anti-regulators, who demand absolute proof of broadscale damage before acting, will slow down our efforts to deal with other long-range problems.

Acid rain is an example. Sulfur dioxides and oxides of nitrogen are being spewed into the atmosphere from the combustion of coal, gasoline, and natural gas at an alarming rate. Pollution from the Midwest and the East Coast has increasingly made its way to the Northeast where chemical transformations have resulted in sulfuric and nitric acid falling from the atmosphere in rain and snowfall.

Acid precipitation has negatively affected the timber and fish population in Scandinavia. Evidence is growing that more and more areas in America are being affected in the same manner. With the loss of fish, timber and tourism in New England, and my home State of Maine, wouldn't we be delinquent to stand idly by and wait to see how much damage we would withstand before we acted?

But the steel mills and coal-burning plants which create this pollution will be well-represented in Washington with good lobbyists.

Who will defend the right of an individual New England farmer to earn a living without pollution

Do we leave this job to economists tucked into the nooks of the Executive Office Building at the White House?

V

The battle over environmental priorities and spending limitations will continue—the mood of the 96th Congress seems to be with the anti-regulators and against new spending. As Chairman of the Senate Budget Committee, I, too, am very concerned about what we can and cannot afford to spend as a nation.

But I am optimistic that the American public will continue to hold the same values displayed in 1970 when we, in Washington, heard you say "we have had enough pollution." There are many hopeful signs:

First, a poll by a private research organization has shown that the public support for cleaning up the environment has not weakened. Fifty-three percent of those polled believe that "protecting the environment is so important that requirements cannot be too high and improvements must be made regardless of cost." Only one person in ten believes pollution control costs more than it is worth.

Second, a $375 million clean water bond was approved, almost without notice in the press, by the citizens of California on the same ballot with Proposition 13.

Third, a report by a private consulting firm, released last month by the President's Council on Environmental Quality, said that the cost of cleaning up air and water pollution will add less than two-tenths of a percentage point to the inflation rate over the next eight years. And, at the same time, such controls will cause the unemployment rate to drop by three-tenths of a percentage point during the same period.

Fourth, although I have some specific concerns with the fiscal year 1980 budget for the Environmental Protection Agency, overall I am pleased with the 6% increase for regulatory programs, at a time when the President has provided an austere Federal budget.

Thomas Paine wrote in the early days of our democracy that:

"The more perfect civilization is—the less occasion has it for government."

I certainly cannot argue with that.

No mattter how hard we try, however, our American civilization will not be perfect. There will always be a new problem which needs solving—just around the corner.

If the mood of anti-regulators dominates, health benefits will more than likely be discounted during discussion of such problems.

But, we cannot discount the absence of lung disease.

We cannot discount the value of a home in a smog-free community.

We cannot discount a neighborhood free of hazardous waste.

This spring, my Senate Subcommittee on Environmental Pollution will begin dealing with legislation designed to curb the spread of hazardous substances through the environment. And next week, the White House economists will appear before the Subcommittee to explain what role they plan to play in this and other environmental issues.

These are battles that will flow into the next decade. I enlist your efforts in those struggles.

Thank you.●

REGULATORY REFORM

Mr. RIBICOFF. Mr. President, today my distinguished colleague, Senator BENTSEN, has been added as a cosponsor to S. 262, the Reform of Federal Regulation Act. S. 262 now has 24 cosponsors, including 6 committee chairmen.

It is particularly gratifying to have Senator BENTSEN's support in this matter. His knowledge of the strengths and weaknesses of the regulatory process will significantly add to our consideration of this legislation. As chairman of the Joint Economic Committee, Senator BENTSEN is well equipped to assist us in making certain that Federal regulation is both efficient and effective.

I welcome the Senator's participation, and I look forward to working with him closely on this important bill.

Mr. RIBICOFF. Mr. President, I ask that the Senator from Texas (Mr. BENTSEN) be added as a cosponsor of S. 262, the Reform of Federal Regulation Act of 1979.

S. 505—MEDICARE-MEDICAID ADMINISTRATIVE AND REIMBURSEMENT REFORM BILL

Mr. TALMADGE. Mr. President, on Thursday of last week when I reintroduced my medicare-medicaid administrative and reimbursement reform bill, I inadvertently omitted as a cosponsor and in my remarks regarding colleagues who had had important input into this legislation the name of my colleague, the distinguished junior Senator from Georgia, the Honorable SAM NUNN.

Senator NUNN was a cosponsor of S. 1470, last Congress version of my medicare-medicaid reform bill, and he, as acting chairman of the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs, played an indispensable part in helping to ferret out waste, mismanagement, and fraud in these programs. As much as anyone else, he is also responsible for the enactment and signing into law of the Talmadge medicare-medicaid antifraud and abuse bill.

I, therefore, ask that Senator NUNN be added as an original cosponsor of S. 505.

SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Wednesday, after the two leaders have been recognized under the standing order, Mr. BUMPERS be recognized for not to exceed 15 minutes, that Mr. TSONGAS be recognized for not to exceed 15 minutes, and that I also have a 15-minute order.

