# SENATE—*Thursday, February 7, 1985*

*(Legislative day of Monday, January 21, 1985)*

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

*Let not the wise man glory in his wisdom, neither let the mighty man glory in his might, let not the rich man glory in his riches: But let him that glorieth glory in this, that he understandeth and knoweth me, that I am the Lord.*—Jeremiah 9:23-24.

Gracious God of wisdom, truth, and love, give us the grace to recognize our need of You, our inadequacy without You. Help us to see that in looking to You for wisdom, we are no less wise—for strength, we are no less strong—for insight, no less discerning. Help us to remember how often the powerful have fallen when weakened by the infection of pride. We thank You, Lord, that we increase in wisdom, strength, discernment, and power when our faith is in God. Forgive the pride—the arrogance—which forbids our dependence upon You. May we understand, Lord, that we are most independent when we live in dependence upon the mighty God, that we are most free when we submit to You, most powerful when we acknowledge our need of You and, Father, remind us of the most precious truth that we need each other. In His name in whom dwells all power in Heaven and on Earth. Amen.

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

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

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

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## SENATE SCHEDULE

Mr. DOLE. Mr. President, under the previous order, there are two special orders of 15 minutes each. The first is for the Senator from Wisconsin, Senator PROXMIRE, who is present.

Mr. President, I will reserve the remainder of my time when I complete a couple of other statements.

Following the special orders, we will have a period for the transaction of routine morning business not to extend beyond the hour of 1 o'clock. That has been agreed to.

It is my intention after morning business to take up the nomination of Lee M. Thomas to be Administrator of the Environmental Protection Agency. There may be a rollcall vote on that nomination.

Mr. President, I think it is fair to state for the information of Senators who may want to make plans, it would be the intention of the leadership to adjourn for the February recess when the Senate completes its business today.

## RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 15 minutes.

## CAN MASSIVE DEFICITS LEAD THE WAY TO PERMANENT PROSPERITY?

Mr. PROXMIRE. Mr. President, President Reagan may prove to be right after all. Huge deficits may be exactly what the country needs. After all, did not 1984—the fourth year of the Reagan term—and three successive supercolossal deficits in a row—$190 billion, $195 billion, and $175 billion—turn out to be about as close to economic heaven on earth as this country is likely to get? Did not we have the best real economic growth since 1951—33 long years ago? As a remarkably happy companion, did not the country enjoy at the same time stable and moderate inflation? Mr. President, that is a rare and very welcome combination; in fact, a knockout couple. At a time when economics seems to be mostly smoke and mirrors, and bad guesses, the first President who has conspicuously turned his back on the economists is the biggest economic winner. Sure, we are now in a colossal deficit, huge national debt buildup jam. And what do we do about it? Well, why not follow the President, why not do exactly what the Congress did before, take another shot of the same old big deficit joy juice, drink deep, relax, and live?

Ask yourself, why did we have the 1984 boom? Easy. The deficit did it. Yes, the deficit did it. The deficit stimulated the economy. Do you ask how about the low level of inflation? The deficit did that, too. It did it by so sharply increasing U.S. borrowing from foreign countries to finance the deficit that we shoved the value of foreign currency down and the dollar up. This has made the price of foreign goods cheap to American consumers and held down the price of American goods that compete with foreign imports.

We also, Mr. President, have 8.5 million people unemployed as of January. That holds down wages. We also have an enormous glut of oil, an enormous glut of food production that has held down the price of energy and the price of food. But the debt itself has made an interesting contribution to stable prices.

Now the President is asking for a slowdown in the rate of increase in overall spending for the 1986 fiscal year. He is asking for drastic reduction in domestic spending. It is true he is calling for big increases in military spending. But, still, if we comply with the President's requests, we will have the smallest increase in overall Federal spending in 1986 that we have had in many years. Is this a major economic policy reversal? No, it is not. Oh, sure, it may be a fat $42 billion lower than the deficit in 1985. But that is according to the administration's estimates. Whatever course the Congress chooses to follow—whether we hold down spending as the President requests, impose some kind of freeze that is roughly equal on all spending, make far deeper cuts in the deficit than the President has asked by including military spending and foreign aid in the reductions and substantially increase taxes—any of these courses will encounter vehement and bitter political opposition back home in our States and districts. And if we stay with the President's proposal or follow the across-the-board equal freeze advocated by others, which are certainly the two most likely courses, we will probably end up with a deficit of at least $296 billion in 1986 anyway.

Administrations have traditionally underestimated the deficit in the coming year. In recent years, their es-

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

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timates have been off by a whopping average of 50 percent. And this year the economic assumptions seem especially optimistic. So Congress will go through the agony of denying thousands of our constituents their most heartfelt wishes for Federal spending and then probably end up with no real gain in deficit reduction after all.

And that is not all; it gets worse. Suppose the Congress cuts spending and the country moves into a recession—a very real possibility. Then, the action by Congress in slowing its fiscal stimulation will get a sure and strong share of the blame for killing the recovery and throwing millions of Americans out of work.

So what can Congress do? Just consider one temptation so lurid and exciting that no one to my knowledge has even dared discuss it—at least, it has not been discussed very much. I have not read it in columns, I have not heard it on the floor. Suppose the Congress or the President decides, "Enough with all this negative thinking, this slinking, shrinking fear of spending big public money to meet our national needs and of cutting taxes at the same time." What would happen to the economy if Congress should decide to go out and court a really massive deficit? Suppose we forget about this pennyante $200 billion stuff. After all, that will be only 5 or 6 percent of the GNP. Suppose we go for a trillion-dollar deficit. Give every interest group pressing for Federal largess everything they want, and then cut taxes by 20 percent or so. What would happen?

Well, Mr. President, we have an historical precedent for that. This is precisely what this country did in World War II at the end of the Great Depression. We ran deficits not of 5 or 6 percent of the GNP but of more than 25 percent of the GNP. Five times our present deficits. And what happened? What happened was that the country ended the Great Depression with a bang. Unemployment dropped from 17 percent down to 2 percent. Personal income soared through the roof. Sure, it took rigorous wage and price controls to keep inflation in check. But we used wage-price controls and, that time, they worked.

Could we do it again? Mr. President, we could, and this Senator has a hunch that we just might blunder into it. If we stumble into another recession, we could easily slip to a deficit to end all deficits. But, even without a recession, the Congress and the President might just find it so hard to agree on spending restraints that it staggers—through a lack of resolve—into a fiscal policy that for 3 or 4 or more years could give us more of that exuberant, intoxicating medicine of 1943 and 1944 and 1945. And, I might add, 1984. I add 1984 because that was last year. As I said earlier, these years of back-to-back peacetime record smashing deficits gave the country its best economic growth year since 1951—33 years ago.

Now, Mr. President, in the long run, this kind of policy of colossal irresponsible deficits could permanently undermine even the marvelous economy of this Nation. We could sink under the burden of a crashing national debt. Inflation and interest rates would eventually break through any restraints and soar out of sight. But the poisonous, lurid, tantalizing attraction of this deficit policy is that, in the short run, for 2 or 3 or maybe 4 years, it would work like magic. After all, 4 years would take us through the 1986 congressional election and the next Presidential election of 1988. So do not count on a Democratic Senate after the 1986 election, or a Democratic President in 1988. Four more years of these gigantic Reagan deficits might do wonders for the Republican Party. Unfortunately, politics is a short-run game.

## THE ADMINISTRATION HAS NOT MADE THE CASE FOR MR. MEESE FOR ATTORNEY GENERAL

Mr. PROXMIRE. Mr. President, a Washington Post editorial on the Meese nomination declared: "We think the Senate has not made the case for rejecting him." I think that is incredible. The implication of that statement is that whoever the President appoints to his Cabinet should be approved unless a case is made to reject him. A Wall Street Journal Pepper and Salt item by Rose Sand appeared on Wednesday, February 6, that carries the same logic. It was labeled Mr. Clean. Here it is:

> The man, a resident of a small town, was charged with a petty offense. He was asked by the judge, "Is there anyone here who can vouch for your character?"
>
> "Yes, your honor, the sheriff over there."
>
> "Why, I don't even this know man," exclaimed the lawman.
>
> "Observe, your honor," beamed the defendant triumphantly, "that I have lived in this county for 12 years—and the sheriff doesn't even know me!"

Mr. President, Mr. Meese is under consideration for appointment to the most important law enforcement position in our country. He should not win confirmation just because the sheriff does not know him. He will, if appointed, be the country's No. 1 lawyer. He will command a department including tens of thousands of professional employees. This country has no more important obligation than to secure justice for our citizens. And Mr. Meese will be Mr. Justice.

Does this mean that the Senate must make a case against him, I repeat against him, and unless we do he should occupy this critical position? No way. Can you imagine a member of a corporate board charged with the responsibility of voting on the next chief executive officer of the company, being told by the chairman of the board that the man he selected should be confirmed unless a case is made against him. Has any university president ever been selected for office on the grounds that opponents had not made a case against him?

Or even a football coach. Could the Redskins have justified the selection of a football coach—not on the basis of his excellence, but simply because no case had been made against the coach?

Mr. President, the selection of the Attorney General of the United States is far more significant than the selection of a football coach, a corporate president, or a university president. In each of those other offices, a number of candidates are considered. Most candidates are rejected. And why are they rejected? Not because they are bad, not because they are incompetent, not because they lack experience and a winning track record, not because any case has been made against them. They are rejected because they are not the best.

Let me give you a case in point, because it happened very near here in the very, very near past. In January, the University of Virginia selected a new president. Now consider how they did it. They established a search committee. The search committee considered not one candidate, not a dozen candidates, but literally 312 persons. After 10 months of meticulous sifting and winnowing they reduced the list down to 10 or 12 of the very best candidates. And, finally, they selected a person who had been president of a great university for the preceding 5 years and who had a record as an administrator in other universities over a longer period of years. He had solid experience and a great record as a university president. He was a distinguished scholar. In the judgment of the University of Virginia Board of Visitors who made the selection, he was the best available man in the country for the job.

Now, Mr. President, contrast that selection of the University of Virginia president with the way the Federal Government has gone about the process of selecting the top policymakers in our Government, and especially the process of confirming Mr. Meese. How many persons did the President consider in determining that he would select Mr. Meese as his Attorney General? Did the President establish any kind of a search committee? Of course not. Did he ask a distinguished group of experts to recommend several of the best qualified persons in the country to serve as the Attorney General of the United States? Are you kidding? We know that was not done. Did he

look within the Department of Justice, past or present, to determine what experienced and highly competent professionals might be qualified to do that job? Do not make me laugh. The President did what Presidents have been doing for much too long. He picked a pal, a crony, a buddy, a man with two commanding qualifications: First, the President knew him and knew him well; and, second, Mr. Meese, as Attorney General, will certainly be 100 percent loyal to the President in every and all circumstances.

Mr. President, if the Federal Government were a family business, this method of selection of top officers would be a mistake, but it would be understanable. It would be the kind of mistake family businesses often make. It is why so many fail. But the Federal Government is not a family business. This Government operates under a constitution which recognizes that Presidents are likely to make appointments like the Meese appointment. That is why the Founding Fathers required that the Senate advise and consent to top policy nominations like Attorney General. And that is why it should not be enough to follow the Washington Post's feeble prescription and approve a person to be Attorney General because no case has been made against him or he must have sound character because after all, "the sheriff doesn't recognize him."

The Senate should disapprove every Presidential nomination to positions of great power in this Government unless the case has been made and made convincingly for the nominee. In the case of Mr. Meese, it is crystal clear that no such case has been made.

## DOES PRESIDENT REAGAN WANT NUCLEAR ARMS CONTROL OR NUCLEAR ARMS RACE

Mr. PROXMIRE. Mr. President, one of the most widely heralded books of the year was Strobe Talbott's "Deadly Gambits." Talbott's book is a highly disturbing account of the struggle over a nuclear weapons policy in the Reagan administration. The struggle is really a fight for the heart and mind of the one man who can determine foreign military policy in our Nation—the President. Because the heart of Ronald Reagan seems transfixed in cold stone on the side of winning the nuclear arms race, the struggle is not over whether the country should negotiate an arms control agreement or win the nuclear arms race competition. The President has already decided that issue on the side of winning the arms race. But most of the American people do not want an arms race. They want to negotiate a mutual verifiable end to the arms race with the Soviet Union. So the real struggle is over how the President can best present himself as an arms control advocate to the American and European public without being pushed or maneuvered into an agreement that would in any significant way limit the U.S. competition in the nuclear arms race: the research, the development, the production, and the deployment of nuclear arms.

Because Ronald Reagan is President of the United States, because he has an amiable, disarming manner, because he speaks smoothly and clearly, because he repeats over and over again that he wants an agreement with the Soviet Union to limit nuclear arms even if he does not, and especially because he has entered into negotiations with the Soviet Union in two arms control areas, the general public view is that the President wants arms control agreements with the Soviets if he can get them. So many, perhaps most, Americans believe the President is truly sincere in pursuing arms control. Is he? The evidence is overwhelmingly to the contrary. Also, here we have a President who is on record in opposition to every single arms control agreement ever negotiated with the Soviet Union by both Republican and Democratic Presidents. As Gerard Smith, President Nixon's chief negotiator of arms control agreements with the Russians, has observed, the only two arms control proposals the President has made—START and INF—are on their face impossible for the Soviet Union to accept.

Who does the President send to negotiate the START Treaty? He sends as hard headed a pure hawk as one could find: General Rowney. So we have a proposition the Russians could not possibly accept, negotiated on our side by a general who bitterly opposes arms control agreements and especially arms control agreements with the Russians. To make sure that the arms control machinery in this country does not second guess Rowney, the President appoints as head of the Arms Control Agency, Kenneth Adelman, a man with no prior experience in arms control except as an unrelenting and consistent critic of arms control.

Some optimists argue that the President really does want an arms control agreement with the Soviet Union but he wants it on his terms. Is that possible? Well, maybe. But when a hard-bitten, down-the-line anti-Communist like Paul Nitze takes a walk in the woods with a Soviet negotiator and comes up with something that looks like the beginning of an agreement advantageous to us, the President engages in a race with the Russians to see who can scuttle the agreement first.

Meanwhile, to make sure that we build an atmosphere which makes it impossible for the Soviets to negotiate, the President pushes his star wars or antimissile program here at home. This program will conspicuously violate the Anti-Ballistic Missile Treaty signed by President Nixon and ratified by the Senate by an 88-to-2 vote in 1972. It will cost hundreds of billions of dollars, perhaps more than $1 trillion. It cannot succeed unless—and get this for the laugh of the year—the Russians agree to limit their offensive missiles to permit it to work. And for the laugh of the century, the President actually proposes that after we develop this trillion dollar turnout we give it—that is right, give it to the Russians.

Now, how can I say it will not work? Well, consider it cannot defend against submarine fired missiles or bomber fired missiles or cruise missiles. The President and his advisers must know all this. And because they know it, they must also know that the Congress will never approve it. Why then do they continue to press it? The answer was given by Soviet leader Gorbachev when he was in England last December. Gorbachev said that the Soviets would not negotiate as long as the President insisted on proceeding with the SDI or star wars defense. The statement by Gorbachev seemed to be precisely what the President wanted to hear. If the Russians were so concerned about star wars that they would not proceed unless we stopped it, it must be good and anyone opposed to star wars is supporting the Soviet Union position. And if the Soviets will not negotiate? Is that not precisely what the President, who did not want to negotiate in the first place, wants to hear? That means he can blame the failure to negotiate on the Soviet Union. Actually, the Soviet Union could care less about whether we proceed with SDI. It would certainly serve their interests if we did. The United States would be throwing $1 trillion away on a military program that would be useless and which the Russians could frustrate at will. It would be a military program that would divide our country and alienate our friends and allies in Europe who would see any U.S. anti-ICBM defense as save America first and let Europe go if necessary. Why would the Russians not want to see us go all out with star wars? And how could they more effectively promote it than to loudly and publicly oppose it. Any American Member of Congress or the press who oppose star wars will appear to be climbing into bed with the Communists.

So the Reagan policies serve the interest of a President who wants to appear to press for arms control but be sure to be able to avoid any pressure to go ahead with it. It keeps the President popular as a sincere advocate of arms control. It helps him secure most of his military programs

from the Congress and to continue an arms race that the President is convinced we will win and that many of the rest of us are convinced could end in nuclear war.

## OUT OF THE ASHES

Mr. PROXMIRE. Mr. President, this last fall in Washington, Public Television presented a series entitled Heritage: Civilization and the Jews. The series outlined the history, culture, and the contributions of the Jewish people. One episode of the series, entitled "Out of the Ashes," focused on the plight of the Jews under the Nazis—a plight which culminated in the Holocaust.

This episode described how the Jews were step by step denied rights. They were denied economic opportunities and declared second-class citizens. The Jews became the ultimate outcasts of Nazi society. Many were confined to ghettos and concentration camps. In the end, they had their most fundamental right taken from them—the right to live. The Nazis set out to systematically destroy the Jews. As the show flesh was your mother."

Subsequent episodes of the series went on to show how the Jewish people, despite this almost incomprehensible loss and pain, rose "out of the ashes" of this tragedy to continue on and contribute to the many societies in which they live.

Also "out of the ashes" of the Holocaust came a treaty which sought formally to outlaw genocide and establish measures to try those guilty of it. This treaty is the Genocide Convention.

Our role in the creation of this treaty was vital. We were primary actors in its drafting. Over 90 nations have ratified it. We have not. Every other developed nation has.

I urge my colleagues not to forget from what this treaty arose. We cannot afford to. Unless we feel the horror of the evils done by the Nazis and others who have committed genocide, we will not feel the moral disgrace of our failure to ratify the Genocide Convention. If we forget the cries and mourning from which this treaty arose, the power behind it and all of our human rights statements will be diminished. The force of our voice to help our neighbors would be lessened. Our words would be hollow.

We must make good on our commitment to consider this treaty. We must also make good on our commitment to lead the struggle for basic rights by first remembering why we desire such a position and then by ratifying the Genocide Convention.

## RECOGNITION OF SENATOR BOREN

The PRESIDING OFFICER. Under the previous order, the Senator from Oklahoma [Mr. BOREN] is recognized.

Mr. BOREN. I thank the Chair.

## THE FAMILY FARM IN AMERICA

Mr. BOREN. Mr. President, there are a number of people who have indicated to me that they wonder whether or not people in the country understand the importance of preserving the family farm unit, which is certainly now faced with the potential for dissolution and extinction unless there are changes in policy in the very near future.

I urge the people of this country to think long and hard about this particular problem and about the proposition that the maintenance of the family farm unit is extremely important. In the very beginning, those who laid the intellectual foundation for the political philosophy of our country had a strong understanding of the importance of maintaining independent economic units headed by those who made ultimate decisions. The maintenance of a broadly held system in which there were many owners and operators was considered of vital importance to those who laid the conrerstones of our American democracy.

James Madison, for instance, understood that our entire system was dependent more than anything else upon an extended republic which had a number of independent spirited people who possessed a variety of interests. So it is a serious question that I hope we will ponder in the days ahead as we debate about the upcoming farm bill.

I think we also ought to think again about who is to blame for the dire situation in which American agriculture now finds itself. Some have said, I think in a most insensitive manner, that it is a result of greed by farmers and that farmers, in an effort to make millions in the 1970's, greatly expanded their operations—this seems to be the view of Mr. Stockman—and therefore they deserve any result which may follow. They are saying that farmers should be forced to tough it out in what they call the free market. Of course, they do not tell us that the free market does not exist; that our farmers are forced to compete internationally where production and sales are subsidized; that they are thrust into a market which in many cases, such as the market in Japan, is foreclosed to all but a small percentage of producers of certain agricultural commodities.

They do not tell us that this free market is dominated by an imbalance in the relationship of the value of the dollar with other currencies, making it impossible for our farmers to compete; that, for example, when one American grain exporting company talked about bringing in Argentine wheat recently and selling it in the United States below the cost of grain produced in this country, even considering the payment of freight and the consideration of a payment of duty at the border, the reason it was possible was that the Argentine currency had depreciated 86 percent in value against the American dollar in just 1 year.

They do not tell us, when they talk about bringing the American farmer back to the free market, that the farmer also is facing a situation in which our own Government, in order to preserve the soundness of the monetary system in the face of unwise loans made by some of our own financial institutions to those in other countries, our own farmer is confronted with producers in other nations who are being indirectly subsidized through loans from the IMF by their own tax dollars.

They also do not tell us that in the 1970's the Government itself called upon the American farmer to rise to the great challenge of feeding the world, to expand their production, to plant fencerow to fencerow to meet the increased export demand of a world crying for food. Government policy urged farmers to go to the Farmers Home Administration and borrow money to meet this great challenge. It was said that the solution to the agricultural problems had finally been discovered—the export market, and the free market. Those who are writing some of the editorials that we read recently do not tell us about the Government-imposed embargo which began in 1973 and culminated in the embargo of 1980 which devastated the hopes of American farmers.

They do not tell us that in 1980 everyone who had suffered in the drought was allowed to plant wheat on their land normally cultivated in other crops such as corn and rice. They do not tell you when this administration established the acreage base for future wheat programs that they counted every acre that was planted in 1980, thereby adding with the stroke of a pen an increased wheat acreage base in the Nation of 8 million acres. They do not tell us that this 8 million acres adds 280 million bushels a year on an average to our wheat surplus. They do not tell us that this administration refused to offer effective commodity programs which could have eliminated the necessity for a multibillion dollar payment in kind program which we just experienced last year.

Congress is scheduled to write a new farm bill this year and the debate over the farm program is important to every Oklahoman.

Agriculture is in the worst crisis since the thirties. In some ways, current conditions are worse. A couple of years ago, Oklahoma's 88,000 farm units averaged less than $20 per farm in net farm income for the entire year. At the same time our farmers, just in Oklahoma, owe an estimated $15 bil-

lion on their land, machinery, and operating debts.

I ask unanimous consent that a table be printed in the RECORD at the conclusion of my remarks telling the story in dramatic terms. Just 35 years ago net farm income for 1 year would have more than paid off total farm debt. This past year the debt was over 16 times as much as annual income. For the past 5 years the farmer has had very little cash income while trying to service a huge debt. At the same time his ability to borrow is declining because so many farms are being forced onto the market that values for purely agricultural land have fallen 22 percent in the last 3 years.

This has led to more than a 200-percent increase in farm bankruptcies and forced liquidations during the same period.

With economic problems on the farm come conservation problems. As farmers scramble for cash, highly erodible land is cultivated. In addition, farmers cannot afford conservation steps which they would like to take. Last year we lost the equivalent of 1 million acres of topsoil because of erosion. It is estimated that 25 percent of all cropland in America is eroding at an unacceptable rate.

This crisis has developed, at least in part, because many Americans do not understand the economics of agriculture or the importance of the farm sector to them personally. They don't know that to start an average family farm today would take over $425,000 in capital. The majority of the American people believe that they are subsidizing the farmer. In one sense, the taxpayers have subsidized farmers through programs which have cost far more than they should because of short-sighted policies.