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

ORDER FOR ROUTINE MORNING BUSINESS ON WEDNESDAY; ORDER FOR RESUMPTION OF TAIWAN ENABLING ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that after the orders for the recognition of Senators on Wednesday, there be a brief period for the transaction of routine morning business, for not to exceed 10 minutes, with statements therein limited to 2 minutes each.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that the Senate then resume the consideration of the Taiwan Enabling Act.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

AUTHORITY FOR CERTAIN ACTION TO BE TAKEN DURING RECESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during the recess of the Senate over until 11 a.m. on Wednesday, the Vice President of the United States, the President pro tempore of the Senate, and the Acting President pro tempore of the Senate be authorized to sign duly enrolled bills and joint resolutions.

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

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that during that same period the Secretary of the Senate may be authorized to receive messages from the President of the United States and/or the other body and that they may be appropriately referred.

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

ORDER AUTHORIZING SENATORS UNTIL 4 P.M. TODAY TO SUBMIT STATEMENTS AND INTRODUCE BILLS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Senators may be authorized to submit statements for the RECORD and bills for introduction until 4 p.m. today.

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

Mr. ROBERT C. BYRD. Mr. President, I yield the floor.

PROGRAM

Mr. BAKER. Mr. President, while we have just a moment, I wonder if the majority leader will outline for me the schedule as it is now provided for on Wednesday or after the Senate concludes its business today?

Mr. ROBERT C. BYRD. Yes, I am glad to.

Mr. President, the Senate will convene on Wednesday at 11 a.m. After the two leaders or their designees have been recognized under the standing order, there will be some orders for the recognition of Senators, I believe three in number at this point, after which there will be morning business, not to extend beyond 10 minutes with Senators permitted to speak therein up to 2 minutes each, after which the Senate will resume its consideration of the Calendar Order No. 14, S. 245, the bill to promote the foreign policy of the United States through the mutual maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis, and for other purposes.

It is hoped that Senators will offer their amendments that day and that votes could be had thereon.

I anticipate that there will be rollcall votes on Wednesday on amendment and/or motions in relation to that legislation.

If business is not completed on that bill on Wednesday, the Senate will continue on the bill on Thursday, and I assume that the Senate should be prepared to stay into the evenings, if necessary, in order to complete action on that bill hopefully Wednesday and Thursday.

Mr. BAKER. Mr. President, I thank the majority leader for that information, and I am pleased that we are able to recess or adjourn the Senate today over until Wednesday so that we can show our respect for our former colleague and departed friend, Senator Dewey Bartlett of Oklahoma, and I thank the majority leader for arranging the affairs of the Senate so we may accommodate that.

Mr. ROBERT C. BYRD. I thank the distinguished Republican leader for his fine cooperation.

RECESS UNTIL 11 A.M. WEDNESDAY, MARCH 7, 1979

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, and as a further mark of respect to the memory of our late departed friend and former colleague, Dewey Bartlett, of Oklahoma, that the Senate stand in recess until the hour of 11 a.m. on Wednesday.

The motion was agreed to, and at 3:15 p.m., the Senate recessed until Wednesday, March 7, 1979, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate, March 2, 1979, under the authority of the order of the Senate of March 1, 1979:

DEPARTMENT OF STATE

Richard Elliot Benedick, of California, Coordinator for Population Affairs, for the rank of Ambassador.

THE JUDICIARY

Joyce Hens Green, of Virginia, to be U.S. district judge for the District of Columbia, vice a new position created by Public Law 95-486, approved October 20, 1978.

POSTAL RATE COMMISSION

James H. Duffy, of Maryland, to be a Commissioner of the Postal Rate Commission for the term expiring November 22, 1984, vice Carlos C. Villarreal, term expired.

IN THE COAST GUARD

The following graduates of the Coast Guard Academy to be permanent commissioned officers in the Coast Guard in the grade of ensign:

Christopher Alan Abel
Jon David Allen
Michael B. Amonson
Edward Gregory Andersen
Rodrick Morris Ansley
Francis Joseph Arland
David Clark Aurand
Robert Copeland Ayer
Edward English Baker
William Jeffrey Belmondo
Herbert Allen Black III
Jay P. Blinkinsop
William George Boehm
Mark Gregory Boucher
Peter John Boynton
Kevin Andrew Buford
Neil O. Buschman
Vincent Max Michael Campos
Kenneth Carvalho
David Lee Chilton
Jeffrey Rittler Clayton
Kevin S. Cook
John Thomas Costello
Daniel D. Cronin
Marc Charles Cruder
Edwin Hassel Daniels, Jr.
Stephen Joseph Danscuk
Charles Nelson Dickerson
Richard J. Digiovanna
Curtis Lee Dubay
Francis Anthony Dutch
Dane Sherman Egli
Steven William Ellis
Mark Allen Feldman
Gilbert William Fonger
John Ewen Frost
Kevin Eugene Gates
George Anthony Gianopoulos III
Timothy Ray Girton
James Sebastian Gozzo
Keith Cullen Gross
Wayne Scott Harral
Richard William Hatton
Kurt John Heinz
Evan Van Dorn Hensley
Joseph Thomas Ahern
Eric McCaslin Amberg
Carl Kenneth Andersen
John Joseph Andrzejewski
George Gregory Arbutina
Neal Joseph Armstrong
John Michael Avallone
Steven Victor Bain
Douglas Glenn Becker
Mark Peter Blace
Michael Louis Blair
Mark Boe
Bennett Thomas Bonomi
Richard Louis Boy, Jr.
Bruce Duane Branham
Michael Justin Burgard
Jay Joseph Butler
Steve Thomas Carter
Mark Benton Case
Davin Richard Cilley
Christopher James Conklin
Robert Frederick Corbin
Paul Howard Crissy
James I. Crowley
Douglas Scott Daeffler
Philip Thomas Daniels
Stephen Jerome Darmody
Patrick John Dietrich
Carlton Jennings Ditto
Larry E. Duerr
William Allen Dyson
Thomas Kenneth Ehnt
Scott H. Evans
Mark Jeffrey Fiebrandt
Earl Lawrence Foutch, Jr.
Ronald Adriaan Gan
Scott Dominick Genovese
Gerald R. Girard
Jeffrey Scott Gorden
William Robert Grawe
John Grant Hansen
Chet A. Hartley
Steven Lynn Hein
Michael John Hejduk
Mark Evan Hesse
Steven Lewis Holcomb
David Guy Holman
John Stuart Howard
Bradley Matthew Jacobs
Michael Keith Jesmonth
Charles S. Johnson, Jr.
Leland Lowell Jones
P. Christopher Kelly
David Rice King
Gregory Albert Kmiecik
John Harry Korn
Kevin Don Krumdieck
Dan Larson
Timothy John Leahy
Keith D. Lepage
John Edward Long
Allen Lotz
Kevin Lee Maehler
Daniel Robert May
John David McCann, Jr.
Robert Emmett McKew, Jr.
David A. Medina
Norris Edward Merkle
Glenn Gorden Miller
Kevin Paul Mizak
Donald A. Moore, Jr.
Kurt William Nancarrow
Patrick J. Nemeth
Daniel Kiesel Oliver
Robert Charles Parker
Walter Frank Pawul, Jr.
Charles D. Pratt
David Fenton Quick
Kevin Anthony Redig
Glen Arthur Robbins
Anthony Henry Rose
Norbert Daniel Rudek
John Harrison Russell
Edward Robert Saleeby
Joel F. Sasscer
Michael Joseph Scanlon, Jr.
Franz Patrick Schiffmann
George Herman Self III
Randell Battelle Sharpe
Stephen Lloyd Sielbeck
Emil Sikorsky III
Mark Antonio Sinnen
David Darrow Skewes
Robert Samuel Spears, Jr.
Patrick Hoy Stadt
Jeffrey David Stieb
Jeffrey Owen Stull
Francis Joseph Sturm
John Hilary Sweeney
Dan S. Takasugi
Neil Edward Van De Voorde
Thomas Patrick Vieten
George Dean Walker, Jr.
Dana Edward Ware
Mark Phillip Watson
Douglas James Wisniewski
Donald Robert Wright
Dennis Michael Holland
Jeffrey David Holmgren
Shane Charles Ishiki
Charles William Jenkins
Eric Michael Jewess
Phillip John Johnson
William Hollis Jones
Patrick Thomas Kelly
Kenneth Lee King, Jr.
Thomas Lee Koontz
Mark Andrew Kowalski
Douglas Bruce Lane
Paul Kevin Larson
Frank Herman Leidy
Kevin Erven Lodeen
Eric R. Longfellow
James Kipling Louttit
David Andrew Masiero
Matthew Samuel McBride
David Peter McDede
David Brian McLeish
Jeffrey Wayne Mehr
Michael McPherson Millar
Vincent Brien Mitchell
Robert Emmett Mobley
Frank E. Mullen
Roy Andrew Nash
Robert William Nutting
Richard Michael O'Rourke
Kenneth Brion Parris
Jeffrey Roland Pettitt
Richard John Preston, Jr.
Rodney Doyle Raines III
Charles Rice
Everett Freemont Rollins III
Bruce Maynard Ross
Steven Paul Rudolph
Larry James Ryan
Frank John Sarna
Kenneth L. Savoie
Richard Raymond Schaefer
Donald Robert Seers
William Jeffrey Semrau
Philip M. Shook
Michael Jeffery Sigmon
Alexander Otto Simonka, Jr.
David William Sinnott
Timothy Vladimir Skuby
David Carl Spillman
Robert Glenn Stephens
James Best Stricker III
Donald Lee Sturdivant, Jr.
David Harlen Sump
Michael Scott Swegles
Scot Thomas Tripp
Bruce Eric Viekman
Thomas John Viglienzone
Terrence William Walsh
Jon Michael Watson
William Douglas Wiedenhoeft
John Douglas Wolch
James Westly Wright

IN THE ARMY

The following-named officers for reappointment in the active list of the Regular Army of the United States, from the Temporary Disability Retired List, under the provisions of title 10, United States Code, section 1211:

To be colonel, Regular Army and colonel, Army of the United States

Hamilton, George B., XXXX
Parker, Brandon L., [redacted]

The following-named officer for appointment in the Regular Army, by transfer in the grade specified, under the applicable provisions of chapter 335, title 10, United States Code:

To be major, Regular Army and lieutenant colonel, Army of the United States

Gray, William T., [redacted]

The following-named officers for appointment in the Regular Army of the United States, in the grade specified, under the provisions of title 10, United States Code, sections 3284 through 3294:

To be major

Amsberry, William E., [redacted]
Araki, Norman G., [redacted]
Danna, James A., [redacted]
Sedge, Roy K., [redacted]
Vitori, Robert A., [redacted]

To be captain

Adams, Michael L., [redacted]
Baker, Marx M., [redacted]
Ball, Michael B., [redacted]
Basilio, Gil D., [redacted]
Berman, Fredoric R., [redacted]
Christensen, Mary J., [redacted]
Coker, Michael E., [redacted]
Corbin, William R., [redacted]
Denucci, Donald J., [redacted]
Dixon, James D., [redacted]
Griffin, Jere M., [redacted]
Hartke, Larry W., [redacted]
Ice, Judith A., [redacted]
Jennings, Bonnie L., [redacted]
Kendall, James J., III, [redacted]
Kotler, Lawrence M., [redacted]
Kuhar, Kenneth, [redacted]
Mollen, Allen J., [redacted]
Montoya, Ralph G., [redacted]
Moore, Craig A., [redacted]
Naleski, Gary J., [redacted]
Nemmers, Theresa M., [redacted]
Newsome, Andrew J., [redacted]
Patterson, Adrian C., Jr., [redacted]
Patterson, James O., [redacted]

Pike, Charles W., xxx-xx-xxxx
Render, Philip J., xxx-xx-xxxx
Rominger, Olivia S., xxx-xx-xxxx
Ryder, John T., xxx-xx-xxxx
Schoch, Roger E., Jr., xxx-xx-xxxx
Schumpert, Warren W., xxx-xx-xxxx
Smith, Charles T., xxx-xx-xxxx
Sweet, Maria T., xxx-xx-xxxx
Tabor, Michael W., xxx-xx-xxxx
Thornton, Linda J., xxx-xx-xxxx
Vogler, Jennie L., xxx-xx-xxxx
Weigum, Larry M., xxx-xx-xxxx
Winn, Mary E. B., xxx-xx-xxxx
Woolford, Farrel J., XXXX
Worthington, Ronald T., xxx-xx-xxxx

To be first lieutenant

Ackerman, Candace P., xxx-xx-xxxx
Almachar, Estelita, xxx-xx-xxxx
Allen, Thomas F., xxx-xx-xxxx
Anderson, Craig E., xxx-xx-xxxx
Berlin, Marlene J., xxx-xx-xxxx
Best, Marcia, xxx-xx-xxxx
Boyle, Virginia A., xxx-xx-xxxx
Brandt, Barbara J., xxx-xx-xxxx
Buchanan, Mary E., xxx-xx-xxxx
Campbell, Robert W., xxx-xx-xxxx
Carter, Linda S., xxx-xx-xxxx
Chang, Jeffrey C., xxx-xx-xxxx
Coleman, Charlyn A., xxx-xx-xxxx
Collins, Patrick C., xxx-xx-xxxx
Corley, Ellen C., xxx-xx-xxxx
Dalton, Philip H., xxx-xx-xxxx
Dauer, Samuel D., xxx-xx-xxxx
Dutton, Marie H., xxx-xx-xxxx
Floyd, Dennis R., xxx-xx-xxxx
Fox, Susan D., xxx-xx-xxxx
Gant, Stephen J., xxx-xx-xxxx
Girling, Allan J., xxx-xx-xxxx
Graves, Janet D., xxx-xx-xxxx
Guerin, Richard D., xxx-xx-xxxx
Harris, Roy A., xxx-xx-xxxx
Harrison, Frederick J., Jr., xxx-xx-xxxx
House, Richard C., xxx-xx-xxxx
Hudgins, Carolyn A., xxx-xx-xxxx
Klossner, Evelyn, xxx-xx-xxxx
Kratz, David A., xxx-xx-xxxx
Ledford, Gordon L., xxx-xx-xxxx
Lilly, Dietlinde M., xxx-xx-xxxx
Lowry, Rebecca A., xxx-xx-xxxx
Meyer, Barbara L., xxx-xx-xxxx
Miller, Christine A., xxx-xx-xxxx
Odom, James D., xxx-xx-xxxx
Partrich, Gale L., xxx-xx-xxxx
Paul, Mary C., xxx-xx-xxxx
Petersen, Mark K., xxx-xx-xxxx
Reaves, James R., Jr., xxx-xx-xxxx
Riddle, Wendy H., xxx-xx-xxxx
Rosenberg, Valerie E., xxx-xx-xxxx
Saindon, Pamela M., xxx-xx-xxxx
Sanders, Jimmy, xxx-xx-xxxx
Schoch, Janet M., xxx-xx-xxxx
Shanahan, Terry P., xxx-xx-xxxx

To be second lieutenant

Gaule, David A., xxx-xx-xxxx

IN THE NAVY

The following temporary captains of the U.S. Navy for permanent promotion to that grade, pursuant to title 10, United States Code, sections 5780, 5782, and 5791.