However, in a larger sense, it is the farm sector which is subsidizing the rest of the country. The facts are clear. Agriculture is the most productive and most efficient sector of our Nation's economy. It is consistently one of the few sectors of our economy where we have a favorable trade balance. Last year we sold to other countries $19 billion more in agricultural products than we bought. The farmers have been giving Americans the greatest food bargain in the world. Americans spend only 16 percent of their income for food. The average Russian spends 45 percent for food. Even in Great Britain the average is about 28 percent. American food consumers get more for their money today than in 1950. In 1950 an hour's wage for the average worker bought 10 pounds of bread or 8 quarts of milk. Today, it will buy 16 pounds of bread or 15 quarts of milk.

The farmers, however, have been absorbing the cost of providing these benefits to the rest of the Nation, often selling below their actual cost of production, and by going broke in record numbers.

In the decade of the 1970's in my home State where agriculture suffers, we lost 21 percent of our farmers. The Nation also suffers. Agriculture, with over $1 trillion in assets, is our largest single industry. Approximately one in five jobs nationally in private enterprise is generated directly or indirectly by agriculture. Also, as we learned in the thirties, a collapse in land values can devastate the entire economy.

We must be concerned about the survival of the family-sized farm unit. Studies show that it is the most productive because no one else will work as hard or care for the farm as well as the resident owner.

What can be done? No one can pretend to have all the answers, but some steps clearly need to be taken.

First and foremost, we must bring down Federal budget deficits which lead to high interest rates for farmers and an overvalued dollar which prevents them from selling in world markets. A balanced Federal budget would be the best farm program of all.

Second, we should develop a long-range, multiyear policy aimed at bringing production in line with demand and announce it early enough so that farmers can make plans. Often programs are changed even after farmers have prepared their land for planting. Stop and start policies cause surpluses to increase. All of this wastes taxpayers' money and our precious national resources.

Third, in our foreign aid programs, we should send fewer dollars overseas, and make greater use of our surplus farm products.

Fourth, a long-range conservation component is an essential ingredient in any good farm program. We need a program to allow farmers to take erosion-prone land out of cultivation and place it in conservation treatment for several years, also providing financial incentives to make up for lost income from this land. Such a program would save our precious soil resources and would help the taxpayers by reducing surpluses and by cutting the cost of current commodity programs by hundreds of millions of dollars.

Obviously, every American should care about what is happening on the farm. Let us band together to work for a commonsense farm bill this year. So I urge my colleagues to look at the whole record when affixing blame for the current straits in which American farmers find themselves. And when the record is fairly examined, I think that impartial observers will find that it has not been the farmer that has been the cause of the present situation, but the farmer has been the victim of past policy mistakes by our own Government—I must say in all honesty and candor by administrations in both political parties—which is to blame as much as anything else.

Congress is scheduled to write a new farm bill this year and the debate over the farm program is important not only to every Oklahoman but to every American. Agriculture is in the worst crisis since the thirties. In some ways conditions are worse.

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

Net Farm Income versus Total Farm Debt

[In billions of dollars]

| | Net farm income | Total farm debt |
|---|---|---|
| 1950 | 19.0 | 12.5 |
| 1983 | 5.4 | 216.3 |

Mr. BOREN. Mr. President, I yield the remainder of my time at this point to the distinguished Senator from South Carolina.

(The remarks of Mr. HOLLINGS are printed under Statements on Introduced Bills later in today's RECORD.)

## ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 1 p.m. with statements limited to 5 minutes each.

## THE ENGLISH LANGUAGE AMENDMENT

Mr. SYMMS. Mr. President, I wish to speak to the English language amendment [ELA] by first telling about an unusual football game I saw on television last fall.

On two consecutive downs, the quarterback called one play but the members of the backfield ran another. On the second attempt, the mixup resulted in a fumble which culminated in a touchdown for the opposing team.

When asked about the blunder, the members of the backfield admitted to a "communications misunderstanding."

Football is a game I have often compared to life. It is true that in a football season, you have wins and losses, but those become memories when the next season rolls around, and we start over. But there is a great deal of similarity and parallel in the real world with respect to misunderstandings in communication, and this can lead to serious consequences—a business failure, the dissolution of a family, or even a war between nations.

The Bible speaks of mankind being created with one universal language which gave them great power: "And nothing which they proposed to do will be impossible for them."

Later, we read where the language was confounded during the construction of the Tower of Babel. No longer able to communicate, the society disintegrated and the people went their separate ways. The world has been in an upheaval ever since.

I have on my staff a linguist who lived in Canada for 11 years during the bilingual-bicultural turmoil. He confirms the problems we read about there. Although the country is officially bilingual, English is the language of business in all but one province. There the minority became so defensive about French that they literally forced large corporations to relocate in other parts of Canada. Separatists in the East helped spawn similar sentiments in the West and there arose a movement to create an independent western Canada.

Now, the large Ukrainian-Canadian population in the prairie provinces of Canada has decided to set up Ukrainian schools to promote their language and culture. After all, "If bilingual is good, then trilingual must be better," according to their spokesman.

Sri Lanka and Belgium are two other nations whose linguistically different populations fight and bicker among themselves constantly. Just two decades ago in India, nearly 1 million people lost their lives in riots that were directly linked to language and culture differences.

So far, the United States has avoided the severe problems these countries have experienced. True, we have absorbed many people speaking hundreds of languages, but we did so because of the cement we call English.

A common language binds people together into societies. In this body, we argue, we debated, we disagree, and we compromise; but at least we understand each other. And because of a common language, somehow we make it happen; we have helped develop a mighty nation with the world's greatest system of government.

But times are changing. Immigrants from many countries are now streaming into America at a rapid rate. There are those who feed on this vast pool of non-English-speaking people for their own purposes. Greedy politicians and others find them easy targets because of the language barrier. And as long as the barrier remains, they are more easily manipulated.

At present, our Federal policies are fuzzy: Do we want our new citizens to speak English, or do we not? Bilingual ballots, current bilingual education policies, and the lack of an official language for our governmental processes make people wonder.

There is some concern over what the ELA will and will not do. Briefly, let me state our intentions.

It will not prohibit or discourage the use of foreign languages at home, in church services, in communities, private schools, commerce, or private organizations. Indeed, we want to protect our rich ethnic heritage which people of many different nationalities who came to our country enjoy.

Second, it will not prohibit the teaching of foreign languages in our public schools, nor will it limit their foreign language requirements. I feel strongly that we should encourage, not discourage, foreign language learning.

My objection to what goes on in many of the bilingual educational programs is this: It is one thing to teach the discipline of a foreign language such as Spanish in the classroom, which I think we should do but I do think it is a mistake to teach chemistry, mathematics, social sciences, and many other courses in Spanish. When we do that those students are never put in the situation where they have to learn English and become competent in it. What will happen to those students who do not learn English fluently in their school years? They will be at a severe disadvantage until they become competent in English. As a father, I encourage my children and make it a requirement that they take Spanish in the school system, because it is practical in the western part of the United States to be at least somewhat comfortable in Spanish.

Third, it will not prohibit the use of another language in matters of public convenience and safety in limited circumstances.

The English language amendment will reinforce the idea that our Nation's fundamental internal security and well-being requires a common language. Also, it will abolish bilingual ballots and establish English as the official language of Federal, State, and local elections and government processes. The ELA will reestablish the original intent of bilingual education; to teach students English as rapidly as possible so they may enter America's economic mainstream. And most important, it will reaffirm that we are truly "one nation * * * indivisable."

I am proud of my heritage as you are of yours. As a nation of immigrants, we have blended our diversity together into what Senator Hayakawa once called a "cultural symphony" known as the United States of America.

I want that symphony to continue as harmoniously as possible. For that reason, Mr. President, I have introduced the English language amendment.

Mr. President, I would urge those Senators who may be listening, to instruct their staffs to look into this question, to look at the growth trends in the United States of America, at what is happening with respect to population growth. Now is the time for us to make a move to head off what could become a problem by the turn of the century or later. Currently we allow large sections of this country to go ahead with business as usual as we teach students in other languages in the schools. Soon we will have large sections of our population that are not fluent or competent in English. Those people will always be at a disadvantage—politically, economically, and culturally—to enjoy the vast benefits that are accorded to them as citizens of the United States of America.

Mr. President, I cannot think of a better example of what I am talking about than the example President Reagan used last night. Cadet Jean Nguyen will be graduating from West Point this coming May 22. Had this young lady come to the United States and not had the motivation to really learn English; or had the opportunity to go into a Vietnamese-speaking school that taught her history, physics, chemistry, and the other courses in Vietnamese, there is no way that she could have been admitted and been successful at West Point.

She came to this country and immediately learned English, and is now well on the way to becoming a commissioned officer in the Army of the United States. I think that is a good example of what we are talking about.

Mr. President, I would urge all Senators to join in this crusade, to get on board the English language amendment, and let us start making the English language what Senator Hayakawa, our former colleague, called a "cultural symphony" we know as the United States of America.

Mr. President, I yield the floor.

## EXECUTIVE SESSION

Mr. STAFFORD. Mr. President, I am about to make a unanimous-consent request, but before I make the request I will say to my colleagues that I have cleared the making of this request with both the majority and the minority leaders.

Having said that, Mr. President, I ask unanimous consent that the Senate now go into executive session to consider the nomination of Lee M. Thomas to be Administrator of the Environmental Protection Agency.

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

The nomination will be stated.

## NOMINATION OF LEE M. THOMAS TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

The bill clerk read the nomination of Lee M. Thomas, of Virginia, to be Administrator of the Environmental Protection Agency.

Mr. STAFFORD. Mr. President, I am pleased that the Senate is acting so promptly to consider the nomina-

tion of Mr. Lee Thomas to be Administrator of the Environmental Protection Agency.

The Committee on Environment and Public Works has recommended that he be confirmed by a vote of 16–0, which is the best vote of confidence any nominee could expect. The reason Mr. Thomas' nomination was endorsed so overwhelmingly is the respect which he has earned for his stewardship during the past 18 months of two of the most difficult and controversial programs administered by the Agency, Superfund and the Resource Conservation and Recovery Act.

Mr. President, I hope and believe that Mr. Thomas will run the Environmental Protection Agency in a competent and independent manner, thus taking us one step closer toward restoration of the Nation's confidence in the Agency, its employees, and the integrity of the laws they administer. For this reason, I hope the Senate will confirm the nomination without further delay.

Mr. THURMOND. Mr. President, it is a pleasure for me to rise in support of the nomination of my good friend and fellow South Carolinian, Mr. Lee Thomas, to be Administrator of the Environmental Protection Agency. He is eminently qualified for the position, and I urge that the Senate expeditiously confirm this nomination.

Lee received his bachelor of arts degree from the University of the South in Sewanee, TN, and his master's degree from the University of South Carolina. He subsequently served as councilman of the Ridgeway, SC, Town Council and two consecutive terms as chairman of the National Criminal Justice Association. He continued his public service career in an exemplary manner, by holding important and responsible positions in South Carolina State government. Additionally, he served as chairman of the Governor's task force on emergency response capabilities in support of fixed nuclear facilities; director, public safety programs; and he directed the establishment of the Governor's comprehensive emergency management advisory committee.

On the Federal level, Lee has served as the Executive Deputy Director and the Associate Director for State and Local Programs and Support of the Federal Emergency Management Agency. Most recently, while under extraordinary circumstances, he did an outstanding job as the Assistant Administrator for Solid Waste and Emergency Response at the Environmental Protection Agency.

I have called upon Lee from time to time in his capacity as Assistant Administrator for Solid Waste and Emergency Response on a number of issues of concern to the public, including a number of hazardous waste sites in my State, as well as the removal of asbestos in South Carolina schools. He has always been extremely responsive and helpful. I look forward to a continuing, positive relationship with him as the next Administrator of the Environmental Protection Agency.

Lee is a fine gentleman with a long and impressive career as a public servant. He has served in government at the local, State, and Federal levels, and in my judgment, he will make an excellent Administrator of the Environmental Portection Agency. He has demonstrated that he is a person of high ethics, competence, independence, integrity, and intellect. He has the qualifications necessary to maintain the effectiveness of the Environmental Protection Agency, and to maintain public confidence in the Agency as the protector of our environment.

I am both extremely proud of, and have high regard for this fine South Carolinian. The Senate should promptly confirm the nomination of Lee Thomas to be Administrator of the Environmental Protection Agency in order that he can get on with the challenging task of protecting our precious environmental resources for the benefit of all Americans.

Mr. CHAFEE. Mr. President, the significance of the vote we are about to cast should not be underestimated. I expect that the Senate will unanimously approve the nomination of Lee Thomas to be Administrator of the Environmental Protection Agency. When we do, we will be sending a message to Lee, to the many dedicated employees at EPA, to the American public, and to those who are tempted to try and control or unduly influence the environmental policies of this country. The message is this: Lee Thomas is being entrusted with one of the most difficult and important jobs in this country, that of protecting human health and the environment, because he has earned the trust, respect, and support of the U.S. Senate. He has earned it and let there be no mistake that he has it. Those who question the breadth of Lee's political support should take note of the 16-to-0 vote of approval in the Committee on Environment and Public Works and of today's vote in the Senate as a whole. Take note and keep in mind that the days when EPA nominees were approved simply because they were the President's choice are behind us. These votes are significant, unequivocal statements of approval.

As Bill Ruckelshaus' successor, the shoes Lee is being asked to fill are quite a bit larger than when Lee took over the job of Assistant Administrator for Hazardous Waste and Emergency Response. As tough as that AA job is, being Administrator of the entire Agency is markedly more difficult and will require a number of adjustments.

Many of our environmental laws are structured in such a way as to make the Administrator the environmental shepherd of the executive branch. He must ride herd on the other agencies and departments to assure compliance with the law. This responsibility won't make him popular. The vast majority of our environmental laws make the Administrator the ultimate decisionmaker. He alone is responsible and accountable. Each decision is virtually guaranteed to disappoint or even infuriate one or the other interest group.

Being Administrator of EPA often appears to be a thankless job. However, it is a job that must be done and, notwithstanding the paucity of periodic thanks and praise, it is a job that must be done well. The health and quality of life of our neighbors, children, and children's children depend on it. It is my hope that as Lee enters his office each day he will look at the name of the Agency written on the wall and think about his mission. The name Environmental Protection Agency says it all.

I believe that Lee Thomas is up to the challenge and is an excellent choice for this job. He deserves our support not only today but each day he is in office. As one Member of Congress, I pledge that support and hope that he will feel free to call upon me for advice and counsel as often as he sees fit.

Mr. HUMPHREY. Mr. President, I rise today to voice my strong support for the nomination of Lee Thomas to be the next Administrator of the Environmental Protection Agency.

The job of Administrator of the Environmental Protection Agency entails enormous responsibility. For 15-years, the American people have looked to the EPA as our Nation's most important institution to preserve and enhance this Nation's precious environmental resources. It is a responsibility that I know Mr. Thomas will not take lightly.

As a member of the Committee on Environment and Public Works, I have been extremely impressed with Mr. Thomas' work over the past 2 years as the Agency's Assistant Administrator for Solid Waste and Emergency Response. In assuming that position, Mr. Thomas was charged with the enormous task of turning around the Superfund Program which only, 2 years ago, had been written off as hopelessly and forever off course. Mr. Thomas immediately and forcefully plunged into the task of turning this vital program around. In doing so, he displayed considerable management skills, as well as his fundamental commitment to the protection of the environment and public health.

There is no question that Mr. Thomas will fill some large shoes. His predecessor, William Ruckelshaus, re-

invigorated the Agency with a sense of purpose, substantially redirected the course of environmental policy in the Reagan administration, and perhaps most importantly, restored the confidence among the American people that the laws designed to protect human health and the environment were being vigorously enforced.

Because Bill Ruckelshaus discharged his duties with such effectiveness, the agenda facing Lee Thomas will be substantially different from that which faced Mr. Ruckelshaus nearly 2 years ago.

The Agency is now facing new and different kinds of challenges—many of which Mr. Thomas is uniquely qualified to take on. Last year, the Congress passed, the President approved a reauthorization and expansion of the Resource Conservation and Recovery Act. And, this year, we will complete action on a new and greatly expanded Superfund Program.

Lee Thomas will also face many of the same challenges which have faced his predecessors in that important office. I speak with great confidence in suggesting to my colleagues that Mr. Thomas will take on these duties with the same skill and ability that he has displayed throughout his distinguished career.

Mr. President, I strongly urge my colleagues to confirm Lee Thomas as the next Administrator of the U.S. Environmental Protection Agency.

Mr. GLENN. Mr. President, Lee Thomas has a long record of public service at the local, State, and Federal levels. Recently, he has proven to be an able and effective manager of complex programs during a difficult period. I am pleased that the Senate has moved quickly to confirm Mr. Thomas so that we can now begin the critical work ahead in the environment.

Virtually all the major environmental statutes including the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, and the Superfund are awaiting action because their funding authorizations have expired or will do so in 1985. Continued inaction on these vital laws not only threatens the progress we have made in the last decade, but weakens our ability to meet the challenges of the future.

I believe that Mr. Thomas can continue the job of restoring public confidence in the EPA. During his testimony to the Environment Committee, Mr. Thomas stated that one of his objectives was to ensure a strong scientific and technical base to support program decisions. Since 1981, the administration has slashed EPA's research office by 50 percent. This has forestalled valuable research, delayed implementation of some technologies, and substantially reduced the level of national scientific expertise available to address critical issues. Without sound scientific data, we not only risk failure to identify environmental threats, but we also risk having industry impose costly controls that better research would have shown to be unwarranted.

So far only six hazardous waste sites have been cleaned up under the Superfund Program enacted in 1980. Our people are understandably alarmed about the health hazards posed by toxic chemicals. Ohio has 28 sites now listed on the National Priority List, and the citizens of my State are demanding a full scale effort to protect their health and the environment from the perils of toxic pollutants. I trust that Mr. Thomas will continue to aggressively administer this program as he has since 1983.

I join with my colleagues in endorsing Lee Thomas as EPA Administrator and look forward to working with him on these vital issues.

Mr. SIMPSON. I am so very sincerely gratified that the Environment and Public Works Committee has unanimously approved the nomination of Lee Thomas to be EPA Administrator. In my duties on the Environment Committee, I have grown to personally admire Lee and to be most impressed by his intellect, skills, and his work product. He does the job.

Lee Thomas has gained a wealth of administrative experience beginning in the Office of the Governor of South Carolina and progressing through the Federal Emergency Management Agency and the Environmental Protection Agency. All of his experience and expertise is geared toward protection of public health and the environment.

President Reagan plans to make the reauthorization of Superfund one of his top priorities this year, and I just can't think of a better person than Lee Thomas to be the "point man" in that effort. Congress must act responsibly during the reauthorization process and Lee will be right there to cut through the fear and the guilt and the emotion that seems to accompany the consideration of environmental issues involving hazardous waste.

Last year, the Environment and Public Works Committee benefited in significantly great measure by having Lee at the Superfund markups, where he could respond with on-the-spot "no nonsense" advice to me and fellow lawmakers. His good counsel and uncommon degree of common sense was appreciated by all of us on the committee.

I am pleased that Lee Thomas will be confirmed today, as he represents the quintessential public servant. He is a man of integrity, wisdom, and forethought. He will lead that agency through his personal strength and—his ability to consider all facets of a situation—and he will continue to maintain the high morale now so evident at EPA.

Lee always deals with the facts and he has become a trusted counselor and adviser on some very contentious environmental issues. And speaking of trust—he has mine in full measure. I commend him. I would urge your support of Lee as he approaches his challenging new job.

Mr. BYRD. Mr. President, I am pleased to speak in favor of the nomination of Mr. Lee Thomas as the new Administrator of the Environmental Protection Agency. In his previous position as head of the Superfund Program to clean up abandoned toxic waste dumps, Mr. Thomas established a reputation as an excellent Administrator. Indeed, Mr. Thomas inherited an unfortunate situation when he first took over responsibility for the Superfund Program. EPA had been through a scandal involving the administration of the Superfund Program. It was largely as a result of Mr. Thomas' efforts that public confidence in the integrity of the Superfund Program has been restored. Based upon his record of achievement, I think Mr. Thomas will make an excellent EPA Administrator.

I have had an opportunity to meet with Mr. Thomas, and I have found him to be reasonable and willing to work with the Congress in addressing the many difficult environmental issues which will face the 99th Congress.

I congratulate Mr. Thomas on his appointment, and I look forward to working with him.

Mr. DOLE. Mr. President, I would just like to take a moment to urge my colleagues to support, with enthusiasm, the nomination of Lee M. Thomas to be Administrator of the Environmental Protection Agency. Mr. Thomas deserves the considerable confidence that President Reagan has demonstrated in him.

Bill Ruckelshaus did an outstanding job at EPA, both in improving administration, dealing with Congress and with interest groups, and in shoring up morale at the Agency. Lee Thomas has been an integral part of the Ruckelshaus team, and already has shown his ability and his commitment to the environment in his management of the RCRA and Superfund Programs. Superfund is due for reauthorization this year, and I look forward to working with Mr. Thomas in putting together a fiscally sound Hazardous Waste Cleanup Program to carry through most of this decade.

Mr. President, prior to his experience at EPA as Acting Deputy Administrator, Lee Thomas was Executive Deputy Director of FEMA, and he has had considerable experience in State government in South Carolina, dealing

with both public safety and criminal justice in the office of the Governor.

I know that our Senators from South Carolina, Senator THURMOND and Senator HOLLINGS, are proud that a South Carolinian like Lee Thomas has compiled such an outstanding record of public service. I am sure they join me in welcoming the opportunity to work with Lee in the years ahead. Finally, let me congratulate Senator STAFFORD and the Committee on Environment and Public Works for expediting action on this important nomination. There is much to be done at EPA in 1985, and we can help by getting Lee Thomas and his team in place right away.

Mr. ABDNOR. Mr. President, I am pleased to support the nomination of Lee M. Thomas as Administrator of the U.S. Environmental Protection Agency.

As a member of the Committee on Environment and Public Works, I have been most impressed with Mr. Thomas' performance as Assistant Administrator of Solid Waste and Emergency Response. Mr. Thomas has earned the respect of the committee and I am confident that we may count on him to work closely with this body as we consider the reauthorization of several significant environmental statutes.

Mr. President, Mr. Thomas knows of my strong interest in the Asbestos School Hazard Abatement Act of 1984. As the author of this program to assist financially needy school districts in financing necessary asbestos abatement projects, I will continue to follow closely EPA implementation of the act. Thus far, I have been very pleased with the way in which the Agency is moving ahead with this new program. I have found the region VIII staff, in addition to the program staff here in Washington, most helpful in responding to my questions and concerns.

Mr. President, the conscientious stewardship of our Nation's natural resources is of vital importance to each and every one of us. I believe that President Reagan has made a wise choice in the nomination of Lee M. Thomas. I wholeheartedly endorse Mr. Thomas as the new Administrator of the Environmental Protection Agency, and I urge my colleagues to give him their unanimous support.

Mr. STAFFORD. Mr. President, I will now suggest the absence of a quorum until the minority leader can come to the floor and make any statement he wishes.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. BENTSEN. Mr. President, I am pleased that we have been able to move as expeditiously as we have in considering the nomination of Lee Thomas as Administrator of the Environmental Protection Agency.

It is no secret that the Federal Government has fallen woefully behind in our efforts relating to the environment, and there is no time to waste in getting down to the serious tasks ahead.

I have known Lee Thomas as a capable manager of the Superfund, and I know he did a very good job in handling this important project under less than perfect circumstances, I have no doubt that he has the ability to serve as Administrator.

However, as we pointed out to Mr. Thomas in hearings before the Environment and Public Works Committee, he has a massive rebuilding effort before him. Despite efforts to correct the questions and complaints over EPA's management and intent, the Agency has not yet regained the public trust that is necessary for progress.

As Members of the Senate are aware, most of the major environmental funding authorizations have expired over the past few years. While this has not prevented us from enforcing the law or developing and modifying regulations, it is a clear signal that Congress is facing real difficulties in attempting to improve environmental policy.

Much of this is due to the fact that questions regarding the effectiveness of EPA to carry out its mandates have limited the ability of Congress to enact revisions.

Mr. President, the people of this Nation have the right to demand a stable and professional EPA to provide an unbiased analysis to assess the issues. Our citizens deserve a safe and sane environmental policy, our industries deserve a consistent guideline for long term planning, and all interest groups deserve to be heard.

I believe the EPA is moving in the right direction, and judging from his past performance and his response to our questions in committee, I believe Lee Thomas is the right man to continue this improvement.

I will vote to conform this nomination and I urge my colleagues to join me.

Mr. STAFFORD. Mr. President, I know of no further speakers who wish to be heard on the matter of the nomination of Lee Thomas. That being the case, Mr. President, I move that the Senate vote to confirm the nomination of Lee Thomas, to be Administrator of the Environmental Protection Agency.

The PRESIDING OFFICER. The question before the Senate is, Will the Senate advise and consent to the nomination of Lee M. Thomas, to be Administrator of the Environmetnal Protection Agency?

The nomination was confirmed.

Mr. STAFFORD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

Mr. STAFFORD. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to the nomination of Lee Thomas.

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

## LEGISLATIVE SESSION

Mr. STAFFORD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. KASSEBAUM). Without objection, it is so ordered.

## S. 433—EMERGENCY FARM CREDIT ACT

Mr. DIXON. Mr. President, I rise to introduce the Emergency Farm Credit Act of 1985.

This bill, Madam President, addresses an issue that is facing hundreds of thousands of American farmers this very month. It deals with an emergency situation with emergency legislation that will, without costing the Federal Government a single cent in additional spending, enable these farmers to begin their spring planting next month.

We are all aware of the crisis facing American agriculture. Just yesterday, the Secretary of Agriculture announced a broadening of the farm relief program that the administration devised last fall.

We do not yet know if this administration program will stave off the wave of foreclosures threatening to engulf farmers, rural banks, and rural communities across the Nation. What we do know is that the administration's program will do nothing for those farmers who—because the rural banks are overextended, because their Production Credit Associations are liquidated, because they have exhausted

all of their credit resources—will not be able to plant this spring.

As any farmer can tell you, if you cannot plant, if you cannot get a crop in the ground, you cannot harvest. Today in farming communities across the country, thousands upon thousands of farmers will go out of business unless they can obtain operating credit.

What this bill does is very simple. The nonrecourse loans, which are made available to farmers of certain crops at harvest time, provide a means of relieving the farmer of the necessity of selling his harvest immediately, thus stabilizing the market. The Emergency Farm Credit Act of 1985 would permit an advance of one-third of this loan, based on his historic yield, to the farmer before the plants, rather than when he harvests.

If the farmer doesn't plant, the farmer doesn't harvest.

These loans would be on the same basis as the nonrecourse loans already are. If this were a normal year, the ASCS would start making them in September and October, as the crops were coming in. What this bill does is to mandate the Secretary of the Department of Agriculture to advance one-third of this loan now, so that the farmer can begin planting.

There are three things I must emphasize about this bill.

The first is that it does not cost the Federal Government an additional cent. If anything, it will save the Government millions of dollars in welfare and other safety-net payments, should these farmers be thrown on the welfare rolls because they could not get their crops in the ground.

The second is that this is a short-term solution to a short-term problem. When the Senate returns from recess later this month, I will introduce legislation to address the larger aspects of the farm credit crisis.

The third is that this is emergency legislation. For the larger aspects of the farm credit crisis we can buy some breathing space, if we can help the farmers get their crops in the ground right now. But spring planting begins next month. Most farmers would start getting their operating loans on March 1, if the credit were available.

We must act now. If the farmer doesn't plant, the farmer doesn't harvest.

Now, Madam President, I know, that under our normal procedure, this bill would be referred to the Agriculture Committee, of which I am a member, for consideration. But these are not normal times. We need quick action. I would therefore like to request that this bill be held at the desk.

I would hope that perhaps the majority leader or one of his representatives would be here in short order but let me make it perfectly clear that I am not trying to do something without discussing it with him.

The other day, during his usual press of very heavy business, I explained to Senator DOLE, that I had a piece of emergency legislation that I wanted to introduce before the break that was directed to the farm credit problem in America on a short-term basis only. And since the Presiding Officer comes from a farm State, the same as that of the majority leader, may I say to her that she may remember that a short time ago, I think a week ago, a group of State legislators from all over the Midwest met in Chicago, at which time they talked about the farm problem in the country and specifically at quite a great deal of length about the farm credit problem.

One of the people at that meeting was a distinguished State senator from my State, Jerome Joyce, who represents roughly the Kankakee-Iroquois County area of my State and parts of other counties, which is a very, very important farm section of our State. Senator Joyce himself farms, as I recall, over 500 acres of ground, the usual Illinois crops—corn, beans—and hogs.

The idea he came up with, which was well-received by everybody at that meeting, is the basis for the bill I am introducing today.

Now obviously this is not a very good solution, Madam President. And the Senator from Illinois does not come here to tell you he has finally found the answer to the farm credit problem. But a lot of people believe that for tens of thousands of farmers in Illinois, Iowa, Kansas, Minnesota, Nebraska, and many other places, at least this will let them put their crops in the ground, because you cannot get the money after harvest if you could not plant in the spring.

As I stated earlier, that is essentially all that this very simple bill does. The reason I say this by way of explanation is I told it to the majority leader yesterday. He was very, very busy and under a lot of pressure, which I can deeply appreciate. I know the pressure on all of us and we know how many hundredfold that is upon the majority leader, of whom I am greatly fond.

So I am going to introduce this bill now. May I say again to the Presiding Officer and others who are listening for the majority leader what I would like to do is keep this bill at the desk until a time certain after we return—I understand that will be on February 18—so that the majority leader and others can contemplate this and see whether this could receive some fast-track emergency special treatment. The problem is now. If the bill is referred to committee and all of the attendant things that would flow from that, this bill could be enacted in time.

A figure I read today, Madam President, in one of the major newspapers—I cannot recall which one had suggested that at least 5 percent of small farmers in America on the American farms in all our States faced a real problem that they would not get the money to put in their crops this spring.

That is all this is designed to do, is for a working farmer last year that he can get money for seed. I do not know how we solve the problem later on, Madam President. I have some ideas, you have some ideas, others in the Congress, and others in agriculture generally do.

At this time, I would like to do two things: introduce this bill, make the appropriate motion to keep it at the desk until I can discuss it further with the majority leader.

The PRESIDING OFFICER. Is there objection?

Mr. TRIBLE. I reserve the right to object. Reserving the right to object, I ask my esteemed colleague to withhold that request until we have had a chance to clear it on this side of the aisle.

Mr. DIXON. Madam President, I am delighted in every way to accommodate my warm friend from Virginia and he was not here for my entire remarks, but he should understand this is only done because it is an emergency. I heard we were going out in a matter of minutes. This directs a problem that begins the 1st of March. We are going to be out for a week. For all those reasons, I dashed over here. I do not want to do anything by subterfuge. I have talked on a prior occasion with the majority leader and am delighted to wait until someone can come to the floor. I want everything to be aboveboard. But I honestly and sincerely believe that the problem at hand is massive and serious enough that we ought to try to devise something right now to address it in a very small way—this is only a band-aid—but in a small way. I am delighted to accede to any request, and ask we do that, and wait. I suggest the absence of a quorum, if that would be the appropriate parliamentary remedy for the moment, until such time as others get here.

Has my bill been introduced, Madam President? I have asked to do that, if I may. I ask that we do nothing further until the majority leader gets here.

The PRESIDING OFFICER. Yes. The Senator from Illinois certainly has the right to introduce his bill. If he wishes to suggest the absence of a quorum——

Mr. DIXON. I do that.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DIXON. I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DIXON. Madam President, I understand that I now have agreement between the majority leader and the distinguished chairman of the Agriculture Committee to make a request for unanimous consent to hold this bill at the desk until the close of business on Tuesday, February 19.

The PRESIDING OFFICER. Hearing no objection, the bill will be held at the desk until the close of business on Tuesday, February 19.

Mr. DIXON. I thank the Chair.

Madam President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 433

*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 "Emergency Farm Credit Act of 1985".

SEC. 2. Effective only for the 1985 crops of wheat, feed grains, upland cotton, rice, and soybeans, the Agricultural Act of 1949 is amended by inserting after section 107C (7 U.S.C. 1445b-2) the following new section:

"SEC. 107D. (a) In order to provide vitally needed assistance to producers of wheat, feed grains, upland cotton, rice, and soybeans, the Secretary shall make available to producers loans authorized to be made under section 107B(a), 105B(a), 103(g)(1), 101(i)(1), and 201(g), respectively, in advance of harvest as provided in this section. Loans made in advance of harvest (advance loans) under this section may be made only with respect to the 1985 crop of such commodities.

"(b) In order to be eligible to receive an advance loan for a commodity under this section, a producer must—

"(1) submit an application for such loan to the Secretary; and

"(2) have produced during the 1984 crop year the commodity for which the advance loan is required.

"(c)(1) Except as provided in paragraph (2), the amount of an advance loan made to a producer of a commodity under this section shall equal one-third of the amount of the loan the Secretary determines the producer would otherwise be entitled to receive for such commodity under a section referred to in subsection (a).

"(2) The total amount of advanced loans a producer may receive under this section may not exceed $50,000.

"(d) The Secretary shall—

"(1) establish and carry out a program to make advance loans to producers in accordance with this section no later than thirty days after the date of the enactment of the Emergency Farm Credit Act of 1985; and

"(2) make or deny an advance loan to a producer no later than thirty days after receipt of an application for such loan.".

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

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

## MARJORIE PALMER

Mr. LEAHY. Madam President, Vermonters know about Marjorie Palmer, who was recently named Vermont Farm Wife of the Year by the State Farm Bureau. I think the rest of the country should know about Marjorie too.

Marjorie has been operating a maple sugar operation for more than 40 years. She is a grandmother, and has been married for 50 years.

And I ask unanimous consent to enter into the CONGRESSIONAL RECORD this story about Mrs. Palmer and her family that appeared in the November 17, 1984 issue of the Burlington Free Press. It will not take long to discover that Marjorie Palmer is one sweet Vermonter.

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

MARJORIE PALMER—FARM WIFE OF THE YEAR SAYS SHE DIDN'T DESERVE IT, BUT THE RECORD SAYS OTHERWISE

(By Maggie Maurice)

HINESBURG—During World War II sugar was in short supply and each American was allotted so many coupons. For Marjorie Palmer then a resident of Burlington, they never seemed to stretch far enough for her family of four. Why not, she pondered, use that sugarhouse at the Palmer farm?

"How about sugaring?" she said to the neighboring farm wife.

"Do you know how?"

"No, but I can read."

That spring in the early 1940s, the two women tapped 1,400 trees.

Marjorie Palmer, wife of Loren, mother of three and grandmother of six, has operated the maple orchard every spring since.

On Nov. 1, she was named 1984 Vermont Farm Wife of the Year by the state Farm Bureau.

"Whether at home, at work, at church or in the community, she is an inspiration to everyone she meets," wrote Clark and Nancy Hinsdale of Charlotte, who nominated her.

"We are proud of our winner from Chittenden County," said Helen Lawrence, Farm Bureau member of Jericho. "She's a hard-working lady."

The winner was stunned.

"This whole thing I didn't deserve," she said after the announcement was made at the Vermont Farm Bureau convention at Lake Morey. "I'm not bashful, but I feel some of the young ones deserved it more."

Striving to explain her feelings, she continued, "I've gotten just as much out of every volunteer job I've ever had. It's rewarding to know I can do something and that some good is coming out of it."

The Palmers live on the road that connects Dorest Street and Vermont 116. The gray house up on a knoll has a maple syrup sign down by the drive, "the only maple syrup sign on the road," she says when giving directions. Although they've always owned the farm, they didn't move there until 20 years ago. Her husband is a retired funeral director.

"Thirty years we owned this place, hired a farmer and a second man," she said. "I always wanted to live in the country. Finally, I said, 'no one else is moving in here. I'm moving in.' "

The farmhouse has a long living room with windows looking out on Camel's Hump. The hall closet is stacked with Palmer's Maple Syrup. The 12 cats run and cavort outside (only Bigfoot is allowed in the house). Evidence of projects is everywhere. A gallon jar beside her chair holds nuts she is wiring for the church bazaar. The dining room is strung with dried herbs and flowers.

"I have some favorite napkins that say, 'The house is a mess but it's better than it usually is' " she has a big garden and has, at one time or another, raised pigs, sheep and calves, the maple syrup business is never completely forgotten. In the kitchen, there's Indian Sugar ("awfully good on hot cereal"), maple cream ("I use that to frost doughnuts,") and a tin of maple candies ("I need to make some more").

We urged her to tell us about the early years.

"We had a white horse, bought a sled just big enough for four milk cans. That's how we did it the first year. One would collect, the other boil," she said. "We went to Jim Marvin and Fred Taylor at UVM for advice.

"Then, I used mostly buckets. When I first sugared, I didn't tap that many trees. The people at the farm let me know when it was running. I had a snowmobile a number of years, went up to the sugarhouse in that. It's always been a fun thing for me. I enjoy it.

"How many days does the season run? Sometimes it's short and concentrated, others a little bit here, there. Mother Nature decides," she said.

Until 1972, she used wood for the stove and boiled all night by lantern.

"It's slower, wood is. We never boiled till more than midnight last year," she said. But then she built the sugarhouse down on the road, and added electricity and oil. The sign on the front says "Palmer's." Another sign on the door adds, "I live the fourth house toward Hinesburg."

No more buckets now. Before the sap starts running, she checks out the lines.

Last summer the Palmers had their 50th wedding anniversary. Their children, Lorelei Kjelleren of Wilmington, Del., Loren (Tinker) Palmer, who lives behind the sugarhouse up the hill, and David, who runs the main farm, wanted to give them a party.

"I said, 'we got more doodads and junk than we can ever get rid of, we don't need a party,' but they did anyway," she said. "They had a party at camp and ask people to bring pictures that would remind us of the way we were involved with the family. They were on display on the porch. Since then, we've looked at them over and over again."

Much has changed since the early days of the white horse and the sled. Syrup was $3 a gallon that first year; it's now $18. The old sugarhouse up the hill is in disrepair, even the smokestack is down. Somebody tore the door down, someone else shot out the windows. As far as Palmer is concerned, it's picturesque but that's all.

"Everybody has good times and sad ones," she said. "I walk up in the woods and think how lucky I am. When you're busy, you forget your aches and pains.

"The Lord has been good to us. My grandmother used to say, 'I can't leave you a lot of money but I can leave you good blood. Now keep it that way.' "

The last we saw, she was sweeping snow off the porch. Keeping it that way, just like her grandmother said.

## LEE KAYHART

Mr. LEAHY. Madam President, I would like to share with my fellow Senators one of the greatest illustrations of individual courage and perseverance that I have ever witnessed in my native State of Vermont.

Let me tell you about Lee Kayhart, a 36-year-old farmer from West Addison and father of three children.

Lee lost both his arms in a farm accident about a year ago, and spent 3 months in a Boston hospital while doctors tried unsuccessfully to graft the limbs back on his body. Today, Lee and his wife Pat and the children are operating the 140-acre farm along the Lake Champlain shore.

Lee does some things with his teeth and feet that he used to accomplish with strong arms and hands. But he goes about his chores with an air of a man who feels happy just being alive.

On January 6, 1985, my home town newspaper, the Burlington Free Press, printed a story in its magazine section about this plucky Vermonter and his family.

If you would like to read more about a Vermonter that I am proud to know, I will send you the article.

It should serve as an inspiration to all of us. Residents of your States will be inspired by the accomplishments of this Vermonter, and his loving family.

## GEORGE TAMES

Mr. LEAHY. Madam President, for years there has been a debate whether photography is an art form. Because of people like Ansel Adams and Henri Cartier-Bresson, people tend to realize photography can be an art form.

My good friend George Tames has proven photography is an art—in the hands of an artist. He is truly an artist recognized as such by people throughout the world.

So all can share the pride photographers feel about this unique person I ask unanimous consent that an article written about George Tames from the New York Times Sunday Magazine be included in the RECORD.

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

[From the New York Times Magazine, Oct. 14, 1984]

IMAGES

(By Francis X. Clines)

Long before George Tames aimed a camera, he first saw light idealized on the face of Franklin Delano Roosevelt. As a growing boy, he was ordered by his mother, Athena, a member of the Greek Orthodox faith, to light the night candle by the icon stand, where images of the Virgin Mother, St. George and St. Luke kept watch over the family. "One night, St. Luke was gone and Roosevelt was in his place," Tames recalls. "It was the Depression, and Roosevelt had become a saint."

Seven years later, at the age of 21, Tames, equipped with a 10th-grade education and a clear eye, finally saw Roosevelt's face in the flesh. For Time magazine, Tames took his first photographs of the President, trying to spare the tired leader some of the harshness of raw light and give him back that icon glow. "I had his declining years," Tames says, "from 1940 until his death, and in my mind he's still one of the saints. I always made sure he was in the right light."

Since that first exposure to the Oval Office more than four decades ago, George Tames has been adjusting the lighting on Presidents; his work spans 11 Presidential terms. "He's the champion," says Cornell Capa, a former Life photographer and director of the International Center of Photography. "He has had the crown for 40 years, and that's a long time to remain a champion." Tames joined The New York Times in 1945, and, over the years, the hallmark of his photography has been his ability to capture the intimate, unguarded moments that reveal the character of life in the capital. In this campaign season, so heavily influenced by media managers and contrived spontaneity, Tames's pictures of the powerful are refreshingly accessible. "He earned everybody's trust," says Capa, who covered Washington for a time himself. "He could just walk into somebody's office, say 'Hi,' and get the best picture. He beats everybody."

Tames admits he has been kindly toward all the Presidents he has photographed. "I owe that to the office, but I also owe that to the man," he says. The notion that the artist has an obligation to both the office and the subject summarizes Tames's method. He needs to see the humanity within the people of power before they can be convincingly photographed.

Undoubtedly, this perspective is related to his origin in Washington as the son of Greek-Albanian parents, one of seven children supported by a religious mother and an industrious father who hawked wares from a pushcart.

In a city of blimp-size egos, George Tames has remained unaffected, a natural. This is reflected in his most dramatic pictures of politicians. The power of his photographs, such as the one of John F. Kennedy leaning into the White House office shadows while working at "The Loneliest Job in the World," comes from patient watching, not melodramatic conjuring. In the case of the Kennedy picture, Tames, on duty in the White House, had observed that the President always left the doors to his office open and that, because of his injured back, Kennedy frequently worked standing up.

"I looked in and saw him standing and leaning forward over the table, with his weight on his arms while he read something," Tames recalls. "I went in and took two pictures that I deliberately underexposed. I wanted the blackness, the mood that I saw with my eye." As it turned out, what Kennedy was reading was the editorial page of Tames's own newspaper, and the President was frowning deeply. The impact of Tames's unposed picture is stunning and complex.

"I was trained in the Speed Graphic days, when you only had one frame," he says, appreciating the old knack of going after a single picture rather than rapidly spray-shooting exposures as is done today. "It was like the muzzleloading gun; if you missed it, your one shot was gone."

Working with little margin for error, Tames developed small tricks that have survived well into the modern era. He noticed, for example, that President Dwight D. Eisenhower had a slight hearing problem. If Tames mumbled to him, Eisenhower would react with a scowl of curiosity that skewed his cherubic smile into something especially revealing. "Ike would give that great surprised look and ask, 'What?' and, bang, I'd have the picture," Tames says, laughing.

During Watergate, when it was hard for many people in Washington to smile, Tames stumbled on a foolproof line. He would sidle up and whisper conspiratorially to a subject, "Would you mind if I took your picture with the very same camera I used to photograph Nixon?"

"They always smiled or laughed," the photographer recalls. "It was a ridiculous question, but it was just what they needed to hear."

Tames has made an art of disrupting the city's craving to stage-manage events. A 1961 "photo opportunity" with Vice President Nixon and a birthday cake was routine and lifeless to Tames's eye until he saw the smoke rise from the extinguished candles. "I popped it fast. That smoke had made something intimate of something ordinary."

One day every year photographers used to be invited to record the members of the Supreme Court robed and seated like mannequins. Tames decided to take a picture before they put on their masks, while the justices were chatting and smoking, waiting for the official picture. The result is disarmingly human.

"You've got to have your confidence," he explains of such singular moments. "You have to be on it. Otherwise you linger behind the action."

Over the years, Tames has discovered the difference between photographing politicians and taking pictures of his grandchildren. "Egos," he says. "You've got to bring out the egos of the powerful to make it believable, let them be what they are." Tames uses his liens chivalrously, taking particular care with lighting when he photographs women, for example, seeking a high light that will shadow the neck. He worries less about giving men a weathered look. But of all his subjects, he says: "They're human first, before anything else."

Tames's empathy might be traced in part to President Harry S. Truman, who, almost 40 years ago, freed the half-dozen news photographers who covered the White House then from the cramped room, dubbed "the doghouse," that served as their office. "There was no TV, no newsreel cameras around there then, and when Truman toured the White House one day and saw us there he became very upset," Tames recalls. "You know, he had a thing about the underdog, and he said, 'They're coming out of there and coming in my office like everyone else from now on.' Truman made firstclass citizens of us."

Perhaps it was gratitude on the part of the photographers that caused Truman's smiling face to appear so often before America. In turn, Truman expected object loyalty; he would call in "his" photographers to snap practically anything he demanded. According to Tames, he even chewed them out once when they balked at photographing an old World War I cronie who had no news value but whom Truman hoped to sneak into the daily prints.

Tames has the ability to reproduce the mannerisms of his favorite subjects, and one of his most poignant depictions is of the

moment he asked Truman what he did alone in the Oval Office when things got quiet or boring. "'I do this,'" he says Truman replied, taking a stack of photographs from a drawer and putting his signature on, one by one.

The pleasure of talking to Truman reinforced Tames's ideas about power being revealed through the commonplace. "Once I told him I had just come from the United Nations," Tames remembers, smiling at the image of the President suddenly treating him like the Secretary of State. "Old Truman leans back and says, 'Tell me, what the hell is going on up there?'" At the United Nations, Tames had first seen television used to cover a news event live, and he told Truman changes were in store for politicians. "Truman said, 'I can remember when a good politician had to be 75 percent ability and 25 percent actor, but I can well see the day when thece of stronger authority. "I learned that trick from Nixon," Kennedy told Tames, smiling.