LINE

Adams, Thomas Curtis
Ailes, Robert Heber
Alexander, Sherman George
Allen, John Elton
Allison, William Rush, Jr.
Anderson, Edwin Knowles
Anderson, James Bruce
Andrews, Bobie
Androski, Frank Nicholas
Apple, John DuBell, Jr.
Armstrong, Clarence Ervin, Jr.
Arnold, Thomas Francis
Arthur, Stanley Roger
Ausley, Joe Henry, Jr.
Baker, Robert Cathcart
Barnes, James Albert
Barnes, James Harold
Barrish, Paul David
Bauman, John Morton
Beach, Milton David
Beard, Percy Morris, Jr.
Beasley, Charles Jahns
Betts, Roger Sherman
Beving, Duane Ubbe
Bigler, William Walter
Bilicki, Daniel Robert
Box, Roger Elden
Breland, Edgar Allen
Brickell, Charles Hennessey, Jr.
Brisbois, Marshall Bartlette
Bronson, Hiram Sherman, III
Brown, Donald Dare
Bruyere, Thomas Edgar
Burdick, Howard Frederick, Jr.
Burke, Thomas Jerome, Jr.
Burkel, John Faubel
Burrows, Donn Talbott
Bush, Vernon Royce
Butterworth, Frank Willoughby, III
Byng, Weston Hamilton
Caccivio, John David
Camacho, Richard George
Campbell, Thomas Gordy
Canada, Donald Edward
Carre, David Morey, Jr.
Carson, James Thompson
Carswell, Michael Stuart
Casey, Richard Francis
Chang, Ming Erh
Charneco, Carlos Mario, Jr.
Chase, Henri Bertram, III
Christenson, William Charles
Christopher, Richard Vernon
Chumley, Sylvester George
Clay, Jack Delano
Cloud, Bruce Larry
Cole, Charles William, Jr.
Coleman, Douglas Connor
Colgan, John Gerard
Coll, William Anthony
Connelly, James Henry, Jr.
Cooke, Vincent Edward
Cooper, David Stuart
Cooper, Estill Allen, Jr.
Covey, Edward John
Cramer, Dean Edward
Crater, George Howard, Jr.
Cullen, Charles William
Curry, Thomas Hugh
Cyr, Byron Alton
Dahl, Lowell Duane
Darling, David Donald
Darnell, Jack
Davis, Harry Leland
Dean, Robert Victor
Dearie, Cyril Glennon
Dennison, William Earl
Deshler, William Albert
De Weese, Everette Dale
Dickerson, Kenneth Alvin
Di Loreto, Lucio
Doerr, Peter James
Dominigue, William Andrew
Doremus, Robert Bartsch
Dorsey, James Francis, Jr.
Duncan, John Gard
Dungan, David Anthony
Dunleavy, Richard Michael
Dunmire, Rance Dwaine
Eaves, James Sylvester
Eckert, John David
Egerton, James White
Ehret, James Daniel
Erie, Carl Richard
Estes, Edward Dale
Eytchison, Ronald Marvin
Eyler, Armand Tise, Jr.
Fantry, William Thomas, Jr.
Featherston, Rex William
Felkins, Charles Gerritt
Fellowes, John Heaphy
Fenzl, George John, Jr.
Ferrarini, Richard Lewis
Fink, George Edward
Finley, John Lawrence
Fitzgerald, Maurice Dwight
Fitzwilliam, Peter Kaufmann
Flanary, Thomas Neale, II
Flannery, Gerard Joseph, Jr.
Flather, Charles Randolph
Fournier, Paul Robert
Fox, Robert Francis
Frey, Robert Dean
Friichtenicht, Richard Del
Fries, Charles Leslie
Gallotta, Richard Arnold
Gauthey, Jules Richard
Gesling, Marion Lee
Giacchino, Louis Frank
Gibson, James Carson, Jr.
Giuliani, Leonard Edmond
Gluse, Michael Robert
Gore, James Roy
Graves, William Sheakley
Green, Gerald Edward
Green, Richard Francis
Green, William Henry
Greer, Robert Eugene
Hacker, Benjamin Thurman
Hahne, Dayton Roy
Hall, Robert Alton
Hamilton, Edward Allan
Hamlin, George Ames, Jr.
Hammon, Colin Paul
Hanson, Morton Howard
Harbrecht, Raymond John
Harmon, Jack Emory
Harscheid, David George
Hatch, Ross Riepert
Hayman, Douglass Frederick, Jr.
Heisinger, Duane Lawrence
Hekman, Peter Maynard, Jr.
Hendrickson, Claude Francis, Jr.
Hesse, Gerald Herman
Hickerson, James Martin
Hodge, William Robert
Hoffman, Chauncey Frazier
Hohensiein, Clyde Gilbert
Hollandsworth, Paul Firm, Jr.
Holm, John Peter
Honsinger, Vernon Chapin
Hood, Joseph Williams, Jr.
Horne, Roger Bigelow, Jr.
Hoyes, Donald James
Hueber, Fred Paul
Huhn, Samuel Peter
Hullander, Robert Arel
Husted, Murl Edwin, Jr.
Hutton, James Leo
Jarratt. Guy Carleton, III
Jauss, Charles Walter
Jeremiah, David Elmer
Johns, Clifford Murdock
Johnson, James Edward
Johnson, Jerome Lamarr
Johnson, Wendell Norman
Johnston, Donald Hendrie, Jr.
Johnston, Donald Whayne
Jones, Jerry Elmer
Karn, Alvin Reuben, Jr.
Keegan, Arthur Edwin
Kerslake, Ronald William
Ketchum, William Harold
Kinert, John Henry
Kinney, Ben Jack
Kinney, Charles Herbert
Kirkpatrick, John Henry
Klein, Harry Lawrence
Komisarcik, Adam
Kralik, Simon Cornelius
Kramer, Theodore Roosevelt, Jr.
Krekel, Lyman Edward
Kruger, Allen Ladon
Kuykendall, Herbert Brent
Lacy, William Anthony
Lambert, Russell Gale
La Motte, Francis John
Langelier, Wilfred Etienne, Jr.
Lanning, Richard James
Larison, John Dereamer, Jr.
Laurance, James Douglas
Lawson, Ramsay
Leblanc, James Bernard
Leeds, Rene Wesley
Lees, Forrest Alexander, Jr.
Lenhardt, Harry Fehl, Jr.
Lewin, Theodore Edwin
Lewis, Harold Stephen
Lown, Paul Clinton
Lund, John Robert
Lynch, Robert Benedict, Jr.