Lyndon B. Johnson had a pharaoh's appetite for chiseling away at the edifice of the Presidency. "My God, his eye was on the sparrow. He knew everything that was going on, and detail did him in." Johnson would use the occasion of a handshake to get himself in position to be photographed from his best side, and he personally gleaned from each day's batch of photographs favorable ones to put in the Presidential archives. "He was working on his place in history every day, and a picture that didn't quite show him in the right way was as important to him as whether we bombed Vietnam."

As a photographer, Tames talks with ambivalence about controlling his emotions when covering some news events. His own tears don't help. "I had to stop what I was doing at Kennedy's funeral. I could not see." When an entire convention, after nominating Jimmy Carter for President, joined hands to sing "We Shall Overcome," Tames figured there was no harm in putting his camera aside to join briefly in the chain of humanity. Another hymn, "Jacob's Ladder," can make him dizzy with the memory of a night covering Martin Luther King Jr. down South.

"You see pictures every day, all the time," Tames says, as if his eye roves humanity constantly. "You watch light as it plays on people's faces. You know when the picture's there."

Some politicians seem to know a photographer's business as if it were their own. Nixon, he remembers, would take a quiet cue from the photo gallery and call over a nervous witness during anti-Communist hearings for a conference. Thus, he would compose that closeup picture that would make the front page. "He wanted to be one of the boys very badly," Tames says, "but I always had the feeling he tried too hard."

George Tames has a way of focusing events down to the level he needs to see, the human scale. "My father always told me that if you have just a single piece of silver, you can never feel poor in this world," he says, recalling the final photo he took of Vice President Spiro T. Agnew on Oct. 10, 1973, the day he resigned in disgrace. "I stopped on the way there and got a silver dollar, and when we shook hands I smiled and palmed it to him and he understood. I was not forgiving him, no no. But this was another human being," George Tames says.

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

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

## DIRECTION OF SENATE LEGAL COUNSEL IN CERTAIN MATTERS

Mr. DOLE. Madam President, I send to the desk a resolution on behalf of myself and the distinguished minority leader [Mr. BYRD] and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 69) to direct the Senate Legal Counsel to represent Senator Riegle and Senator Levin in *Lawrence Jasper & Family U.S.A. v. Federal National Mortgage Association, et al.*, Civil Action No. 83-2896DT.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. DOLE. Madam President, this resolution would direct the Senate legal counsel to provide representation for Senator RIEGLE and Senator LEVIN in response to subpoenas from the plaintiff in the case of Lawrence Jasper & Family U.S.A. versus Federal National Mortgage Association. This case is pending in the U.S. District Court for the Eastern District of Michigan and concerns the plaintiff's claim of housing discrimination against the Federal National Mortgage Association and a private mortgage company. Senators RIEGLE and LEVIN had received requests from the plaintiff for casework assistance prior to the commencement of this matter in the courts. The subpoenas seek both documents and testimony. If it is necessary to provide testimony, it is likely that this might be given by members of the Senators' staffs. Therefore, this resolution would authorize Senators RIEGLE and LEVIN and members of their staffs to produce documents and testify, if necessary, and would direct the Senate legal counsel to represent them and to assert any Senate privileges.

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

The resolution (S. Res. 69) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 69

Whereas, the case of *Lawrence Jasper & Family U.S.A. v. Federal National Mortgage Association, et al.*, Civil Action No. 83-2896DT, is pending in the United States District Court for the Eastern District of Michigan;

Whereas, plaintiff has served trial subpoenas for testimony and documents on Senators Donald W. Riegle, Jr., and Carl Levin;

Whereas, these subpoenas may be answerable by members of Senator Riegle's and Senator Levin's staffs;

Whereas, pursuant to section 703(a) and 704(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a) (1982), the Senate may direct its counsel to represent members and employees of the Senate in civil actions relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of a member or an employee of the Senate is needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

*Resolved*, That the Senate Legal Counsel is directed to represent Senator Riegle, Senator Levin and members of their respective staffs in the case of *Lawrence Jasper & Family U.S.A. v. Federal National Mortgage Association, et al.*

SEC. 2. That Senator Riegle and Senator Levin and members of their respective staffs whom they may designate are authorized to testify and to produce documents in the case of *Lawrence Jasper & Family U.S.A. v. Federal National Mortgage Association, et al.*, except when the Senators' attendance at the Senate is necessary for the performance of their legislative duties, and except concerning matters that they and the Senate Legal Counsel or his representative determine are privileged from disclosure.

## ORDER FOR PRINTING OF STAFFORD AMENDMENT

Mr. DOLE. Madam President, I ask unanimous consent that amendment No. 7, offered by the Senator from Vermont [Mr. STAFFORD], be printed.

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

## ORDER OF BUSINESS

Mr. DOLE. Madam President, does the distinguished Senator from Hawaii wish the floor?

Mr. MATSUNAGA. Yes, Madam President.

Mr. DOLE. Madam President, I yield the floor to the Senator from Hawaii [Mr. MATSUNAGA].

The PRESIDING OFFICER. The Senator from Hawaii.

## OUR NEXT FRONTIER IS IN SPACE

Mr. MATSUNAGA. Madam President, last night, in his State of the Union Address, President Reagan recalled that "Proverbs tell us that without a vision the people perish." In this inspiring context, the President went on to declare his intention to "push on to new possibilities not only on Earth

but on the next frontier in space." I wholeheartedly applaud those words and the expansive sentiments they express.

It is in the same spirit that for the past 2½ years I have been advancing legislation meant to develop policies that recognize the new realities, the extraordinary new possibilities, opened to us by the space age. In my continuing effort, Madam President, yesterday, I reintroduced a joint resolution, Senate Joint Resolution 46, cosponsored by a bipartisan group of three Democrats and three Republicans, as an incremental step forward. The resolution introduced yesterday pertains to a distant planet that has fascinated the human species since our earliest ancestors first contemplated the heavens—Mars.

Some of my colleagues may wonder: Has the Senator from Hawaii lost his senses? Here the U.S. Senate convenes to address a veritable avalanche of pressing issues, and the Senator from Hawaii talks about Mars?

But Madam President, I believe we also have a duty to try to see beyond the cascading issues that engulf us daily, even while we are considering them. No one likes to be called a reactionary, but if we simply react to problems as they occur, what else are we? Too often, it seems harried policymakers only have time to consider the future when it has nothing to offer because the encroaching present has already violated its potential.

I do not accept that, Madam President. I do not believe the American people sent us legislators here only to respond to their immediate needs. I believe our constituents also hope that some day, perhaps, we will respond to their aspirations as well, and not merely by concluding our speeches with misty visions borrowed from greeting cards or uplifting quotes from folklore. The future is neither nostalgia nor a dream but an unfolding concrete reality, filled with promise, meant to be acted upon pragmatically now, with intelligence and imagination, by those of us who are entrusted with the responsibilities of government.

As the preambular clauses in Senate Joint Resolution 46 indicate, the prospect of another costly and wasteful space race with the Russians is anything but science fiction. At a Senate Foreign Relations Committee hearing last September 13, a panel of U.S. space scientists testified unanimously that the Russians were going to Mars, perhaps as early as the 1990's. The evidence is convincing. The Soviets' record-setting achievements in long duration flight—nearly 8 months, most recently—can only be justified as preparation for an interplanetary mission, since space stations, including the one we are planning, are most efficiently serviced by rotating crews; whereas missions to the Moon can be completed in a few days. Similarly, the heavy-lift launch vehicle the Soviets are developing, which vastly exceeds our capabilities, is a requisite building block for manned interplanetary exploration. Other indications, including an already-scheduled unmanned mission to the Mars moon Phobos, plans for high-powered nuclear rocket engines, and numerous other activities and pronouncements by officials of the Soviet Government, point in the same direction. Are we setting ourselves up for another sputnik? Many experts believe so.

We can, of course, wait characteristically until the last minute, then launch a crash program to beat the Soviets to Mars, at stupendous cost. And after that, Neptune? Pluto? The next galaxy? Even in the context of our self-perpetuating "real world" we cannot anticipate racing the Soviets into a cosmic infinity.

As the space age unfolds, it is generating new realities and new opportunities, unlike any heretofore imaginable. Cosmic is no metaphor out there. Only fantasists talk about riding through space, planting flags and defending trade routes with rocket ships. Realists recognize that the sheer immensity of space generates requirements for survival that, ultimately, will force the superpowers to cooperate. At a certain point, anything other than international exploration of the cosmos from our tiny planet will cease to make any sense at all. In our intense absorption with events of the moment, we have failed to recognize how close to that point we really are.

But before we can reach it, we must develop policies that respond to the unfolding realities of the space age, that move out to meet it on its own uniquely promising terms. Without such policies, earthbound civilization can only wind up recoiling upon itself. It is not often remarked, Mr. President, that the space weapons systems currently under development will reach scarcely above the atmosphere. Regardless of their merits, those systems are irrelevant to the challenge of space exploration. For that compelling reason alone, it is in our interest to develop a separate track for international space exploration, even as we negotiate with the Soviets at Geneva and strengthen our defenses at home. It would permit us to test a new context for political action without letting down our guard in the context which currently prevails. As it happens, the planet Mars offers an initial guiding step in that direction.

Toward the end of this decade, an unusual convergence in space exploration will occur. In 1988, the U.S.S.R. will launch an unmanned scientific mission to the Mars moon Phobos. In 1990, the United States will launch its Mars geochemical/climatology orbiter. It makes no sense not to coordinate the two scheduled missions, so as to insure maximum scientific return. But, due to long leadtimes for such activities, meaningful cooperation cannot be achieved unless action is taken within the next few months. Senate Joint Resolution 46 proposes that the President direct the Administrator of NASA to explore the opportunities for coordinating the two Mars missions while there is still time, in the context of the administration's committed effort to renew the U.S.-U.S.S.R. space cooperation agreement in accordance with legislation the President signed last October 30. Due to the time sensitiveness and the technical complexities involved, it is entirely fitting that NASA take on this responsibility, in consultation with the Department of State. Coordinating the 1988 and 1990 Mars missions—which would require no technology transfer on either side—represents an opportunity that deserves the highest priority. Among other things, it could open the way to a wider range of cooperative activities in other areas of space science, such as solar-terrestrial physics, astrophysics and plasma physics. And, of course, it would set the stage for further collaboration in the exploration of Mars.

With the preceding in mind, Senate Joint Resolution 46 also proposes that NASA prepare a report examining the opportunities for joint East-West Mars-related activities, including an unmanned sample return and all other activities that might contribute to an international manned mission to Mars, perhaps at the turn of the century. I should point out that Mars contingency planning is nothing new at NASA. Senate Joint Resolution 46 notes that the orginal target of American space planners was the planet Mars—not the Moon, which the White House decided upon for political reasons—and that Mars was subsequently advanced as a logical followup to the Apollo Moon Program, but this time it was rejected for budgetary reasons. Designs for Mars missions have been percolating on NASA's backburners for 25 years. I understand that even now NASA may be gearing up for yet another manned Mars mission study, in keeping with the President's admirable intention to establish goals beyond the space station that "will carry us well into the next century." In effect, Senate Joint Resolution 46 suggests that such a study also encompass the possibilities for international cooperation, so we can at least consider that option alongside the alternative of an absurdly wasteful U.S.-U.S.S.R. race to Mars, while we still have a choice.

In sum, Madam President, my resolution does two things. On the one hand, it urges policymakers to exploit an immediate opportunity for space

cooperation. On the other hand, it casts that opportunity in the context of requirements generated by an almost unimaginably expansive new age which promises to render many aspects of current thought and action obsolete, if we manage to keep human civilization intact long enough to enter it. I hope we will devote greater consideration to devising ways to take advantage of those uniquely promising opportunities on the horizon, even as we now stand on the brink. If successful, we will earn the gratitude of future generations—indeed, of whole new worlds.

Madam President, we can only conclude that the U.S. Congress has a duty to include in its deliberations the joint cooperative exploration of space, beginning with the planet Mars.

Madam 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. DOLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## AGREEMENT ON CLASS A COMMITTEES

Mr. DOLE. Madam President, I just wanted to announce—and I have the concurrence of the distinguished minority leader, Senator BYRD—that we think we have reached an agreement on class A committees. There would be a 214 base, 115 Republican slots and 99 Democrat slots. I am not now prepared to announce the ratios, but I thank my distinguished colleague, Senator BYRD, and others on the Democratic Steering Committee as well as Senator MATTINGLY, the chairman of the Committee on Committees, Senator QUAYLE, Senator CHAFEE, and others on our side. It is our hope that we can approve the resolution on committees on February 19. It is fair to say that this solution is not entirely satisfactory to either side, but it is one that has been arrived at after a number of meetings by Republicans and Democrats. Again I thank my distinguished colleague from Georgia [Mr. MATTINGLY], who has spent I do not know how many hours trying to work this out, and the distinguished minority leader, Senator BYRD.

Madam 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. HELMS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

## IRAN: A TERRORIST STATE

Mr. HELMS. Madam President, a few days ago President Reagan warned of a new danger facing the free world in Central America. According to President Reagan—and I fully agree with him—that danger is being fueled by the support for the Sandinista dictatorship in Nicaragua by the Khomeini dictatorship in Iran.

The American people should be greatful to President Reagan for his forthright warning about the dangers to all of us in the free world posed by the Khomeini regime. In 1983, the Department of State described Khomeini's so-called Islamic Republic as a terrorist state. Iran's subsequent actions have only served to confirm the accuracy of that description.

Recently, the Times of London broke a story detailing the establishment of a special military unit in Iran to recruit and to train suicide squads for terrorist missions outside of Iran. The French weekly magazine VSD published in Paris last fall published a major exposé of the inner workings of this type of terrorist structure that Khomeini is creating.

Madam President, I ask unanimous consent that the article from the Times of London of January 16, 1984 entitled "Khomeini Approves Suicide Hit Squad" be printed in the RECORD at the end of my remarks as exhibit 1.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. HELMS. Madam President, I ask unanimous consent that a translation of the top secret Iranian document quoted by the Times of London be printed in the RECORD at the end of my remarks as exhibit 2.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 2.)

Mr. HELMS. Madam President, I ask unanimous consent that the article from the French weekly VSD by Philippe Bernet entitled "Two Billion Francs in Arms For Khomeini" be printed in the RECORD at the end of my remarks as exhibit 3.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 3.)

EXHIBIT 1

KHOMEINI APPROVES SUICIDE HIT-SQUAD

(By Our Foreign Staff)

Iran has set up a special military unit to recruit and train suicide squads to carry out terrorist operations in countries opposed to Ayatollah Khomeini's Islamic republic, according to documents obtained by an Iranian opposition movement and supplied to *The Times*.

Saudi Arabia, Kuwait, the United Arab Emirates, Jordan and France are named as prime targets of the unit, which is called the "independent brigade of irregular warfare in enemy territories".

A leading figure behind the creation of the new unit is said to be Mr. Husain Musawi, leader of the Islamic Jihad organization, which has claimed responsibility for suicide attacks in the past three years on American and French establishments in Beirut and Kuwait.

According to the documents, the secondment is being requested of specialized military instructors who should be under 30 years old, preferably bachelors and who "must be completely committed to martyrdom".

One of the documents is an invitation, dated May 19, 1984, from the Minister of Islamic Guidance, Ayatollah Muhammad Khatami, to 12 ministers, military commanders, heads of department and Ayatollah Baqer Hakim, a pro-Iranian Iraqi Shiite clergyman who leads the self-styled Supreme Assembly of the Islamic Revolution of Iraq in Iran, to attend a meeting at Ayatollah Khatami's office a week later.

The second document purports to be minutes of the meeting, though it only records the introductory speeches of the ayatollah and a mysterious figure referred to by the code name of Mirhashem.

"All your eminences here are fully acquainted with his face," Ayatollah Khatami said in the minutes, "but for the sake of prudence, let us refer to him as brother Mirhashem."

A spokesman for the London office of Dr. Shahpur Bakhtiar, the former Iranian prime minister, whose National Movement of the Iranian Resistance has acquired the documents, said the mystery man was Mr. Musawi.

He is Iranian by upbringing and nationality, though he has for some time been based in northern Lebanon.

Ayatollah Khatami said he and Mirhashem first took their plans for the suicide squads to Ayatollah Khomeini on May 14 and gained his approval immediately. "Whatever is necessary to destroy them must be done," Ayotallah Khomeini is reported to have said.

Ayatollah Khatami added that the plans, to be examined later by the meeting, were more than 200 pages long. Perhaps this, together with Ayatollah Khomeini's alleged approval of it, explains why the minutes do not contain any suggested amendments from the others present, though they included the Minister of Foreign Affairs, or one of his senior aides, and all the top commanders of the armed forces.

According to the Ayatollah, the unit was to be built around the nucleus of "a few groups of 10 to 20 people each who are currently serving in Labanon". Though officially a secret branch of the Revolutionary Guards or one of the other armed forces, "to avoid any legal difficulties" it would act independently and report directly to the Supreme Commander, Ayatollah Khomeini.

The meeting was then briefed by Mirhashem, who referred to the Lebanese groups under his command as being "known to the outside world as suicide groups". He said his organization had been "assisted by five Muslim brothers of occupied Palestine who have for many years served in the army of the occupiers of Jerusalem and who will be making all their knowledge available to us".

Mirhashem complained, however, that the increased vigilance of the Arab countries in the region, and the inadequacy of the military training of his men had rendered Iran unable to topple the government's opposed to it "except by blows brought to bear from within".

He requested that specialized instructors from the armed forces be seconded to his organizations by July 1, and some 1,500 to

2,000 men under 30 and preferably bachelors, be introduced by July 23. "They must be completely committed to martyrdom."

He also requested cooperation from the Foreign Ministry to send abroad, in the guise of military attachés, his intelligence agents. Other requests included a secure, isolated base for training the men, and facilities for teaching them to pilot light aircraft and naval vessels.

Mirhashem enumerated his targets as a first tier of Saudi Arabia, Kuwait, the United Arab Emirates and Bahrain, a second tier of Jordan, and the third tier of France and "any other countries that might oppose the Islamic Republic."

He said it would take at least until the next summer before his men would be able to go into action, and he feared the possibility of a lull in their activities in the meantime.

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EXHIBIT 2

TOP SECRET

Subject: Creation of an independent brigade for carrying out unconventional warfare in enemy territory.

In the process of obeying the orders of His Eminence . . . Ayatollah Imam Khomeini . . . , the great leader of our revolution, and the founder of the Islamic Republic, which were given in handwriting, I would be pleased if you attended a meeting at the building of the Ministry of Islamic Guidance on 5/3/1363 (26 May 1984) at 1600 hours. Should Your Excellencies presence for some reason not be possible, then one of your deputies or, otherwise, one of your senior responsible staff with full powers of authority on your behalf should attend the meeting, and his name, qualifications and title should be relayed 48 hours before the meeting.

Signed on behalf of the Minister of National Guidance.

Seyed Mohammed Khatami.

*List of recipients of the memorandum*

Chief of the Joint Staff of the Islamic Republic Armed Forces.

Representative of the Iman in the Supreme Defence Council.

Commander of the Revolutionary Guards of the Islamic Republic.

Commander of the Ground Forces of the Islamic Republic.

Commander of the Air Force of the Islamic Republic.

Commander of the Navy of the Islamic Republic.

Chief of the G2 Section of the Joint Chiefs of Staff.

Chiefs of the Political-Ideological Offices of the various forces.

Chiefs of the Islamic Committees (Head of the combattant clergy organisation).

The Representative of the Iman in Haj.

Minister for Foreign Affairs of the Islamic Republic.

Hojat-Ol-Islam, Mohammed Baquir Hakim (Islamic Revolution of our brother country, Iraq).

*Official proceedings concerning the creation of an independent brigade for carrying out unconventional warfare in enemy territory*

The meeting commenced with the speech of His Eminence, Ayatollah Khatami, the Minister of Islamic Guidance, who said the following:

"In the name of God, the Merciful, the Compassionate, dear Brothers, I wish to welcome you on behalf of the International Islamic Movements Organisation, and to explain in brief why this meeting has been called. On 24th of "Ordibehesht", I, accompanied by the Head of this movement (Islamic World Organisation) were received by our beloved leader to whom we presented our progress report. His Eminence, the Iman, expressed dissatisfaction with the behaviour of the leaders of the sheikdoms of the Persian Gulf and of the Saudi regime. Of course, he was not pleased either with others who pretend to be leaders of Islamic nations. After moments of silence which were evidence of his deepfelt anxiety and dissatisfaction, His Eminence in his usual style of firmness concerning all living matters made certain comments which are as follows:

"From the beginning of the revolution, we have had many enemies, but our expectations from Muslims was something else. Unfortunately, all the rulers of Islamic countries are servants of foreigners and instead of learnings from our advice and being in step with us in the direction of Islam and the Islamic "Ummah", they have chosen the path of hostility and have acted in the same fashion they acted with the prophet (Mohammed) at the dawn of the Islamic period, and have consequently stepped on all the laws and traditions of the Koran and have left the entire Islamic heritage in the hands of the foreigners—first of all Sadam (Hussein, President of the Iraqi Republic) began to fight against Islam. Although his situation is near termination, these poor people are also sinking in the well with him; by this I mean the reactionary rulers of Arabia who also consider themselves the guardians of the Holy Shrines, and others, Kuwait, etc. These people think that because their bosses are Russians or Americans that they can by strong guns and tanks face the Iranian Ummah which has given so many martyrs. The destiny of the Shah, Sadam and their bosses, America, has not been a lesson to them. Now, it is up to them. we have a heavy responsibility in the face of the Koran, His Holiness, the Great Mohammed (the Prophet) and Islam. We have to spread Islam everywhere, and in this path we have given a great deal of blood, and we will give more until, with the help of god, Islam becomes victorious. You should act according to your religious duties. Whatever is necessary to destroy them must be carried out. There is no longer any time for talk and advice. That's it." (end of Khomeini's comments).

The Minister for National Guidance continued:

"Our brothers are aware that for four full years we have been at war with Sadam (Hussein, President of the Iraqi Republic), and we have borne a lot of suffering, and until such time as we have destroyed him and liberated our brother Iraqi nation, we cannot stop. On the other hand, all the forces of world oppression have united against this righteousness and have begun to pull the strings of their puppets everywhere to damage our glorious revolution. Inside, groups which have sold themselves, and outside, countries like Iraq. Therefore, based on what has been said, we are encircled by such an enormous satanic force and we must accept this truth, that apart from fighting this imposed war we face thousands of other internal and external problems. Apart from this, as indicated by our beloved leader, we have a heavy duty toward Islam and as such we must prepare ourselves to face the challenges of any enemy until such time as we have carried out the wishes of our leader and our "martyr-raising" Ummah, and we have liberated all Islamic countries from the yoke of corrupt and reactionary rulers. Therefore, because of the present difficulties which have been mentioned, it is not possible for us to directly confront this enormous force that is supported by the super powers, based on a plan that has been prepared in almost 200 pages and on which you will be subsequently informed, it has been decided that the strike-force which at present is composed of a few groups of 10-20 people each, who are currently serving in the Lebanon, should be increased to the size of a brigade.