MacCabe, Van Lorin
Majors, William Tyree
Maloney, John Joseph
Maston, Joseph Harold, III
May, James Laurence
McBride, Michael Alexander
McClenahan, Tom Porter
McCracken, David Jerome
McDivitt, Ronald Merrell
McEachen, Angus Dougald, III
McGarry, John Gordon
McGrath, James Joseph
McHugh, John Thomas
McKenzie, John Henry, Jr.
McClellan, Charles Anthony
McMorris, John Allen, II
McQuesten, John Theodore, Jr.
Mecaughey, Robert William
Melvin, Edmund Waller
Mercer, William Charles
Meyer, "J" "D"
Miller, Forrest Ray
Miller, John Albert
Miller, Robert Howard
Minton, David Carson, III
Mirise, Kerry Winston
Monk, Samuel William
Montgomery, George Cannon, Jr.
Mook, Joseph
Moore, Paul Michael
Morrison, Orrin Lee
Mortimer, Edmund Craig
Mozier, Richard Anthony
Munsey, William David
Murray, Paul Anthony
Nelson, Carl Alfred
Newman, Alvin Simmerman
Nicholson, Harry Evans
Norrington, Charles Gilbert
O'Connell, Jerome Arthur
O'Connor, William Joseph Michael
O'Donnell, Daniel Tanner
Onhaizer, Jerry Eugene
Orrik, David Neil
Owens, Ramon Ronald
Owens, Robert Spencer
Palmer, Philip Maynard
Pasquinelli, Francis Chris
Pate, Zachariah Taylor, Jr.
Patton, James Matthew
Peek, Robert Franklin
Pellock, Lyle Edward
Pendleton, Benjamin Lewis
Periolat, John Joseph
Perry, Albert Joseph
Perry, Leonard Gordon
Peterson, Karl Lawrence
Peterson, Peter Clauson, Jr.
Petree, Noel Harper, Jr.
Petrich, Horst Alfred
Phillips, Richard Wayne
Phillips, Ronald Morris
Pingel, Leon John
Poindexter, John Marlan
Polfer, Clarence Ronald
Powell, Wendell Wynne
Powell, William Charles
Presley, Jack Cole
Purdy, Dale Claude
Rabuck, Leo Vincent
Ransom, James Patterson, II
Reese, Franklin White, III
Rentschler, Richard Lee
Rettig, Godfrey Aloysius
Rich, Willis Scott
Richardson, Fred Douglas, Jr.
Riefler, George Breeze
Roberts, Ned Cooper
Robertson, Hollis Eugene
Rodgers, Robert Dennis
Rowsey, James Melvin, Jr.
Russ, William Marcellus, Jr.
Russell, Kay
Ryan, Gerald Frederick
Sage, Robert Allen
Salo, Lennart Reino
Sayers, Samuel Lee
Schaffert, Richard William
Scheyder, Ernest John
Schilling, George Frederic
Schulze, John Milton, Jr.
Scott, George Wilkinson
Scott, Philip John
Scruggs, Richard Mitchell
Sechrest, Edward Amacker
Seesholtz, John Richard
Severance, Laverne S., Jr.
Shannon, Philip Martin
Shapero, Allen Leonard
Sharp, Gail "J"
Shearer, Oliver Vassar, Jr.
Shinn, Robert Allen
Short, Benjamin Francis
Shulick, John, Jr.
Shultz, Theodore Byers
Simpson, George Thomas Kortes
Skelly, Arthur Richard
Smetheram, Herbert Edwin
Smith, John Peter
Smith, William Cody
Soriano, Joseph Ronald
Spencer, Barry Williamson
Spink, Peter Joseph
Spoto, Victor Samuel
Stechmann, Donald Henry
Stephenson, Paul Dean
Stevens, William
Stocking, Sigurd Irvin
Stone, Lowell Perry
Stouffer, John Willoughby, II
Sullivan, Eugene Joseph, Jr.
Sullivan, William Kenneth
Sumner, Donald Morbeck
Swan, Robert Sheridan
Swan, William Ralph
Swinnerton, Ronald Hugh
Talbert, Joseph Truitt, Jr.
Tarbuck, Richard Ray
Taylor, Lawrence Hammond, Jr.
Taylor, Robert Charles, Jr.
Teachout, David Stanley
Terrell, Jerry Lee
Tettelbach, Frederick Morley
Theodorelos, Pete "J"
Thibault, George Edward, Jr.
Thomas, James Grant
Thorpe, Gordon Lewis
Thurber, John Davis
Tibbitts, Barrick Frank
Timberlake, David Winburn
Tinker, Charles LeRoy
Titus, Edward DuFour, Jr.
Tracy, William Kenwood
Treiber, Maurice Lamar
Ulmer, Donald Milton
Wales, George Edward
Ward, Compton Eugene
Watson, John
Way, Edward Richard
Weir, Richard William
White, Richard Farrell
Whittaker, Robert Leroy
Wilbern, Jack Martyn
Winter, Richard Arthur
Wise, Stephen Ames
Wolfe, Robert Eugene
Woolam, John Edson
Wright, Harry Wallace
Wright, Joseph Martin Pickett, Jr.
Zipperer, William Ray
Zirbel, William Donald

SUPPLY CORPS

Abele, Robert Burke
Ault, William Upshur
Barnett, Andrew Flowers, Jr.
Bosco, Clement, Jr.
Buckley, John Edwin
Bulluck, Edgar Glenn
Connolly, George Sylvester, Jr.
Daddona, John Michael
Dolenga, Harold Edmond
Evans, Lloyd Robert
Fitzpatrick, Edmond John, Jr.
Frampton, Robert Traylor
Gerstenberger, Wayne Walter
Goslin, Thomas Clinton, Jr.
Harmon, Robert Grant
Hummel, Don Franklin
Hurst, Harvey Richard
Kruse, William Ernest
Langer, Gerald Delane
Maldonado, Teodosio
McKinnon, Daniel Wayne, Jr.
McNall, Phillip Freeman
Morgan, Richard Escott
Olivier, Denny Royce
Olson, Gene Paul
Peters, William Anthony
Pistolessi, Vincent James
Raymond, James Arthur
Rounds, Richard Norman
Shaughnessy, John Michael
Smith, Franklin Dean
Starrett, William Ivan, Jr.
Walsh, Richard Sheridan
Willis, John James
Young, Jack Leslie

CHAPLAIN CORPS

Elder, Robert Macrum
Gaughan, Geoffrey Edward
Jerauld, Philip Eldredge
MacCall, Harry Franklin, III
McDermott, Thomas James
McPhail, Clark Buckeridge
Murphy, Milton Gaylord
Running, Paul Harrisville
Voth, Murray Howard

CIVIL ENGINEER CORPS

Cerreta, Ralph Michael, Jr.
Collins, Allan Wayne
Dickpeddie, John Irvine
Ford, James Edward
Groff, James Burton
Johnson, Don Paul
MacDonald, Malcolm John
McHugh, Robert Joseph, Jr.
Newcomb, Frank Miall
Petersen, Norman William
Quinn, Robert Emmet, Jr.
Schade, Robert Ashton, Jr.
Shanley, John Joseph, Jr.
Shirley, Ronald Gene
Shumate, James William
Wilson, Robert Burns

JUDGE ADVOCATE GENERAL'S CORPS

Abernathy, Kenneth Lee
Fasanro, Michael Francis, Jr.
Palmer, William Ronald
Redding, Robert Marshall
Toms, James Edwin
Wade, Manley Burt

MEDICAL SERVICE CORPS

Barboo, Samuel Harvard, Jr.
Gallagher, Thomas Joseph
Myers, James Ivan
Nichols, Lloyd Barden
Palmer, Jack Junior
Pittington, Francis Calvin
Wilcox, James George

NURSE CORPS

Barker, Elizabeth Anne
Butler, Phyllis Ann
Dunn, Dorothea Jean
Gampper, Mary Elizabeth
Jones, Kathaleen Rae
Moris, Patricia Joan
Nickerson, Lois Elva
Shaw, Joan Sandra
Steinocher, Anne Marie

The following temporary captains of the Naval Reserve for permanent promotion to that grade, pursuant to title 10, United States Code, sections 5783, 5911, and 5912.