This force, for security reasons, and for the purposes of making sure that legal impediments do not delay its formation, will be formed under the aegis of either the Revolutionary Guards or the Armed Forces. Of course, the decision in this respect will rest with His Eminence, the Leader. At this time, we are concerned with its creation. This force will act independently and will present all its reports directly to the Commander in Chief. Because the carrying out of this plan required the assistance of all revolutionary organs, the matter was presented to His Eminence in that initial meeting, and he accepted the proposal. What has been said has been a brief introduction, and now we will enter the main substance and I shall pass the platform to Brother "Mirhashem", who is responsible for this organisation. Of course, all present here are fully familiar with his (Mirhashem's) features; however, please allow for prudence-sake that we refer to him as "Mirhashem". [Pseudonym for Hossein Mossavi]."

Brother Mirhashem thanked His Eminence, Ayatollah Khatami and all respected people present.

"From what was said at the beginning, there was some reference made to the creation of brigade. For the information of all present, I must say that we have at present a number of dedicated groups who are ready for action and who have, to the outside world become known as suicide groups. These groups have already performed certain actions. But since regional reactionary forces out of fear from the Islamic Revolution and the hard blows of the fighters of Islam, with each passing day under different pretexts are perparing themselves more and more, and this in itself is a big threat for the continuation of the revolution, these groups that we have are by themselves inadequate. Also, the personnel in these groups are commited only because of their beliefs for which they are ready to do anything, but they lack warfare experience. Therefore, the personnel of this brigade must from the point of view of military combat experience be of a very high echelon. If we wish to commence this task from the beginning, that is from the training stages, by the time that we can prepare such people for utilisation at least one year will have elapsed, and this is something that will create an interlude in our activities and will award our enemies more time. Therefore, it has been decided to select dedicated religious and fully commited candidates from all combat (Nahad) organisations so as to prevent any interlude in the continuation of our operational activities.

For the purposes of dealing with the main substance, I will list our requirements for you so that all brothers present will be informed of the boundaries of their duties and contributions towards the creation of this brigade. It is pertinent here that I should remind all that as indicated in the invitation memo the name of this brigade is

for carrying out unconventional warfare in-enemy territory. To commence operations and confrontations we must have excuses. Therefore, we must begin by propaganda—and here this is the responsibility of the combattant clergy organisation and the Friday Mosque prayer leaders (throughout the country) who must in the course of their political-religious sermons propose the plan that the administration of the Holy Shrines belongs to all Muslims in the world and must be controlled through a trusteeship consisting of all Islamic countries, and also the question of renovating other religious shrines and building for which I have no specific knowledge. I refer only to the heading which is in line with the wishes of His Eminence the Imam, and the Friday prayer leaders are more than capable of dealing with the substance of these headings.

Second, propaganda and operations during the month of the Holy Pilgrimage which Hojat-Ol-Islam Moussavi Khoiniha, who is himself both a contributor to the original plan and an operator as well. If necessary, he can say a few words concerning the operational plan for Haj.

Third, the combat structure of the brigade which must be ready for operation in the waters, airspace and territory of the enemy.

A. At this time, we request the commanders of the various forces (Revolutionary Guards and the three regular forces) to introduce dedicated and religiously committed qualified candidates to the temporary staff of this brigade. These people must have obtained a high school diploma and must have participated in the four year war (with Iraq). They must not be more than 30 years old, preferably bachelors. Their candidature must be approved by the political-ideological offices and these people must be introduced no later than the end of the month of "Tir" (20 July). I underline that these people must in the course of their total commitment to the path of Islam place no value on their life, and must be totally committed to martyrdom.

B. To train these personnel, it is necessary to have the services of officers and non-commissioned officers specialising in partisan warfare (ground forces). His Eminence, our leader, has agreed that should we at present be faced with a shortage of such people, we can invite former officers and NCOs with these qualifications to return to work. In this respect, if necessary, our military attaches in foreign countries can prepare such invitations for military people who are, for whatever reason, living abroad, and they can give them whatever assurances that are necessary. The only point concerning personnel living abroad is that care must be taken that no recommendation be made of people who have acted in a hostile way towards the Islamic regime. Unlike combat personnel, there is no age criterial for these specialised trainers.

C. Specialised officers and NCOs for training people for naval activities—according to the information given by the Navy in the past and at present. were in possession of a strikeforce which might still exist, personnel from this structure are also required by the brigade. If faced with a shortage of such personnel, the above instructions are also applicable in this case.

D. For training in the art of piloting light aircraft, it is essential that we introduce certain candidates to the Airforce. It would be better if the Airforce can create a training centre outside its present bases for it would be more secure. In this regard, more will be said later.

Another thing which is required is combat information, that is airforce intelligence, naval intelligence and ground force intelligence. For this, whatever information which at present is available concerning enemy territory within the various intelligence units of the forces must be made available to the temporary intelligence, and more intelligence officers should be sent to the countries under consideration, under the umbrella of the military attachés office. In this respect, I repeat once again the same proceedures as those applicable to specialized officers and NCOs are to be followed, and in this regard, utilization can be made of former Savak agents and the counter intelligence files of Savak. Here, I have a very important and secret matter to divulge, and that is that so far our organization has been assisted by five Muslim brothers of occupied Palestine who, for many years have served in "the Army of the occupiers of Qods" (Israeli Army), and in the future they will be making all their knowledge available to us.

The target countries are as follows. The first tier is Saudi Arabia, Kuwait, United Arab Emirates and Bahrain. The second tier is Hashamite Jordan. The third tier is as needs be, France and other countries who will try and confront the Islamic Republic.

Our brothers are informed and as stated, know that the reactionary forces of the region with each passing day, either out of fear or for reasons of dependence on the super powers, are arming themselves to the teeth, which is not to the advantage of the Islamic Republic of Iran, and there is no way that we can bring them to their knees unless we are able to inflict relentless blows on them from within. That is, to neutralize them at every step. Here it is necessary that I give a word of caution, that to obtain information from enemy territory you should select and introduce officers who once they have completed their observations and have submitted their reports, do not omit the slightest bit of information which might be of intelligence value.

With regard to Iraq, with the assistance of the 12th Imam, the Sadam (Hussein, President of Iraqi Republic) regime is gasping its final breath, for operations inside Iraq the political organisation which has been through the tireless efforts of the son of Ayatollah Hakim and other brothers is capable of exercising great strength, and in the not too distant future they will enter into operation.

The final request of this organisation is that the Ministry of Foreign Affairs ensure that the fullest cooperation is given to all personnel who are to sent by the organisation abroad (to ensure that they can proceed without delay etc.).

And finally, before I end, I wish to remind you that all specialised and intelligence personnel unlike ordinary personnel must be introduced no later than the 10th day of "Tir" (1 July) so that there is no interlude in our activities.

Concerning the number of personnel to be introduced, outside the meeting certain questions were asked to which I must respond in this fashion, that apart from the command and HQ staff, the ordinary personnel introduced must number between 1500 and 2000, so that proper selection (taking into consideration ideological, combat and other credentials) can be made. There is no objection if the number of candidates exceeds the allocated amount. The other matter is that for forthcoming meetings either for exchange of opinion or for analysing the plan between the various organisations present in this meeting, without resorting to writing, each organisation must introduce a responsible person no later than the 10th day of "Khordad" (31 May)

I have nothing else to say."

Closing remarks by Ayatollah Khatami.

"With repeated thanks to all those present, I request that should any proposals for the further strengthening of this brigade come to anyone's mind, they be submitted in writing by the chosen candidate who will deliver it by hand so that they can be utilised.

Also, since the above proceedings will appear on paper from a cassette disk, I would be grateful if it was accepted that all irrelevant discussions be omitted. If there are no more comments in this regard, we can end the meeting."

The meeting ended at 2400 hours, and this record of the proceedings, after the omission of unnecessary items from the tape was prepared and is certified by all of us.

The Secretary (signature)

The Head of the International Islamic Movement's organisation "Mirhashem"

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EXHIBIT 3

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
*Washington, DC.*

Source: V.S.D. September 5, 1984 (Paris) pp. 7-9.

TWO BILLION FRANCS IN ARMS FOR KHOMEINI

(By Philippe Bernert)

This is the secret tale of six mullahs sent by Teheran with all the treasure from the Iranian war to buy ultrasophisticated materials which was supposed to assure the imam's victory over Iraq and all the other "satans of the world."

More than 20 billion dollars, nearly 200 billion of our francs, constitutes the fabulous budget which the authorities in Teheran have put at the disposal of their arms buyers in order to make ready, under the best possible conditions, the ultimate offensive against Iraq, which has been put off since June and scheduled for September or October. Placed in bank accounts at the Credit Suisse in Zurich, the Union de Banques Suisses in Geneva, and the Midland Bank of London, this gold mine has been put in the care of six mullahs working exclusively for the pasdarans (Guardians of the Revolution), the toughest forces in the regime.

That's what it is, this great development within the Islamic State. Having no more confidence in what remains of the army, navy, and air force inherited from the Shah's time, the ayatollahs are building new armed forces, composed exclusively of fanatic volunteers. Just as Nazi leaders towards the end of World War II, preferred more and more to have the totally committed SS behind Hitler and Himmler, rather than the Wehrmacht.

So in Teheran they have decided to obtain truly modern military equipment for the pasdarans. Although up to the present time the Guardians of the Revolution have only had carbines, now they will be given planes, tanks, and some sophisticated missiles. Since they don't know how to use these things, they are being recruited from among those elements in the traditional army who are closest to the revolution, the instructors and the interim officers. In order to speed up the technical training of these pasdar-

ans, training is being carried out as fast as possible.

"This is how I learned to my amazement," tells us a former commander of the Iranian air force, Houshang Mortezai, "that the pupils I had been training on a Cessna, were getting their fighter pilot's license after a hundred hours of flight time, when sometimes a thousand hours are required to become a good fighter pilot."

The objective which the clergy has set itself is to give to the pasdarans, and only to them, the means of winning the war against Iraq. Then, to eliminate the last vestiges of the traditional army and to make this new pasdaran military and religious striking force the spearhead of future battles and conquests. This is probably why the purchasing committees of the Iranian army, under the management of Colonel Azizi, are no longer looked upon with favor in Teheran. They have been short-circuited by some striking personalities who are being talked about in London, Paris, Geneva and Milan:

"They are obtuse, with one obsession: get the very best equipment, the stuff which is usually under embargo. They are incredibly tough businessmen, demanding to inspect the merchandise, refusing to pay until the equipment is delivered in Iran itself. It is true that they have been burned by unscrupulous businessmen who often kept their money for themselves . . ."

At the head of this small group of mullahs purchasing armaments in the West, is a certain Vahed, who is close to the Libyans (he was seen in Tripoli on or about last August 10). A kind of chief comptroller, Vahed is supported by a mullah in charge of the navy, Teymoury, and another, an aviation specialist, Sadeghi. Completing the commando group: one of Khomeini's nephews who is often seen in Paris, another mullah, Sadeh, who often travels in the Scandanavian countries, and a certain person by the name of Ghafemi. Traveling all over the world, carrying new diplomatic passports on each one of their visits, with correspondents throughout the world at their disposal, making blitz appearances, in Argentina, certain African countries, and even the United States, these six members of clergy are spending billions and creating the new pasdaran army.

"They don't buy just anything" one of their correspondents told us in London. "In small select meetings they will announce to you in scathing tones that they are not interested in buying yet another oil tanker for the Gulf. They are interested in political targets. They want to destroy their enemy's economic potential, get to him in his palaces, in the heart of his cities." A terrorist war, that's the pasdaran password. This is why they are increasing their kamikaze units, both in the navy and in the air force.

It is because of this new form of war that the six mullahs are trying to buy very specific kinds of materiel. Just a few months ago they were hoping to get some Exocets from the French government, putting forth the political context as an argument:

"We know that you have been selling equipment to our enemy, Iraq," they said in Paris. "But if you deliver some to us as well, you will reestablish the equilibrium a bit. You will erase some of the unpleasant effects of your decisions and we will be able to consider some detente in our relations."

Paris did not refuse and, for a moment, there was even a question of having a demonstration of the famous AM-39, the air-sea Exocet, for the mullahs. But the situation soured and the mullahs decided to buy Exocet's American rival, the Harpoon. They needed two different models: the sea-sea Harpoon to equip the very few Cherbourg patrol boats which are still in shape to function in the Gulf, and which are desperately short of munitions. And they want the air-sea Harpoon AGM 84-A, which is installed on combat planes or helicopters. But, as it happens, these missiles, which are manufactured by the American company McDonnell Douglas, are under embargo. And Washington expressly forbids selling them to Iranians.

How to get around this difficulty? By getting the Harpoon from another country that can get them from the United States with no difficulty and no limitations. This is why the mullahs have entered into intimate business relations with Argentina. Buenos Aires does the buying. And, using certain front companies set up in Switzerland by the vice-president of an important Western armaments business as a go-between, this highly sensitive equipment is sent off to Teheran.

In order to make efficient use of the new air-sea Harpoons, the Iranians, who now have only an antiquated air force, would need American F5s. Another commodity prohibited by Washington. No problem. Again with the help of billions, the mullahs, they say, have succeeded in obtaining some from Argentina. And perhaps also with Israel as go-between, since Israel can get this type of plane from the United States with a simple telephone call. But the Teheran regime will have no lack of airplanes for its final offensive, as they are supposed to be about to receive, via a Third World country, Soviet MIG 21s.

But even more than on a new air force, the mullahs are betting on equipment intended for suicide sailors and pilots. In Sweden they have ordered 60 small, swift patrol boats. Each one of these, stuffed with a tonne of explosives, could be aimed at either a civilian or a military objective, right in the middle of a port, for example, and cause an explosion with appalling damage. It's just that the mullahs consider the Volvo motors on these units too small, and they are trying to find, on Formosa, 10-11 meter long torpedo patrol boats, which are faster.

But they are really counting on flattening the enemy from the air with single-engine planes which have been turned into flying bombs piloted by kamikazes trained in North Korea. One of these suicide flyers, Houshang Mortezai, whom we met in London, told us the following story:

"Just six weeks ago I still belonged to one of the kamikaze units of the new Iranian terrorist army. I was a commander in the Imperial Air Force, arrested and deported after the revolution but brought back by the mullahs, who needed instructors, and who tested my religious convictions. I was selected along with 32 other pilots to undergo training in Won-San, North Korea during 1982 using single-engine Swiss Pilatus planes. We hedgehopped touching particular tree branches, and flew under bridges, and they had us do the most unbelievable somersaults. That was where, during training, we had our first two deaths. There were others after that . . ."

Successfully ingratiating himself with the mullahs, demoted from his rank as imperial officer, but reintegrated into the new army with the rank of sergeant, Hushang Mortezai had only one idea: to get out.

"I had to wait for just the right moment, which wasn't easy," he told us. "I had to keep an eye on two student pilots, and I was being watched by another guy. Finally we had this mission to the mouth of the Hormuz Straits. Our group had to take four machines to the two important Iranian bases in the region, to Bandar Abbas and Bandar Lengeh. No one had told us beforehand about the change. Taking advantage of a moment's inattention by the head of the patrol, I took a sharp, 90° turn to my right, straight west. It was all so fast, so intuitive on my part, that I didn't even think, I just took off. Twenty-five minutes later, the longest of my life, I landed on the other side of the Gulf, at Sharjah, with all my lights out. The alert had been sent out, but the pursuing Iranians were unable to catch me. Everything that happened was split-second timing . . ."

When the authorities of the small emirate of Sharjah undertook to inspect the plane, they were stunned. They found, well-hidden, 11 cases of dynamite and some highly explosive materials, enough to blow up a port or a city.

"Looking back, I break out into cold sweats," Hushang Mortezai told us. "I knew one day they would put me in command of some boobytrap to go rain death and destruction on Iraq, or somewhere else. That's just exactly what I wanted to avoid, but I didn't know that they had already filled the planes that we were ordered to take to the southwest of the country with dynamite. Why to Hormuz? Doubtless to dive on the American fleet some day."

When he was interrogated by Western authorities, Hushang Mortezai made no attempt to conceal what civilian targets he and his kamikaze comrades were being trained for:

"In order of importance," he explained, "the president's palace in Baghdad, which we could have reached with our eyes closed, since we'd made so many flight simulations for this high-priority target. Then came the Iraqi Parliament, then the armed forces' general headquarters, the Iraqi staff headquarters, the nuclear power plant at Tammuz, the oil-producing centers of the north, the complexes at Bassorah and Fao. My own orders carried the name Kirkouk, the most important oil-producing city in Northern Iraq. I know that there were other targets, outside Iraq, destined for disintegration by our kamikaze planes: all the Arab Gulf States, from Kuwait to Oman, for starters. Although I was able to hide my intention to flee someday, I must tell you that my comrades are one-hundred-percent fanatics. They are preparing to make their strikes and nothing will stop them. All I needed was to look at the reactions of uncontrollable joy after the attacks against the French and the Americans in Beirut last year. . ."

How many of them are there, these men who are willing to risk someday unleasing the deadly fire from the sky? According to Hushang Mortezai there are still 20 of his "first-grade" comrades left. They are to be reinforced shortly by two dozen other volunteer pilots who are now completing their training in North Korea. Will they have the aircraft to complete their mission?

"The unbelievable part about it," a Swiss armaments official told us, "is that we are giving them the means to do this. At first, the mullahs wanted to buy their little flying bombs in France. Single-engines, not in the least designed for terrorism, and built by a little company near Bernay, in the Eure. Since they didn't get what they wanted, the Iranians fell back on the Pilatus PC 7, a single engine meant for agricultural use, for

spraying the vineyards and treating the fields with pesticides. These aircraft are versatile, easily maneuverable, fast and economical. Just exactly what the mullahs need for installing explosive charges for terrorist purposes.

"And," continues our Helvetian, sincere and disillusioned, "you probably won't believe this, but we are furnishing them, quasi-officially, here in the land of Dunant and the Red Cross, with the potential to launch the most frightful terroristic operations. The small Pilatus company of Stans, near Lucerne, using as a go-between one of the first-rate front companies which pullulate on Confederation territory, has already supplied Iran with a dozen of these single-engines.

The mullahs have asked for sixty. Another convoy has just left . . ."

Taking a very strange route. A shipment of Pilatus PC 7 components left Stans, heading by truck and by rail toward Milan via the St. Gothard Tunnel. There, a company by the name of Contraves which specializes in anti-aircraft materiel, assembled the aircraft, transforming the peaceable agricultural machines into instruments of combat. The Swiss military pilots delivered the Pilatuses directly to Teheran, making a stop in Turkey. This is because one of the established rules of the very rich and stubborn clerical arms merchants expressly stipulates:

"We only pay for merchandise delivered to the spot."

This whole affair of the Pilatuses delivered up to the terrorist bulimia is creating quite a scandal in Switzerland at the present time. But this little storm is nothing in comparison to the one that would come up if the whole West were to discover just exactly how much the neutral countries are helping the Iranian pasdarans procure the most sophisticated weapons for the most fanatic and pitiless of armies.

As long as they had no real means of fighting against the Iraqis, the pasdarans sent tens of thousands of children to their deaths, children who went off to jump on mines so they could win paradise. These weapons are being sold to them right now, in spite of all embargoes and prohibitions. Confronted with the powerful Iraqi artillery, they needed cannon. They have just received 105a and 155a from South Africa. Why would the land of apartheid come to the aid of an ultra-terrorist country which would try to destroy it later?

"For the money," replies an American arms specialist coldly. "We are under no illusions on that score."

As for the Chinese, they have delivered to Iran, via an intermediary country, 10,000 RPG 7 missile launchers, a Soviet model modified by Peking. The suppliers did not include the sights which are standard equipment on the things. But the Iranians managed somehow to buy the requisite number of sights elsewhere.

"Does anybody realize the enormous size of that order?" comments an American specialist who told us of the fact. "An incredible instrument of death has been supplied to these pasdarans, who from that time on will be more powerful than their own army, externally as well as internally."

The Iranians are trying to find the right response to the enemy's tanks. Their first-rate mullah buyers pulled off a lovely deal getting themselves 1,300 BGM 71 A anti-tank missiles, better known under the designation "Tow," and made in the United States by Hughes Aircraft. Washington had decreed: "Not a single Tow for Iran." After two years of ruses and intrigues the mullahs finally discovered the key. A small shipping company run by a Frenchman who had worked in Algeria for many years in Boumedienne's time, had maintained excellent contacts in the Third World and continues to have dealings with a Panamanian company that has offices in Argentina.

Once again, Argentina is the pivot. By way of Buenos Aires the Panamanian company gathers in a formidable shipment consisting of 1,300 missiles, a 32-tonne load. The Frenchman, lurking in the middle of the web, has already sold the whole consignment to the agent of the pasdaran ministers, by contract No. 3038 at the end of May, 1984, for a total 9,555,000 dollars. For once, because the deal is enormous, unhoped-for, Teheran decided to take some risks and payment was made before delivery through the Melli Bank in London on instructions from the Markasi Bank (National Bank of Iran).

A weapon like this means victory for the taking, the total destruction of the Iraqi armored divisions and the omnipotence of the pasdarans secure. Only one thing is lacking: delivery of the missiles in Iran. And, oddly enough, that is the trickiest part of the whole deal. Transport was supposed to be arranged via Latin America, then via Frankfurt by Lufthansa about the middle of August. Lufthansa being with its sister company, German Cargo, the usual means of traffic between the West and Teheran. The C.P. Company Teheran (actually headquarters for some pasdarans who have been receiving military equipment for the new religious army for months) had even scheduled a definite flight, LH 686, arriving in the Iranian capital at 12:55, for this shipment of "assorted equipment," destined for a private company.

But just as oddly, at the last minute this historic shipment was postponed several weeks. Can the offensive be begun without the Tow missiles, which are the key to victory? From London to Paris to Zurich the mullah buyers have been a furious activity waving their checkbooks around. They are the buyers of US helicopters, which one of their Swiss friends has been trying to get for them, of biological disablers and bacteria, learned terms to start a chemical war, coders and decoders for their own telephones and telexes abroad. They are suspicious; they feel spied upon at every moment.

They have also taken off on a chase after armored vehicles. Still thanks to their supporters in Buenos Aires, they have acquired 200 Tam tanks. Missiles which were actually made in West Germany, then sent in parts and assembled in Argentina. The tanks, the pasdarans want tanks, so as to be independent of the regular army tanks, in order to organize their own army. They have already taken more than 2,000 armored vehicles, Soviet T 62s and T 72s, from the Iraqis, and they would like to turn them against the enemy. But the motors, Polish-made, aren't worth a dime and are constantly breaking down. And the Russian cannons are out of munitions. To change all this, to adapt a Western cannon, to install a new motor, the mullahs are ready to spend millions of dollars. They are talking about it with the Swedish company, Saab Bofors.

The six missi dominici of the pasdarans, rich with the greatest war treasure of all times, tarry indefatigably at all the Western companies willing to supply them with radar systems, amplifiers, coastal defense missiles, Phoenix missiles, etc. While all this is gong on, behind the Iranian tschador, a new kind of army is being formed, whose objectives are essentially political: assassinations, elimination of foreign heads of state, beginning with Saddam Hussein, and the suicide measures: planes stuffed with explosives to crash onto their targets.