LINE

Bell, William Frederick
Best, William Vernon
Borgardt, Elmer Gilbert
Class, William Horton
Dawson, Allan J.
Dearing, Paul Wayne
Dellinger, David Worth
Falkenstein, Timothy Oleary
Fare, Claude Lee
Flanigan, Mark
Francis, Jon Kenneth
Greech, Billy Sims

Griffin, Donald Allen
Hamel, Donald Rodolphe
Harris, Donald Earl, Jr.
Hood, Warren Wheeler
Kelly, Theodore Alanson
Lavin, Lawrence Michael
Lockeman, George Franklin, Jr.
McCarthy, John Dillon
McDermitt, Carrol
McGirr, Francis William, Jr.
Murphy, Warren Tuttle, Jr.
Newton, William Preston
Pacalo, Nicholas
Prater, James
Ready, George Eugene
Rogstad, Allen Rockwell
Taylor, Otis Wintfred, II
Woodall, Elliott Arnold

SUPPLY CORPS

Chancler, Robert Thomas
Flaush, Donald Anthony
Roethe, Edward Albin

Executive nominations received by the Senate March 5, 1979:

DEPARTMENT OF STATE

Francis J. Meehan, of the District of Columbia, a Foreign Service officer of class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Czechoslovak Socialist Republic.

RENOGOTIATION BOARD

William Mays Burkhalter, of Maryland, to be a member of the Renegotiation Board, vice Rex M. Mattingly, resigned.

IN THE ARMY

The U.S. Army Reserve officer named herein for appointment as a Reserve commissioned officer of the Army, under the provisions of title 10, United States Code, sections 593(a) and 3384:

To be brigadier general

Col. Albert Bryant, [redacted]

HOUSE OF REPRESENTATIVES—*Monday, March 5, 1979*

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. BRADEMAS).

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, D.C.,
March 1, 1979.

I hereby designate the Honorable JOHN BRADEMAS to act as Speaker pro tempore on Monday, March 5, 1979.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, B.D., offered the following prayer:

Gracious Lord, we ask Your blessing on us at the beginning of this new week. Grant us the gifts of Your Spirit that we may serve You and all the people.

Give us vision to care not only for the day, but for the future, give us wisdom to know the lasting from the trivial, give us patience with one another, and give us courage to speak the truth. Amen.

THE JOURNAL

The SPEAKER pro tempore. 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.

NATIONAL GRAIN BOARD

(Mr. WEAVER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WEAVER. Mr. Speaker, year after year we export more grain and generally get lower prices. Meanwhile, we pay more for imports such as oil.

We can do something about this. We can institute a National Grain Board to bargain and barter for our grain. Now, international grain companies handle almost all sales. A National Grain Board would permit private sales forces to operate, but would approve prices and terms.

We need free trade, yes, but we also need fair trade. A National Grain Board can achieve this for our balance of payments, our farmers, our taxpayers, and Treasury. A National Grain Board need not cost the taxpayer a cent. Indeed, it can make money through barter or sales.

Canada and Australia, our two major coexporters, now have such grain boards. So does Brazil for soybeans. It is in our interest to do the same. Nations such as Japan would be interested in paying higher prices if long-term contracts could be assured, which only a National Grain Board could do.

Russia and China, two oil exporters who buy large quantities of grain, could be required to pay more for our grain, just as we pay more for oil. They need our grain. Why give it to them at cheap prices? Since 1972—the year of the great Russian grain steal—our exports have actually increased; yet prices have fallen sharply from their peaks made after the Russian purchases.

Despite the excellent season, countries overseas bought a record amount of wheat, corn, and soybeans from the United States last year. They bought twice as much as they did during the 1972–73 winter, when the Soviet Union sparked panic buying with its purchase of a record 1.1 billion bushels of grain, of which two-thirds came from the United States.

The United States exported a record 4.2 billion bushels of grain and soybeans last year, twice the 2 billion sold in 1972 and 25 percent more than was shipped in 1972, according to recent Agriculture Department reports.

The export figures for 1978 showed wheat sales at 1.25 billion bushels, compared with 891 million the year earlier; corn sales of 1.95 billion, against 1.58 billion, and soybean exports of 770 million, against 593 million in 1977.

In 1972, China imported almost 180 million bushels of grain, of which 75 percent came from Canada and the rest from this country. The next year, Peking imported about 290 million bushels, with 25 percent coming from Canada—then almost sold out—60 percent from the United States and the rest from Australia and Argentina.

Last year, China imported a record 351 million bushels of grain, or a third more than the previous year. The United States and Canada each supplied a third of these imports, while Australia filled the rest.

I plan to introduce the bill—a single one-page piece of legislation creating a National Grain Board within the Commodity Credit Corporation and giving it power to make, barter, and approve grain sales. I urge the House to act on it.

REPORT ON RESOLUTION PROVIDING FOR ESTABLISHMENT OF SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 96–27) on the resolution (H. Res. 13) providing for the establishment of the Select Committee on Narcotics Abuse and Control, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION ESTABLISHING A SELECT COMMITTEE ON POPULATION

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 96–28) on the resolution (H. Res. 38) establishing a Select Committee on Population, which was referred to the House Calendar and ordered to be printed.

PERMISSION TO FILE REPORT ON H.R. 90, 1979 OMNIBUS SMALL BUSINESS BILL

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that the Committee on Small Business may have until midnight tonight to file a report on H.R. 90, the 1979 omnibus small business bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.