"Our 'entehari' (suicide) brigade was somewhat like the embroyo of this force," ex-kamikaze commander Mortezai told us. "In order to accomplish this, we got together 30 Cessna turbojets, a dozen old DC 3s and DC 2s, and 20 Jet-Falcons intended for the naval air force. I left at the time when the Swiss Pilatus had just arrived: their technology was supposed to revolutionize our group.

Following the terrorist era, a terrorist war looms. Twenty billion dollars are being offered to the West to assure the training and armament of the pasdarans' army. Lenin did say that the West would supply the rope with which to hang itself.—Inquiry in London and Zurich, by Fred Saint-James.

12-YEAR-OLD VOLUNTEERS FOR DEATH

Twelve-year-old kids with the blood-red headband of the death volunteers, the Islamic kamikazes. Proudly and solemnly carrying the automatic pistol, almost unconsciously held against their temples, as in Russian roulette, for what voyage to the bottom of hell? Or rather, paradise, as their pasdaran instructors tell them.

These children form the relief troops for the army of a million pasdarans massed on the Iraqi front for the decisive assault planned for the end of September or beginning of next October, the date of the Iraqi invasion.

However, aware of the necessity of economizing on human lives, of using the most modern equipment against the forces of Saddam Hussein, the staff headquarters of the Guardians of the Revolution has recently sent arms buyers to the West. It was a matter of sweeping up planes, cannons, and tanks on all the markets of the world. Special flights, by Lufthansa air freight, are expediting tonnes of armaments to Teheran at this moment.

Forming the regime's new pretorian guard, making up militias charged with the responsibility of keeping watch on factories, ministerial buildings, and schools, the "pasdaran children" feel invested with enormous responsibility. Here they are, all of a sudden turned into adults, powerful, to be feared. They boast among themselves and often salvos go off. They sometimes kill their comrades, wound themselves, even kill themselves. . .—Translated by David Skelly, CRS—Language Services, February 4, 1985.

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

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

(The remarks of Mr. BUMPERS are printed under Statements on Introduced Bills.)

## COMMITTEE MEMBERSHIP REFORM

Mr. SIMPSON. Mr. President, let me just swiftly express my thanks very sincerely for the work of the participants and the work performed for the Senate by the majority leader, Mr. DOLE, and by the minority leader, Mr. BYRD, with their work, and the Committee on Committees in resolving a very vexatious thing for us, that is a tough, tough situation for a legislator. It deals with the areas of prerogatives, pride, and pressure, and Senator BYRD and Senator DOLE did a marvelous service to us in resolving that, and I particularly recognize the service of Senator MATTINGLY who has done extraordinary work and Senator QUAYLE, Senator RUDMAN, Senator GORTON, the Committee on Committees, and particularty thanks to the staff members who participated from the minority and majority, Rod DeArment, Richard Moore, and Howard Greene, secretary for the majority, John Tuck, and special thanks to Pat Griffin, who worked so diligently on that and now has gone on to other things here in Washington and to his successor David Pratt. I thank them for their efforts in resolving what is always one of the toughest bones of contention in any legislative body and that is the makeup and the number and membership of committees with which we function and work.

I thank Senator MATTINGLY.

Mr. MATTINGLY. Mr. President, I thank the acting majority leader for those kind words. I also thank Senator DOLE, Senator BYRD, and Mr. Greene, Mr. DeArment, and Mr. Richard Moore, of my staff, for all the outstanding work that they have done on this.

I also wish to say just a special thanks to Senator QUAYLE, from Indiana, because it was the Quayle Commission that set the stage for this reform that we have just undergone. When I look back, it was in the 97th Congress there were 217 slots. In the 98th Congress there were 231 slots. So, what we have now done is reduced, through the cooperation of both sides of the aisle, in reform down to 214 positions. To me this is really a major victory, and it is a major step I think in the reform of the committee system in the Senate.

We all know that it is easy to go up when you want to increase larger numbers, but when you want to come down, we saw that it was a difficult task, but I think, as we look through all the people who served on the Committee on Committees, on the Republican side and certainly on the other side of the aisle, everyone really sort of joined together and everyone wanted reform and we ended up having reform.

So hopefully, I say to my good friend, the Senator from Wyoming, that this same spirit of cooperation will work on the reform of the budget, and I think it will. I think through this cooperative effort we can see that we can make change that is beneficial to everyone.

So I end by saying on the last day before recess I am not only glad to see this come to a conclusion, but I am glad to see it come to a positive conclusion.

Mr. SIMPSON. It certainly has because of the efforts of Senator MATTINGLY. I thank the Senator very much, indeed.

## IN SUPPORT OF S. 281, A BILL TO AMEND THE INTERNAL REVENUE CODE TO ADD A SECTION DEALING WITH PUBLIC SAFETY VEHICLES

Mr. HEFLIN. Mr. President, I am pleased to join with my distinguished colleague, Senator PRYOR, in sponsoring S. 281, legislation to correct a serious problem in the area of employee use of an automobile. This legislation is designed to ensure that State troopers, sheriffs, sheriffs' deputies, firemen, policemen, emergency medical workers, and other public safety officials are not taxed on any portion of the use of their vehicles.

Last year's Deficit Reduction Act made several changes in the area of fringe benefits. Specifically, the bill that came back from conference added a new section to the Tax Code—section 132—that provided four general fringe benefit categories. At this stage it was impossible to wage a successful battle to remove these provisions. If any employer provided benefit fits into one of these categories, then the employee does not have any income to the extent of the benefit provided. Not included within those categories, however, is the use of a public safety vehicle by a public safety employee, such as State trooper's use of his patrol car.

On December 31, 1984, the Internal Revenue Service issued temporary and proposed regulations dealing with this issue. Under these regulations if certain requirements are met and the vehicle is used only for commuting purposes, the employee had additional income of $4 per day. However, if the conditions for the special $4 per day rule are not met, then the employee will be taxed for the percentage of his or her personal use of the vehicle. This percentage is applied against the annual lease value of the vehicle, depending upon its fair market value. Under these regulations, no exemption has been provided for public safety employees such as sheriffs, State troopers, and firemen. Without an exemption, these officials will have taxable income from the personal use of their vehicles of $4 per day, or alternatively, will be taxed on a portion of the annual lease value of the vehicle and be forced to keep a travel log. In essence, we are imposing a tax on public safety officials for the vehicles they are required to operate in carrying out their responsibilities.

The legislation I am cosponsoring today would add a special exemption to section 132 of the Internal Revenue Code exempting from taxation the use of a public safety vehicle by a public safety employee. The need for this exemption is obvious. State troopers, sheriffs, firemen, and other public safety employees must use their vehicles for the protection of the public. These people are constantly on call and must respond to emergencies at all hours of the day or night whether they are on duty or off. Therefore, they must have the use of their vehicles 24 hours a day. S. 281 would make it clear that we recognize and appreciate the important and difficult role public safety officials play in our society by treating any use of a public safety vehicle as a working condition fringe benefit, and, therefore, not subject to taxation.

Mr. President, to place this burdensome tax on the people charged with protecting and caring for our citizens is an inequity and an outrage. I, therefore, urge my colleagues to cosponsor this important legislation which will correct this very serious flaw in the Tax Code.

Thank you, Mr. President.

## RETIREMENT OF HENRY EARLE HOLLEY, JR., OF AIKEN, SC

Mr. THURMOND. Mr. President, the chairman of the board and chief executive officer of Palmetto Federal Savings & Loan in Aiken, SC, my good friend, Henry Earle Holley, Jr., recently retired from his post after an illustrious 34-year affiliation with this growing financial institution. This is an organization with which I am very familiar, as I had the privilege of cofounding Palmetto Federal in 1951, and serving as its first president until 1954, when I was elected to the U.S. Senate.

Since its early days, Palmetto Federal has greatly benefited from Earle Holley's leadership. He was a charter director in 1951, became president in 1964, and chairman of the board in 1982.

Earle Holley comes from a fine family with a rich heritage in the Palmetto State, and all who know Earle would agree that he is a true southern gentleman. Indeed, his exemplary character is a result of his commitment and service to God, country, and fellow man. Earle Holley served our Nation during World War II as a decorated Army infantryman in Europe. His contributions to our State earned him the prestigious Governor's Order of the Palmetto in 1971—South Carolina's highest award. A civic-minded in-

dividual, Earle Holley has devoted much of his time and resources to make the Aiken community a better place to live and work. He is an involved member of the First Presbyterian Church, and his life epitomizes those Christian virtues which all men should strive to attain.

Mr. President, I want to offer Earle and his lovely wife, Laura, my best wishes for many years of good health and happiness as he begins his much-deserved retirement. In order to share more about Earle Holley's life, I ask unanimous consent that articles from the Augusta Chronicle and the Aiken Standard be printed in the RECORD.

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

[From the Augusta (GA) Chronicle, Jan. 17, 1985]

AIKEN BANK OFFICIAL RECALLS LONG CAREER AS RETIREMENT STARTS

AIKEN—Henry Earle Holley Jr. is not the kind of man who likes to talk much about himself. In the tradition of the Southern gentleman, he prefers to let his acts speak for him.

The former chief executive officer and chairman of the board of Palmetto Federal Savings and Loan retired Wednesday after guiding the 34-year-old institution through its founding years into prosperity.

He is: A decorated World War II veteran who served in Europe with the U.S. Army; past owner of Holley Motor Co. in Aiken; a developer of Kalmia Plaza Shopping Center; charter director of Palmetto Federal in 1951 (then called Aiken Federal Savings and Loan); 1971 Governor's Order of the Palmetto recipient; and a leader of First Presbyterian Church in Aiken.

"Just like anything else, you should improve your environment," he said recently. "You have an obligation to try and leave a better place for your children and grandchildren."

Duty, honor and integrity are the qualities Holley credits for his successes—a moral code borrowed from glorious times past, and which Holley said still holds merit today.

"Your word is your bond," he said. "You don't have to sign your name to it. I've done a lot of business deals with the shake of a hand. Integrity—that's one thing people can't take away from you."

Holley, who turns 62 in March, will keep a hand in the company as a consultant and chairman of Palmetto Service Corporation, a real estate subsidiary of the savings and loan.

But he's looking forward to his retirement, to days of fishing and golfing and farming on a 740-acre tract of land outside the city of Aiken that has been in the Holley family for nearly a century.

Holley's family tree branches back to ancestors here before Aiken County was founded in 1872, including a great-grandfather who was the country's first sheriff.

But it was his grandfather, B.F. Holley, who ensured that his sons and grandsons would be among the leaders of Aiken County in the 20th century.

A large landowner and enterprising businessman, B.F. Holley acquired some 4,000 acres of land around Aiken in the early 1900s. By 1922, the year before Henry Earle Jr. was born, he owned the Ford dealership in town and was selling Model Ts, Holley recalled.

Holley grew up during Aiken's heyday as a winter resort for wealthy Northerners, working part time at Holley Motor Co., and entered Clemson University in 1940.

In 1943, he joined the Army Infantry Corps, served three years in Europe and returned to Aiken in 1946 to work with his father at the car dealership.

He married the former Laura Clowe in June 1947, and two months later, at the age of 24, found himself president of Holley Motors following his father's fatal heart attack.

It was not until 1951 that he was elected one of the founding directors of Aiken Federal, organized by the law firm of Thurmont Lybrand and Simons with former South Carolina Governor Strom Thurmond as its first president.

The company started small, Holley recalled, offering savings accounts and home loans principally in Aiken. Thurmond left the institution in 1954 following his successful write-in campaign for the U.S. Senate, turning the leadership over to E. E. Child.

"As we grew, it took more and more of my time," Holley said. "I was taking all day Tuesday away from my dealership to do appraisals."

He was approached a number of times to work full time for the savings and loan, but it was not until 1960 that he sold the car dealership and joined the management force at Aiken Federal.

Eight years later, the company took a growth posture and installed mobile banking services to five outlying communities, Williston, Barnwell, Edgefield Johnston and McCormick. All but Williston now have full-service offices.

The mobile unit was one of the first to use an on-line computer terminal and it fostered the growth of the company from $33 million in assets to $325 million today.

Along the way, the company's name changed twice, finally adopting its present name in 1969, Holley said.

He attributes the success of Palmetto Federal to aggressive branching policies, a responsible and dedicated board of directors, installation of television drive-in service and advertising.

"Also, the policy has always been that we made loans to all folks. We give good honest service. Aiken, too, has grown and SRP and all that certainly contributed to all that (growth)," Holley added.

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[From the Augusta (GA) Chronicle, Jan. 17, 1985]

"CHAIRMAN, CHIEF EXECUTIVE OF PALMETTO FEDERAL RETIRES"

AIKEN—H. Earle Holley Jr., chairman of the board and chief executive officer of Palmetto Federal Savings and Loan of South Carolina, resigned his post Wednesday at the institution's annual meeting.

He will be replaced by John W. Cunningham, who has served as vice chairman of the borad since 1983.

Holley, 61, will remain a member of the board and will serve as chairman of Palmetto Service Corporation, a wholly-owned subsidiary of the savings and loan dealing with various real estate ventures.

Holley joined the association as one of its original directors in 1951 when Strom Thurmond, now a U.S. senator, directed the institution as president. Holley split his time between the association and his Ford dealership.

He later became vice president of the firm, then known as Aiken Federal, and was named president in 1964.

"We were successful because of a philosophy of delivering a superior quality of service," Holley said Wednesday.

Cunningham, who has been a member of the Palmetto board since 1980, took on the duties of chief financial officer in 1984.

He served as vice president for finance and treasurer of the Graniteville Co. from 1972 to 1984. Previously, Cunningham held several senior management positions with the Reliance Electric Co. and U.S. Gypsum.

In other business at Wednesday's annual meeting, the board appointed retired Lt. Gen. George Forsythe of Beaufort to a director's post. Forsythe has served as chairman of Palmetto Federal's regional Board of Directors in Beaufort.

Re-elected to three-year terms were J. Frank Cummings Jr. of Hampton, Charles E. Simons III of Aiken and Holley.

Palmetto Federal operates 15 banking centers across the southern part of South Carolina.

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[From the Aiken (SC) Standard, Jan. 17, 1985]

HOLLEY ANNOUNCES RETIREMENT; CUNNINGHAM IS BOARD LEADER

H. Earle Holley, board chairman and chief executive officer of Palmetto Federal Savings and Loan in Aiken, announced his retirement yesterday.

John W. Cunningham will assume Holley's position. A former Graniteville Company executive, Cunningham has served as vice chairman of the board of directors since 1983.

Holley will remain a member of the board and will serve as chairman of Palmetto Service Corp., a wholly owned subsidiary of the savings and loan. He will continue to be closely involved with the firm's varied real estate ventures and developments, according to a press release from the institution.

Holley had indicated to Palmetto's board in 1983 that he intended to retire. The expected move was announced at Palmetto's recent annual meeting held in Aiken.

Also at the annual meeting, retired Lt. Gen. George Forsythe of Beaufort was named as a director of the association's corporate board. He will serve a three-year term. Forsythe has served as chairman of Palmetto Federal's regional board of directors in Beaufort.

Holley joined the association as one of its original directors in 1951 at the age of 28. He divided his time between the family Ford dealership and his responsibilities under the association's former president Sen. Strom Thurmond, R-S.C., the release said.

Holley later became vice president of the firm, then known as Aiken Federal. The association was later named Aiken First Federal. He was named president in 1985, succeeding E.E. Childs.

Looking back at the institution's 34 years of growth, Holley commented, "We were successful because of a philosophy of delivering a superior quality of service. My predecessor E.E. Childs insisted on it."

Cunningham served as vice president of finance and treasurer of the Graniteville Company from the time he and his family moved to Aiken in 1972 until 1984. Prior to that, he served in several senior level management positions with the Reliance Electric Company.

Cunningham holds a B.S. degree in commerce from the State University of Iowa. He completed graduate work at Harvard, Northwestern and Notre Dame.

## JOBS TRAINING PARTNERSHIP PROGRAM AND "NETWORK" IN SOUTH CAROLINA

Mr. THURMOND. Mr. President, in 1982, Congress wisely passed the "Jobs Training Partnership Act" [JTPA] which I supported, as a viable alternative to the "Comprehensive Employment and Training Act" [CETA]. The purpose of JTPA is to encourage greater involvement of private business and industry through a cooperative Federal jobs training program.

Ideally, the role of Government in providing unemployment compensation to jobless persons who are able to work should be a very limited, temporary one. Unfortunately, those persons who are displaced from jobs, and those who experience difficulty in finding employment initially, often do not possess the skills necessary to perform available jobs in our rapidly changing, high technology society. The JTPA is designed to give people the educational opportunity to develop their skills so that they can qualify for available employment and thereby earn a respectable living. Because its mission matches up well with the need in our society, this program has quickly become popular and cost effective.

I am pleased to announce that the JTPA program has been a tremendous success in South Carolina during its first year of implementation. Over 6,000 South Carolina citizens have received jobs as a result of JTPA training, resulting in millions of dollars' worth of reinvestment in our State's economy.

The private sector in the "Palmetto State" has responded to this program with great interest and enthusiasm. Special recognition and commendation go to the South Carolina Private Industry Council for its efforts in promoting "Network," the program which encourages business and industry to participate in this valuable job training project.

Mr. President, I am encouraged by the progress which has already taken place in this exciting endeavor, and I am confident that there will be even greater progress made in the future.

In order to share more about the success of JTPA in South Carolina and the contributions of "Network," I ask unanimous consent that a report to the South Carolina congressional delegation, by Mr. Louis Jordan, and related material, be printed in the RECORD.

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

JTPA—FIRST YEAR IN SOUTH CAROLINA

(By Louis Jordan)

Members of the South Carolina Congressional Delegation. Ladies and gentlemen. Thank you for the opportunity today to appear before you.

My name is Louis Jordan. I come before you to share some good news about important Federal legislation which you have supported and which has helped thousands of South Carolinians to find meaningful employment over the past 12 months. I am speaking of the Job Training Partnership Act.

The Private Industry Council here in South Carolina manages JTPA programs throughout the State. The PIC, as we call the council, is comprised of private business men and women like myself. As a member of the South Carolina PIC appointed by Governor Riley, and as chairman of the Dislocated Worker Committee, I want to tell you about the results of our first year with JTPA and recommend that this program be continued.

When Congress passed the Job Training Partnership Act in 1982 to replace the Comprehensive Employment and Training Act, or CETA, it meant an increased role for business and industry in the design and management of federally sponsored, private sector job training activities. As a result of this partnership, between September 1983 and September 1984, we served a total of 13,570 individuals, 8,586 of whom received training and 6,262 of whom now have skilled jobs. Over 6,000 of these individuals were employed at an average wage of $4.26 per hour.

In 1984, this Federal job training program had impressive economic impact on our statewide economy. The data gathered by the Governor's Office, division of employment and training, indicates that the Federal dollars South Carolina received through JTPA went directly into training and placing many unskilled people who were on the welfare rolls and considered hard to employ. At an average of $4.26 an hour, 6,262 recently hired workers are each earning an average of $8,860 per year, before taxes. That means an addition of between $150 to $200 million for the State's economy. With ongoing plant closings across the State, JTPA programs have been essential to offset the more than 6,500 jobs lost through textile and other industrial layoffs last year alone.

How does South Carolina compare to the rest of the Nation in terms of efficiency? As the next graph shows, we had a 78-percent adult employment rate from September 1983 to June 1984. By comparison, the national average in the program's first year was 68 percent or 10 percent lower than South Carolina's adult training and placement rating. In addition, the cost per adult employed was $3,757, compared to a $4,372 national average. Almost 75 percent of adults hired in this State after receiving JTPA-funded training are no longer living on State or Federal subsidies. That's 17 percent higher than the national average of 58 percent.

The year 1984 was a good year for JTPA in South Carolina but we still have a significant task ahead in the area of employment and training. Thirty-one thousand jobs have been lost in the textile industry alone; however, 15,000 new jobs have been created with more than $2 billion in capital investments last year. We face a major challenge in employing and training the people in South Carolina so that the State can continue to move forward.

Governor Riley has asked Bob Royall, chairman of our Private Industry Council, to head up a special task force to address this challenge on several fronts including the maximum utilization of $400 million in State job training funds. While we attempt to intensify our own efforts here in South Carolina, let me say to our congressional representatives that we cannot meet this challenge without your commitment. We are relying on your continued support of job training and economic development programs like JTPA which are proof that the public and private sectors can work as partners for the good of the people who need these programs most of all.

Thank you for your time and your commitment.

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"NETWORK"

A PROJECT OF THE SOUTH CAROLINA PRIVATE INDUSTRY COUNCIL

*The Approach*

The Job Training Partnership Network was designed in cooperation with business throughout the state. The primary goal of the program is to harness the skills, knowledge and expertise of the private sector in determining where the jobs are and in fitting the worker to the job.

One of the unique aspects of the Network is that it is designed to support and assist private business.

Potential employees are screened according to your requirements. You hire and retain only those persons you choose. Program involvement lasts only for the duration of training, but the benefits continue.

The program is flexible to your needs. You define the requirements, training and degree of involvement you want.

Your business and your records are your own. The Network Partnership only extends to locating, training and providing you with the workers you determine you need.

Network was designed by business for business. The benefits are for you.

*On The Job Training*

On-the-job training is available statewide. If you desire, a Network representative will come to your place of business.

Together you determine the specific job openings you have or anticipate, and the basic level of skills you feel are necessary for any potential employee to begin training in those positions.

The Network representative locates and screens possible candidates against the skills requirements you set forth. You are assured, then, of seeing only those persons with the skills you need. You select only those persons whom you want.

Once you have identified the persons capable of fulfilling your requirements, you hire and train the employees. During the training period, up to 50 percent of the employees' wages may be provided by Network. You need only supply an accounting of the time each employee works and at what rate. Your Network representative will complete the necessary forms and arrange for payments.

*Classroom Training*

Again, you and your Network representative determine your employment needs and the skills requirements of the available positions. If the job skills involved require more specialized training, one of two things may happen. You may select from trainees already enrolled in Network classroom training and fill the positions in a timely manner.

If, however, there are no trained applicants available at the time of your request, appropriate courses within the South Carolina technical training system will then be identified and your chosen candidate enrolled and trained at no cost to you.

*Tax Credits*

The benefits for participation in the Job Training Partnership Network are not limited to training. You can receive a tax credit of up to $4,500 per qualified employee hired.

Many potential workers supplied for you by Network will qualify you for these employer tax credits. Potential employees with the necessary requirements will be furnished with a preliminary voucher stating such.

Then, at tax time, you file only one two-sided form (IRS form #5884-Jobs Credit) for all your eligible Network employees. Not one form each—one form for all. As you already have a file of eligibility certificates and your payroll provides an employment record, no extra corporate paperwork is required.

Claiming the jobs tax credit is only a tax filing detail and does not expose you to any additional government regulation.

*Customized Training*

In the event that no training is currently available for the skills your jobs require, customized training can be arranged.

Your Network representative will identify applicants with the entry level skills you deem necessary to be trained in the specialized job. Once you have selected the acceptable applicants, customized training will be designed that best meets your needs.

Customized training can be provided in your workplace and be conducted by your own employees. Your employees will then be paid as training instructors by the Job Training Partnership Network.

If it is not practical to conduct the training in your location, Network will endeavor to locate an alternate training site where customized training can take place.

In this way, and many others, you and other members of the private sector form the partnership working together to locate, train and employ skilled workers while availing yourself of the most rewarding and cost effective means to do so.

*Becoming a Partner*

Add it up. You set the guidelines. Hire only the people you want. Save recruitment and screening cost. Save administration cost. You get up to a 50% salary reimbursement for on-the-job training. Classroom training at no cost. Customized training. And a tax credit for many employees hired.

Best of all, you get skilled workers.

So when it comes down to the bottom line, the ultimate net is work.

Joint the Partnership.

The savings are yours, the gains are yours, and the Net is Work.

## CONFIRMATION OF NOMINATION OF DONALD PAUL HODEL TO BE SECRETARY OF THE INTERIOR

Mr. MURKOWSKI. Mr. President, I support the nomination of Donald Paul Hodel to be Secretary of Interior.

Prior to 1981, there was trouble in America's last frontier:

We had just emerged from a decade-long battle over the future of Alaska's lands.

The Federal Government had refused to convey the lands promised Alaskans at the time of statehood.

The Federal Government, in the minds of many Alaskans, was a greedy, hard-hearted absentee landlord in control of almost 80 percent of our State.

Washington simply didn't seem to understand Alaska's problems, and it didn't want to understand them.

I do not exaggerate when I tell you that a "Tundra Rebellion" was eminent.

All this changed when President Reagan came to the White House. Almost overnight, Alaskans were hearing about the Department of the Interior's good neighbor policy.

The Federal Government began to convey lands that had been promised 20 years before. Genuine concern over the future of my State suddenly became a factor to be considered at the Department of the Interior.

Alaskans really began to feel that their absentee landlord had moved closer to them.

Don Hodel was a part of that change of attitude at the Department of the Interior. After speaking to him in my office 2 weeks ago and participating in his confirmation hearings before the Senate Energy and Natural Resources Committee last week, I am confident that the improved relationship begun under Secretary Watt and continued under Judge Clark will also continue under his leadership.

Secretary Hodel will have one of the most difficult jobs in the Cabinet.

He must balance the interests of backpackers and strip miners.

He must manage wilderness as well as mineral leases.

With respect to OCS leasing in Alaska, he must consider the interests of commercial and subsistence fishermen in Alaska who derive their living from the sea; but he must also recognize the fact that 60 percent of the Nation's undiscovered oil and gas reserves may lie off Alaska's coast.

I don't envy Secretary Hodel because the diversity of thinking among the entire spectrum of interest groups out there is assurance that he will never be a stranger to controversy.

But I have great respect for him, his intellect, his fairness, and his willingness to take on this tremendous job.

Thank you Mr. President, I yield the floor.

## CONFIRMATION OF NOMINATION OF JOHN HERRINGTON TO BE SECRETARY OF ENERGY

Mr. MURKOWSKI. Mr. President, I support the nomination of John Herrington as Secretary of Energy.

I had the opportunity to consult with Mr. Herrington in my office last week, and I participated in his confirmation hearings before the Energy and Natural Resources Committee. I am convinced that Mr. Herrington will make an excellent Secretary of Energy.

Energy remains a very misunderstood issue. The public has all but forgotten the days when we were held in the grasp of OPEC. Now that the gasoline lines have disappeared and energy prices have declined, the public's attention has turned away from the need for sound energy policy.

But energy policy is still important today. There are some disturbing trends which lead me to believe that we could still find ourselves in a serious energy supply disruption once again.

During the 1970's, our proven reserves of oil fell by a third. We are still importing roughly a third of our oil, and our trade imbalance continues to grow out of control, partially as a result of the costs of imported oil.

We are importing more and more refined product. We need to remember that a dependence on imported product is as bad, if not worse, than a dependence on imported crude.

This is the situation which faces Mr. Herrington, and we must not allow complacency to make us vulnerable to the actions of OPEC.

We must not lose sight of a basic goal that must lay at the foundation of our energy policy; namely, to achieve the highest degree of energy independence that we can.

I hear a great deal of talk about energy independence in this Chamber. But I am deeply concerned that we are pursuing a number of policies that are taking us further and further away from that goal.

We still have OCS leasing moritoria in effect today. That makes absolutely no sense when you consider that most of the Nation's new oil and gas reserves will come from the Nation's Outer Continental Shelf.

We still prohibit the export of Alaskan North Slope crude, in spite of the fact that the lifting of the export ban could encourage production from new fields in Alaska, enhance our energy security, lower our staggering trade imbalance, and result in millions of dollars worth of transportation savings and increased tax revenues.

Again, we make brilliant speeches about energy independence, but our policies don't always reflect our rhetoric.

I know that Mr. Herrington is aware of these factors, and I will support his nomination wholeheartedly.

## G. RAY ARNETT ELECTED NATIONAL RIFLE ASSOCIATION EXECUTIVE VICE PRESIDENT

Mr. SYMMS. Mr. President, on January 26, 1985, the National Rifle Association of America lost to retirement one of its most dedicated and successful chief officers, Harlon B. Carter, the executive vice president of the 3 million member organization. His has been a lifetime of great dedication, good will, high standards, and unwavering defense of the U.S. Constitution,

especially the second amendment right to keep and bear arms. Mr. Carter will continue to serve the NRA in an advisory capacity and will serve on the association's executive counsel. I know this body will want to join me in extending our best wishes to Harlon Carter as he begins his retirement.

At the same time, it is with great pride that I announce to my colleagues that G. Ray Arnett, former Assistant U.S. Interior Secretary, was unanimously elected to the post of executive vice president of the National Rifle Association by the NRA Board of Directors on January 26.

A Marine Corps veteran, Arnett saw combat during World War II in the Pacific theater, during which he received a field commission. During the Korean conflict he served an additional 2 years.

Ray Arnett is an avid sportsman and outdoorsman who has devoted much of his life to the conservation, preservation, and enhancement of wildlife. Later he was appointed by Gov. Ronaldan, of the Wildlife Legislative Fund of America and its companion organization the Wildlife Conservation Fund of America. A former NRA board member, Arnett also has held posts with the Wilderness Leadership School, Game Conservation International, World Wilderness Congress, Californians for Recreation and Ducks Unlimited.

An internationally acclaimed hunting and conservation expert, Arnett recently resigned from his position as Assistant Secretary of the Interior for Fish, Wildlife and Parks. He was appointed to that position by President Reagan early in 1981.

This brief recitation of Ray Arnett's credentials are only the tip of the iceberg. Ray is a giant of a man, not only in stature, but also—and most importantly, in his deep commitment to protect and defend the U.S. Constitution, especially the second amendment. He has played an integral role in promoting hunter safety and wildlife management. He has served his community, local, State, and Federal Government well in the past. The National Rifle Association will most assuredly benefit with Ray Arnett at the helm.

Mr. President, I would like to call on my colleagues to join me in extending our congratulations to G. Ray Arnett as he begins his duties as executive vice president of the National Rifle Association.

## THE CHARLOTTE-MECKLENBURG BUSING CASE: STILL FESTERING

Mr. HELMS. Mr. President, the Charlotte-Mecklenburg Schools case, decided by the Supreme Court in 1971, was the landmark decision on forced busing by race. It began a revolution in American public education, disrupting the schools and creating havoc for a generation of schoolchildren. I do not believe it is possible to account for the much publicized decline in achievment test scores nationwide without careful examination of the adverse effects of forced busing.

The busing controversy presents a classic case of professional elites—judicial, journalistic, and educational—promoting radical change, having little or no personal effect on them, while citizens most adversely affected by such change largely opposed it. In this case the change was the abolition of the neighborhood school for the sake of achieving racial quotas. The power here has been in the hands of the elites, and the American people and their children—especially blacks—have suffered accordingly.

Mr. President, relatively little has been written about the problems attendant to busing in Charlotte and elsewhere, largely because those in a position to write and publish—the elites—have themselves been the architects of this round of social engineering. Rather than taking a critical look at forced busing, these elites, while often sending their own children to private schools, have been leading the chorus in favor of busing in the public schools. As a result, busing has become a pedagogical sacred cow, and anyone with the temerity to question it can expect to incur the wrath of its ideological defenders.

Recently, Ralph McMillan, a Charlotte lawyer and former city councilman, wrote a thoughtful and informative column in the Wall Street Journal about the Charlotte-Mecklenburg busing experience. His candid conclusion is that, despite the good faith effort of the local community to make the best of a bad situation, busing has improved neither the general quality of education nor the education received by blacks. In fact, Mr. McMillan points to evidence that it has hurt both.

Mr. President, I ask unanimous consent that Mr. McMillan's article in the Wall Street Journal of January 21, 1985, entitled "That Success Story," be printed at this point in the RECORD.

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

THAT BUSING SUCCESS STORY

(By Ralph McMillan)

Charlotte, N.C., was one of the first cities in the country to undergo forced busing. Today, it is often held up as a shining example of how busing can succeed in accomplishing desegregation without lowering the quality of education.

But now, the school-busing issue that so divided my native city and others in the early 1970s is back in the news as the Fourth Circuit Court of Appeals prepares to rule soon on the case of Riddick vs. School Board of Norfolk, Va. In an attempt to establish a voluntary system of integration favored by both blacks and whites, Norfolk is working to avoid many of the pitfalls inherent in a mandatory system such as Charlotte's.

The issue involved is almost certain to reach the Supreme Court: Can a school system under a court-ordered busing plan decide on its own to cut back on busing now that it has satisfied the courts that it has desegregated? A group of Norfolk residents has filed suit to prevent the partial dismantling of the forced school-busing plan in effect there. Instead, the school board proposes that elementary schools only adopt a modified "neighborhood" school system to try to end the flight of white children from Norfolk's schools.

SOME SIGNIFICANT LESSONS

Charlotte's history in this issue offers some significant lessons.

When President Reagan visited Charlotte during his reelection campaign, he called court-ordered busing a "social experiment that nobody wants" and one which had "failed."

The response by the local establishment was swift. The Charlotte Observer, the area's largest paper, fired an editorial salvo, later reprinted in the Washington Post, entitled "You Were Wrong, Mr. President." It stated that Charlotte's "proudest achievement is its fully integrated public school system . . . born out of a bitter controversy" and declared that Charlotte's school system "has blossomed into one of the nation's finest." Supporters of forced busing to achieve racial balance have for years proudly cited Charlotte as an example of where busing worked. But how necessary was busing in Charlotte and what is the bottom line when its costs and benefits are balanced against each other?

I believe that the *relative* success of the busing experiment in Charlotte stems from the positive racial attitudes held by citizens of Charlotte rather than from the practice of forced busing itself. Many residents here have always been uncomfortable with segregation. In the early 1960s, most civic leaders pushed for voluntary, gradual integration when confronted with the problem of how to end the system of segregated schools. Before the decision requiring forced busing. Charlotte was slowly but surely integrating.

Around 1965 the community eradicated the practice of assigning black students to all-black schools, called "union schools." It was replaced by a system making pupil assignment dependent on geographical location supplemented by a freedom-of-choice option. Under this scheme all students could transfer to any school they wanted if they could furnish their own transportation and space in the school was available.

By 1969, there were only eight schools out of 106 in the system that were not integrated in some manner. Out of a total of more than 20,000 black students, the number attending integrated schools had increased from a few dozen in 1964 to nearly 10,000 in 1969. This system satisfied the then federal district court judge for Charlotte, Braxton Craven, when legal action was first filed against the school board. Because of the steps already taken, no federal remedies were prescribed.

However, this didn't satisfy Julius Chambers, a local civil-rights attorney, who had pressed for further judicial relief in 1968. The rest is history. James McMillan, the new federal court judge, required forced busing to achieve racial balance in Charlotte-Mecklenburg schools in the fall of

1970. The Supreme Court unanimously upheld his decision.

Opposition mounted to the order. Most community leaders did not support forced busing. Many whites fought it because they felt educational standards would decline with the chaos forced busing would cause. Many blacks also opposed it because they realized a greater percentage of blacks than whites had to be bused to meet the required racial quotas. Violence and riots erupted, causing academic test scores to sag. Even the Charlotte Observer reported, "The anti-busing furor create(d) a highly charged atmosphere. . . . Racial tension within the schools became a fact of life in Charlotte." This grim condition continued until at least 1975.

After the initial struggle to overthrow court-ordered busing, a sense of futility set in. Once people knew that busing was here to stay, they accepted the verdict reluctantly and resigned to adapting to a difficult situation. In 1973, a coalition of black parents and white parents formed the Citizens Advisory Group to insure that the desegregation plans mandated by the federal courts would be applied equitably. The school board initiated various educational programs to improve the quality of education for all students.

Jane Scott, a former member of the Charlotte-Mecklenburg School Board and an opponent of forced busing, says: "Once the Supreme Court ruled that we had to implement 'busing,' I and many others did all we could to assure that the school assignments would be as equitable as possible. . . . The children had come first." Because of leaders like these, Charlotte managed to cope with the situation.

Despite the efforts of residents to make their school system work, evidence exists that many whites abandoned the public schools and that white flight is continuing. Since substantial integration had occurred prior to court-ordered busing, it is fair to assume that this white flight cannot be attributed to latent racism, but to a decline in educational quality. From 1972 to 1982, 12% of the white students left the public-school system. Enrollments are still declining despite continued population growth. If present trends continue, by 1995 the white school population will have declined almost 25%.

Thirty-four private schools now serve Charlotte and surrounding Mecklenburg county. Almost every one was established after 1968. Neighboring county school systems and nearby South Carolina school districts have grown rapidly in the past 10 years because of their proximity to Charlotte. One public-school official believes that many of Charlotte's "best and brightest students" have been lost to the private-schools and that increases in private-school enrollment are directly related to forced busing.

Racial quotas are still required in some areas of school life, such as in the election of cheerleaders and school officers. Apparently, despite a decade of busing, protection by quota is still thought necessary to ensure that some blacks will be elected to leadership posts by the white majority.

An analysis of test-score statistics published in 1981 indicates that 10 years of busing have not succeeded in narrowing the educational gap between blacks and whites. Jane Scott, commenting on these scores in testimony before the Senate Subcommittee of Separation of Powers, contended that, "In virtually every category, the differential in the black and white scores is greater now" than when busing was ordered by the federal courts.

Since court-ordered busing was initiated in 1970, constant pupil reassignment has been necessary to maintain racial balance in the schools. The school board has had to adjust the assignment plan 11 times. This need to rework the plan has occurred because parents are reluctant to send their children to schools they consider inferior. Jay Robinson, the present school superintendent, believes that although racism may be a factor, concern for a child's education is the major reason. He says, "The one thing about pupil-assignment plans that has never worked is sending children from more affluent neighborhoods into lower income or deprived communities in the lower grades." This constant reshuffling has weakened many parents' commitment to the public-school system and caused them to opt for private schools.

TEST SCORES IMPROVE

Despite these problems, bright spots have appeared. Test scores rating student academic achievement have begun to rise after a significant plunge during the earlier years of busing. Although some critics have charged that a change in the type of test used caused the higher scores, school administrators believe better teaching methods and programs are the cause.

Scholastic Aptitude Tests (SAT) scores for Charlotte show encouraging results when measured against the same scores throughout the state. In 1983-84, Charlotte-Mecklenburg students averaged a combined score of 855—42 points below the national average but 28 points above North Carolina's average.

However, many Charlotteans still do not believe that a forced bus ride fosters learning, though the school board here has not chosen the voluntary approach being attempted in Norfolk. To be sure, Charlotte's experience has not been as traumatic as those of Boston and other cities. But even Julius Chambers and other supporters of forced busing concede that educational quality has suffered because of it.

Mr. HELMS. Predictably, the Charlotte Observer, the local morning newspaper owned by the Knight-Ridder chain, responded to the McMillan article with an editorial giving virtually unqualified support to busing. Among other things, the editorial declared that "even if academic achievement were at a lower level than it is, and even if white flight were more extensive," there is no acceptable alternative to busing.

Such statements by the Charlotte Observer and other busing promoters confirm what many have long suspected: that busing advocates have written off the neighborhood school for good. In their view, the neighborhood school is the enemy, and it alone is synonymous with segregation. A more dangerous notion for the future well-being of public education in this country—a system built on the neighborhood school—is hard to imagine.

Mr. President, I ask unanimous consent that the Charlotte Observer editorial of January 28, 1985, entitled "Busing's Success: Consider the Alternative," be printed at this point in the RECORD.

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

BUSING'S SUCCESS—CONSIDER THE ALTERNATIVE

On today's Viewpoint page you'll find a column that appeared a week ago on the editorial page of the Wall Street Journal by Charlotte lawyer Ralph McMillan, who also writes periodic opinion columns for The Observer, Mr. McMillan challenges the notion that the Charlotte-Mecklenburg school system is "a shining example of how busing can succeed in accomplishing desegregation without lowering the quality of education."

Although he acknowledges the "relative success" of busing here, he asks: "But how necessary was busing in Charlotte and what is the bottom line when its costs and benefits are balanced against each other?"

He doesn't really answer those questions. Instead, he suggests that busing causes a significant amount of "white flight" to private schools. He also writes that "an analysis of testscore statistics published in 1981 indicates that 10 years of busing have not succeeded in narrowing the educational gap between blacks and whites."

ACADEMIC GAINS

Mr. McMillan's column is by no means a one-sided attack on the local schools. He acknowledges the gains in academic achievement as measured by standardized test scores in recent years. But some of his assertions are misleading.

If Mr. McMillan had looked at more recent figures he would have found the academic gap between black and white students closing significantly, with scores for both improving.

Statistics on the number of students enrolled in public and nonpublic schools in Charlotte and Mecklenburg County, and on the percentage of black students in the public schools, belie the suggestion that busing has led to extensive "white flight" or that white families continue to abandon the public schools in large numbers.

Any gross comparison of public school enrollment and black percentage over a period of time can and does reflect a number of factors other than "white flight," including changes in the number of school-age children in the community and the changing racial ratio within that number. A more accurate measure of "white flight" is the change in the number of students in non-public schools over the period.

The figures suggest that "white flight" has been triggered more by initial fear and uncertainty than by busing. From the 1968-69 school year, just before the 1970 court order that eventually led to busing, until the 1975-76 school year, one year after the final busing plan had been approved by the court and implemented, private school enrollment in Charlotte-Mecklenburg increased from about 2,150 to about 8,050. But since the school system's commitment to a busing plan and systemwide integration has been clear, that initial flood of white students from the public schools has become a trickle. Private school enrollment from the '75-'76 school year until last year increased from about 8,050 to only about 8,695.

DECLINING ENROLLMENTS

From 1971 until 1983, enrollment in the Charlotte-Mecklenburg schools—the 31st largest system in the nation—fell 11.2%.

Among the nation's 50 largest school systems, only four showed an increase in enrollment in that period, and 34 experienced larger declines in enrollment than Charlotte-Mecklenburg's.

For an example of serious "white flight" in a formerly segregated school system comparable in size to Charlotte-Mecklenburg's, consider the Nashville-Davidson County schools in Tennessee. There officials failed to maintain a consistent desegregation plan, and public school enrollment declined 27% between 1971 and 1983.

We would offer these answers to Mr. McMillan's questions:

Clearly, busing was necessary to eliminate segregation at all schools and maintain fairness and stability throughout the system. (Perhaps it's worth noting at this point that more than half the Charlotte-Mecklenburg students who ride school buses do so for reasons of convenience, not for purposes of integration.)

As to costs and benefits, we believe the alternative to busing, for now, is simply unacceptable—even if academic achievement were at a lower level than it is, and even if white flight were more extensive. No one really likes the idea of busing on the basis of race, of course. But without it, many schools would be essentially segregated by race, with the destabilizing possibility of more lawsuits. Such a system would be unfair to those students who found themselves part of a tiny black or tiny white minority in "neighborhood" schools. And instead of a consistent level of quality throughout the system, schools again would reflect their neighborhoods, varying widely in quality, status and parental support and expectations.

KEEPING A COMMITMENT

Most important of all is a point critics of busing never mention: Without busing, this community would have to abandon its commitment—court-ordered, but now widely accepted on merit—to remove from the public schools, root and branch, the unfair results of generations of enforced racial segregation in housing, employment and education.

Mr. HELMS. Mr. President, further confirmation that the views of the Charlotte Observer and other busing advocates are best characterized as elitist came just a few days after the above editorial appeared. A local representative to the North Carolina General Assembly, Ray Warren, suggested that a referendum be held in Mecklenburg County on school busing. His suggestion drew immediate objections from the professional staff of the Charlotte-Mecklenburg school system. It also produced a column by the editor of the Charlotte Observer castigating Mr. Warren and arguing that his effectiveness as a legislator was jeopardized by even offering the idea.

Mr. President, I ask unanimous consent that a January 31, 1985, Charlotte Observer news article by Jim Morrill, entitled "Legislator Suggests Fall Referendum on School Busing," and a February 3, 1985, opinion column by Observer Editor Rich Oppel, entitled "When Silence Really Can Be Golden," be printed in the RECORD at this point.

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

[From the Charlotte Observer, Jan. 31, 1985]

LEGISLATOR SUGGESTS FALL REFERENDUM ON SCHOOL BUSING

(By Jim Morrill)

A Mecklenburg County legislator is exploring the possibility of putting a school busing referendum on the fall ballot.

Rep. Ray Warren, R-Mecklenburg, has asked Elections Supervisor Bill Culp to estimate the cost of a countywide referendum to accompany the Charlotte city elections in November.

President Reagan resurrected the issue in October during a Charlotte campaign appearance by calling busing an experiment that had failed.

His remarks were met by statements and editorials in The Charlotte News and The Observer defending Charlotte-Mecklenburg's 15-year-old integration plan. Of the system's 72,000 pupils, 12,000 are bused for integration.

"The school administrators and the Charlotte newspaper editors seem to think the community is supportive of busing," Warren said Tuesday. "I think they ought to have an opportunity to be vindicated in that belief. . . .

"Should the time come in the future when the school board is granted more flexibility to deal with busing, they would have a clear statement of public opinion to guide them," he said.

State elections officials say a nonbinding busing referendum—essentially a straw vote—would require General Assembly approval to get on the ballot.

School officials reacted strongly Tuesday to a possible referendum.

"I think this type of thing will very much polarize the community," said Charlotte-Mecklenburg Schools Supt. Jay Robinson. "I certainly don't believe that most people in the community want children bused. But I seriously doubt that the majority of people want to return to segregated schools."

"I cannot imagine it serving a useful purpose," school board Chairperson Carrie Winter said. "I think most people are very proud of what's been achieved by the goodheartedness of this community."

Warren said a referendum "might give people hope that they can have input into the education of their children again."

Charlotte-Mecklenburg's pupil assignment plan is the result of a federal court order requiring integration. Warren, a public school graduate, said he believes future, more conservative courts could allow cities like Charlotte to stop busing programs.

Robinson said the current program exceeds court-mandated standards.

"I don't think our plan anymore is a question of what the courts say," he said. "Either you believe in integration or you don't and if you do, you do what it takes to see that all the schools have some integration, more than just tokenism."

Sen. Larry Cobb, R-Mecklenburg, declined comment on the possibility of a busing referendum but said he generally sees little value in straw votes.

"I'm not going to salute that flag, let's put it that way," Cobb said. "My feeling (about busing) is that the school system was set back initially and it has overcome those problems and is in pretty good shape."

Asked if a referendum would reopen wounds, Warren said, "If (people) feel that way they should blame the school board and the Charlotte Observer editorial writers and all the other people who are talking about how wonderful things are . . . and trying to make us a national pro-busing model."

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[From the Charlotte Observer, Feb. 3, 1985]

WHEN SILENCE REALLY CAN BE GOLDEN

(By Richard Oppel)

Freshman state Rep. Ray Warren's anti-busing proposal brings to mind a piece of wisdom given new legislators since the time they rode to the nation's state capitals in buckboards. It's called Coughlin's Law: Don't talk unless you can improve the silence.

The N.C. General Assembly convenes Tuesday. The stakes are enormous for Mecklenburg County. We should be optimistic, but recognize the fragility of politics in Raleigh.

One, Mecklenburg has the good fortune to have in the governor's mansion a local man, Jim Martin, who is a capable, experienced legislator with broad knowledge of local, state and federal government. Yet, he is a Republican in a Democratic world and the holder of an office with comparatively little power.

OUR GROWTH PAINS

Two, our county faces mounting problems of growth and urbanization that require increasing coordination between state and local officials. Yet, this teamwork must be developed within an environment—the N.C. General Assembly—historically controlled by rural interests who do not share our problems.

Three, Mecklenburg voters chose in 1984 to abandon legislators of power and experience—Sens. Craig Lawing and Cecil Jenkins and Reps. Parks Helms, Louise Brennan and Jim Black—in favor of people who are mostly untested.

These add up to a need for caution by our legislative delegation. The lawmakers must forge a strong relationship with Gov. Martin's office. They must work to earn credibility with their General Assembly colleagues. They must gain the confidence and trust of local Mecklenburg officials.

That is why Rep. Warren's comments on busing are dismaying. He told Observer reporter Jim Morrill on Tuesday that he had asked Elections Supervisor Bill Culp to estimate the cost of a countywide school busing referendum to accompany the Charlotte city elections in November.

"The school administrators and the Charlotte newspaper editors seem to think the community is supportive of busing. I think they ought to have an opportunity to be vindicated in that belief," said Warren.

We have a fine public school system. Our 15-year-old Integration plan has worked. Of the system's 72,000 pupils almost 50,000 are bused but only about 12,000 for purposes of integration. Our system is a model for the nation. New industry is attracted by the harmony of the community. And desegregated schools are the law of the land.

What does Rep. Warren wish to accomplish? The reopening of old wounds? A return to a dual system, which would inevitably happen if school officials could not adjust enrollments to account for shifting residential patterns?

I choose not to debate the merits of desegregated schools here. But I question the

logic of Warren's apparent social agenda as a freshman legislator.

In a letter published Jan. 4 in The Observer, the 27-year-old Warren appealed for bipartisanship and teamwork between Piedmont Democrats and Republicans to provide the best representation for their constituents. Said the Mint Hill lawyer.

"It is far too early to herald the arrival of an era of diminished legislative effectiveness for Mecklenburg and other Piedmont counties. Together, Piedmont Republicans and Democrats have the numerical strength to promote the interests of our part of the state."

Maybe so, but Warren's first steps would surely threaten his effectiveness in our legislative delegation. Veteran lawmakers quickly dismiss noisy ideologues among a freshman class in favor of those who are willing to work hard, and do so quietly, until they know enough about the legislature to lead. It is especially easy to dismiss one when the ideologue is a Republican amid a Democratic majority.

Warren has been active in conservative causes since he was s student at UNC-Wilmington in the late 1970s. He has been a consistent opponent of racial quotas at universities and other policies he viewed as racial discrimination. He has written intelligent and passionate letters to this newspaper.

NOT CAMPUS POLITICS

But campus politics are a far cry from representing the largest county in North Carolina in the General Assembly.

Gov. Martin has a record of mainstream Republican pragmatism. In modern times, local Mecklenburg officials have approached policy issues with a nonpartisan, progressive spirit.

If Rep. Warren or his fellow Mecklenburg freshmen attempt to achieve their own political goals with an agenda that has little to do with the future of our county, they should know the huge, potential cost to Mecklenburg's 450,000 residents—in roads, university money, public works projects and tax reform.

Mr. HELMS. Why, I ask, Mr. President, are those who think schoolbusing is such a good thing for our society and our schoolchildren afraid to hear from the people on this matter—white and black alike? Why do they want to keep the lid on what is obviously serious dissatisfaction with forced busing by the American people?

Mr. President, I do not pretend to have the answers to these questions. But I am convinced that if we do not let the public be heard on busing and if those with the political power to do something about it fail to heed the counsel of the people, the American public school system will never achieve the levels of excellence which our children and our grandchildren deserve. They will be shortchanged, and they will rightly blame those who abandoned the neighborhood school.

That is why, Mr. President, this Senator will continue to sponsor legislation curbing forced busing and restoring the neighborhood school. The professional elites may hope that forced busing has now become a permanent party of public education, but as long as Congress has the power to act in this matter, this Senator will be pushing for appropriate solutions.

## DEATH OF SENATOR LISTER HILL

Mr. BYRD. Mr. President, I join my colleagues today in paying my respects to a senatorial legend, Joseph Lister Hill. My condolences go to his wife, Henrietta M. Hill, and his children, Luther Lister Hill and Henrietta Hubbard.

But while we sorrow in the loss of the public servant, and join in sympathy for his relatives and close friends, it is fully appropriate that we celebrate the memory and the career of Senator Hill. He was a man who accomplished a great deal for the people of his beloved State of Alabama, his Nation, and for mankind.

For 45 years, from 1923 to 1968, Mr. Hill proudly represented Alabama in the Congress of the United States. He served 15 years in the House, and 30 years in this Chamber. From the administration of President Calvin Coolidge to the administration of President Lyndon Johnson, he was here building and creating.

On a great proportion of the monumental legislation enacted during that period, one will find Lister Hill's name as a sponsor. On the legislation establishing the Tennessee Valley Authority, it is there. On the Rural Housing Act, the National Security Act, the Rural Telephone Act, the Social Security Act, the legislation creating Medicare, and the GI bill of rights for veterans of World War II and the Korean conflict—his name is on all them.

In 1940, Senator Hill placed the name of President Franklin Roosevelt into nomination for President of the United States with the words: "His heart made him the friend of the lowly. His deeds show him to be a friend of all, both great and small." These words as easily and as accurately could have been said about himself.

Lister Hill's chief concern, throughout his congressional career, was improving the quality of life of all his fellow Americans, regardless of economic status.

A long-time advocate of education, in 1955, Senator Hill sponsored legislation to provide Federal aid to education so that no American child would grow up unable to read or write. He also pointed out that the country was failing to train and develop what he termed "our top talent." "If we continue to neglect our schools," he warned, "5 years from now the Russians will be ahead of us."

The Soviet Union became the first nation to launch a satellite into orbit 2 years later. In response, Senator Hill was instrumental in drafting and sponsoring the National Defense Education Act. In words that we would do well to recall today, Senator Hill told us:

Our schools are the backbone of defense of our country, the bulwark of the American enterprise system, and the foundation of a trained and loyal American citizenship.

Lister Hill's greatest accomplishments, and his greatest glory, however, came in his efforts to assure that all Americans would have access to quality health care. One Congress alone enacted more than 20 "Hill bills," as they were known, to improve the public's health. Upon his retirement from the Senate in 1968, Senator Hill received a special Lasker Award for guiding "more than 80 major pieces of health legislation" to passage during his congressional career.

In his efforts to reduce the pain and suffering of illness and injury, he sponsored legislation for increased research into the cause, cure, and prevention of cancer, mental illness, heart disease, arthritis, and other crippling and killing diseases. He sponsored legislation for medical professions' training and education.

And Senator Hill sponsored the legislation that bears his name, the Hill-Burton Act of 1946, which provided Federal funds for the construction of medical facilities, primarily in rural and poverty areas. Today, more than 9,200 medical facilities throughout the United States, many of them in poor and rural areas, owe their existence to this act.

The honorary names he was given, the Senate's "Statesman for Health," the "Leader for the Public's Health," "Mr. Health," and the "Father of the National Institutes of Health, speak for themselves.

"There are millions of our people who are better off today," said President Lyndon Johnson, "and millions who will be better off in the future," because of the work of Senator Hill. Senator Hill "has done more for the public's health than any American in history," read an article in Harper's magazine, in 1959.

The congressional career of Senator Lister Hill is one of those instances in history when the lives of millions of persons have been improved and made more comfortable by the efforts of one man.

The State of Alabama, the U.S. Senate, and the United States lost much with his retirement from public life, and now with his passing. But Senator Lister Hill left such a legacy from his days of public service, that he will never truely leave us.

He has set an example for all of us who seek to do the public's work.

## BIRTH OF ASHLEY HANSEN RIEGLE

Mr. BYRD. Mr. President, it is with great pleasure that I announce to my colleagues that a new Democrat has been brought forth.

On February 1, Ashley Hansen Riegle was born. The proud parents are the senior Senator from Michigan, DONALD RIEGLE, and his wife, Lori Hansen Riegle.

As always, I am pleased to announce a birth. Being a parent myself, I know the joy that such a happy event brings, and the many years of pleasure that will come.

I wish the baby and the mother the best of health. I give the Senator my heartiest congratulations.

## SENATOR CLAIBORNE PELL ON CONSENSUS IN AMERICAN FOREIGN POLICY

Mr. BYRD. Mr. President, last week the Senate Committee on Foreign Relations held its opening round of hearings on "The Future of American Foreign Policy."

These hearings could not have been held at a more opportune time. For as our distinguished colleague, Senator CLAIBORNE PELL, the ranking Democrat on the committee observed in his opening remarks:

With the advent of a new chairmanship—and of a Presidency with a renewed mandate—the hope naturally arises that we might be able to achieve in the future a greater degree of consensus in foreign policy then has characterized the recent past.

Senator PELL noted that the goal of consensus in American foreign policy was a worthy aspiration and one which he, and I believe all Members of the Senate share. However, he offered us some very wise words of caution when he pointed out:

Just as I believe no Senator should support or oppose the President purely for reasons of party, I believe also that no Member of Congress should feel compelled to support the President simply because he is President.

In making this observation Senator PELL DREW UPON THE INTENT OF OUR FOUNDING FATHERS WHO ALLOCATED THE FOREIGN POLICY POWER TO BOTH THE EXECUTIVE AND LEGISLATIVE BRANCHES OF OUR GOVERNMENT WHEN THEY DRAFTED OUR CONSTITUTION. CITING THE DISTINGUISHED HISTORIAN EDWARD CORWIN, THE SENATOR NOTED THAT:

Far from creating a clean separation of power, Corwin said, the Constitution extended "an invitation"—to the President and to Congress—"to struggle for the privilege of directing American foreign policy."

On May 16, 1983, in a speech on this floor, I reminded my colleagues that having thrown off the yoke of tyranny, our Founding Fathers were determined that our fledgling Nation would never again suffer the abuses of a monarch vested with absolute power. In so doing, they constructed a system of government in which the three branches were delicately balanced, each against the other two.

For the Founding Fathers, Congress had a unique role to play since they viewed it as an institution reflecting the voice of the people and as the bulwark of American democratic ideals. I note that the first article of the Constitution deals exclusively with the legislative branch and its powers. The Founding Fathers, in light of our colonial experience, were justifiably suspicious of executive power, and this was reflected in the noble instrument they drafted and which we know as the Constitution of the United States of America.

As Senator PELL pointed out, the Founding Fathers accorded the Congress a significant role in the conduct of this Nation's foreign policy. And as Senator PELL so eloquently stated:

* * * Ultimately we must accept a truth about consensus that proceeds from the very meaning of the word: that we will achieve consensus when we can reach agreement, and we will lack consensus when we can't. That is what the Founding Fathers envisaged for our constitutional system and that, I trust, is the way it shall continue to operate.

I urge my colleagues to weigh very carefully the views of our distinguished colleague on the issue of consensus in American foreign policy. They are a timely reminder that the Senate has a special responsibility to heed the warning of Senator PELL who has reminded us that: "* * * Ultimately Congress must judge the President's policy on its merits."

I ask unanimous consent that the full text of Mr. PELL's remarks be printed in the RECORD.

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

STATEMENT OF SENATOR CLAIBORNE PELL

Mr. Chairman, I wish to congratulate you on the assumption of your new responsibilities, and to underscore my intent to work with you in a spirit of cooperation. In this regard, I was pleased to concur with your desire to commence your chairmanship—and the second Reagan Administration—with this series of hearings aimed at addressing the broad questions and principles underlying American foreign policy.

With the advent of a new chairmanship—and of a presidency with a renewed mandate—the hope naturally arises that we might be able to achieve in the future a greater degree of consensus in foreign policy than has characterized the recent past. This is a worthy aspiration, which I share. But on the subject of consensus, I do believe a few cautionary words are in order.

With tongue in cheek, the British statesman Disraeli once described his idea of an agreeable person as a person who agreed with him. The concept of consensus in foreign policy is subject to the same tendency. As the President seeks agreement from Congress, or as one political grouping finds itself opposed by another, there is often a temptation to label as disagreeable—or irresponsible—those from whom one cannot elicit concurrence. While such accusations inevitably arise in our political process, we ought to keep them in perspective.

It first bears emphasis that the absence of consensus generally has little to do with excessive partisanship. As a case in point, we need look only to the current dispute between the Senate Republican leadership and the Defense Secretary over the national military budget, a question central to foreign policy. A second topical example is the disagreement between the Republican-controlled Senate and the Administration over aid to the Nicaraguan contras. Historically, I recall vividly the controversy over Vietnam, when opposition to the Johnson Administration arose first among Senate Democrats.

My second point about consensus concerns the role of Congress. Just as I believe no Senator should support or oppose the President purely for reasons of party, I believe also that no member of Congress should feel compelled to support the President simply because he is President. There is, I believe, a normal predisposition in Congress to support the President by reason of his responsibilities as head of state, head of government, and commander-in-chief. But ultimately Congress must judge the President's policy on the merits.

Some fifty years ago, the distinguished historian Edward Corwin gave us a classic description of the way the Founding Fathers had allocated foreign policy power to the executive and legislative branches. Far from creating a clean separation of power, Corwin said, the Constitution extended "an invitation"—to the President and to Congress—"to struggle for the privilege of directing American foreign policy." Throughout our history, this struggle has been waged, sometimes yielding a period of executive or legislative supremacy, sometimes abating for a period of relative tranquility, but always eventually resuming, in a phenomenon reminiscent of a phrase from the Roman poet Horace, who spoke of "harmony in discord." This, I believe, is precisely what the Founding Fathers intended.

And so, Mr. Chairman, as these hearings begin, I join with you in searching for areas of common ground on which we can base the future of American foreign policy. But ultimately we must accept a truth about consensus that proceeds from the very meaning of the word: that we will achieve consensus when we can reach agreement, and we will lack consensus when we can't. That is what the Founding Fathers envisaged for our constitutional system and that, I trust, is the way it shall continue to operate.

Mr. Secretary, I join with Chairman Lugar in welcoming you here today.

## THE 40TH ANNIVERSARY OF THE YALTA CONFERENCE

Mr. DURENBERGER. Mr. President, this week marks the 40th anniversary of the Yalta Conference among Franklin Roosevelt, Winston Churchill, and Joseph Stalin, the leaders of the wartime coalition against Nazi Germany.

Conferences are not often remembered, except by historians, for all too often they do little more than ratify reality. But the Yalta Conference is different, and its anniversary merits attention.

Yalta did not ratify reality; it helped shape it, and it did so in large measure because the Western powers did not fully comprehend the nature of Soviet foreign policy. Like any diplomatic conference, the Yalta meetings result-

ed in statements which were deliberately euphemistic and subject to some degree of misinterpretation. But a significant number of the pledges offered by the Soviet Union at the Yalta Conference were crystal clear: Guarantees of free elections, of fundamental human rights, and of an end to the sphere-of-interest politics which had twice plunged Europe into world war.

What happened? The answer is obvious to anybody. First, the United States simply failed to understand the nature of the Soviet Union, and it accepted the best possible interpretation of vague and euphemistic commitments. Thus, shortly after returning from Yalta, President Roosevelt told Congress that the Conference meant the end of spheres of influence, and that Europe would be free. The Soviet interpretation, of course, was exactly the opposite. So Yalta was an early reminder of something we should never forget when dealing with the Soviets: Where an agreement leaves any room for error, the Soviets will construe it to their own advantage.

More importantly, however, Yalta simply represented the Soviet penchant for the diplomacy of the lie, and for policies of naked power. The free elections never materialized. First Poland, then Czechoslovakia—both countries which had fought against Germany—were occupied and brought into the Soviet bloc through puppet governments. The wartime enemies of Germany were treated no differently than Germany's allies. Whether a country was "liberated" by the Russians or whether it was defeated by the Russians, the result was the same.

To this day, we live with the consequences of the Yalta Conference. The dividing line between the Warsaw Pact and NATO reflects the final battle lines of the various Allied Powers in World War II. Two generations of Americans and Europeans have come of age without knowing a free Europe, at peace with itself. As Zbigniew Brzezinski points out in a brilliant article in the most recent edition of Foreign Affairs, the division of Europe which resulted from Yalta is both artificial and dangerous. It serves as the justification for the state of armed truce which characterizes Europe today, and it is justified by it.

The situation in Europe is not natural, and it is not something we should celebrate. We have made the best of a bad situation, and we should continue to do so for as long as necessary. But the perpetual tensions along the inter-German frontier, the vast amount of treasure poured into the NATO alliance, and the periodic disputes among NATO members over such questions as burden sharing are the daily price we pay for the Yalta Conference. Moreover, military tensions are not the only price. As a Polish Americannd all other Eastern Europeans, including Jews who must live under Moscow's definition of liberty, is another legacy of Yalta.

So long as Europe is effectively divided into two armed camps reflecting spheres of influence—so long, in other words, as the legacy of Yalta remains with us—we cannot take much satisfaction. The costs of Yalta's legacy are too high, and the benefits accrue only to Stalin's heirs.

Simply put, Mr. President, we went to Yalta with high hopes, and we came back with broken promises and outright lies. We have lived too long with the consequences, and we are paying the price every day. As other Senators have suggested, it is time to make clear that we do not accept Yalta's legacy, for the legacy is not what we were told it would be. Contracts are not valid if one party fails to live up to their terms. The contract we thought we had signed at Yalta has never been effective, for the Russians set out immediately to break its terms. Under the circumstances, we are foolish to continue to treat the Yalta agreement as anything more than a broken artifact of other times.

Does this mean that we should seek the dismantling of current borders? Of course not. It would be foolhearty to try, and we are bound as well by the Helsinki agreement which finally put an end to World War II.

But Europe is more than boundaries and borders. It is a collective entity, and not just an accumulation of governments. The course of history has persistently led to the emergence of a cultural and regional whole. There was a Europe long before there were separate nation-states, and things are no different today. When Charles de-Gaulle spoke of "Europe from the Atlantic to the Urals," he was being factual, not visionary.

Governments and borders matter, and they must be bolstered. But they are not the only things which animate people. Common visions, common cultures, and common beliefs can and do transcend national borders. That is why, for instance, the NATO alliance is an Atlantic alliance, and not simply a European organization. It is why we in this country look with awe on the works of such masters as Brahms, Chopin, Goethe, and others. It is why Pope John Paul II speaks to the hearts of so many Europeans, Catholic, and non-Catholic alike.

In short, as Dr. Brzezinski argues, Europe can become European, even while we recognize the borders and boundaries which define the nation-states of Europe, eastern and western alike. As Dr. Brzezinski argues, we can repudiate Yalta's legacy, and should do so if we want to end the artificial division of Europe which carries with it such profound costs. But in doing so, we cannot repudiate the course of history which has pointed for centuries toward a Europe which is united by bonds of belief. The Helsinki agreement recognizes this by specifying that human rights are a transcendent concern of all nations, and not the domestic concern of sovereign nations free to tyrannize their citizens. Helsinki recognizes borders, but it recognizes a common Europe as well, a Europe defined by such fundamentals as human liberty and shared culture.

If we repudiate Yalta's legacy while bolstering our commitment to the vision of Helsinki, we can begin, however slowly, to move toward the time when President Roosevelt's belief that the world should be free of spheres of influence is fact, not fantasy. The process will take time, but if we do not begin to invest that time, we are doomed to live in a world divided and to pour our national treasure into the means by which to keep it so. There is really no choice. We owe it to ourselves, and to our brethren in the Eastern European countries, to come up with a better vision of the future.

Mr. President, I ask unanimous consent that the article by Zbigniew Brzezinski, which I have mentioned, be printed in the RECORD.

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

THE FUTURE OF YALTA

(By Zbigniew Brzezinski)

Yalta is unfinished business. It has a longer past and it may have a more ominous future than is generally recognized. Forty years after the fateful Crimean meeting of February 4-11, 1945, between the Allied Big Three of World War II, much of our current preoccupation with Yalta focuses on its myth rather than on its continuing historical significance.

The myth is that at Yalta the West accepted the division of Europe. The fact is that Eastern Europe had been conceded de facto to Josef Stalin by Franklin D. Roosevelt and Winston Churchill as early as the Teheran Conference (in November-December 1943), and at Yalta the British and American leaders had some halfhearted second thoughts about that concession. They then made a last-ditch but ineffective effort to fashion some arrangements to assure at least a modicum of freedom for East Europe, in keeping with Anglo-American hopes for democracy on the European continent as a whole. The Western statesmen failed, however, to face up to the ruthlessness of the emerging postwar Soviet might, and in the ensuring clash between Stalinist power and Western naivete, power prevailed.

Yalta's continuing significance lies in what it reveals about Russia's enduring ambitions toward Europe as a whole. Yalta was the last gasp of carefully calibrated Soviet diplomacy designed to obtain Anglo-American acquiescense to a preponderant Soviet role in all of Europe. At Yalta, in addition to timidly reopening the issue of Eastern Europe, the West also deflected, but again in a vague and timorous fashion, Soviet aspirations for a dominant position in the western extremity of the Eurasian land mass.

Yalta thus remains of great geopolitical significance because it symbolized the unfinished struggle for the future of Europe. Forty years after Yalta that struggle still involves America and Russia, but by now it should be clear that the issue is unlikely to be resolved in a historically constructive manner until a more active role is assumed by the very object of the contest, Europe itself.

II

The setting for Yalta was prostrated Europe. That once globally dominant civilization had committed historical suicide in the course of two devastating wars fought within the span of a mere quarter-century. When the two leaders of the British and American democracies met with the Georgian tyrant of the Great Russian Empire to resolve the future of Europe, continental Europe was absent from the deliberations. In the meantime, much of Europe's future was being decided on the ground, by the great extra-European armies pushing from the east and the west into Germany, the heart of Europe.

Until Yalta, the key issue perplexing the wartime alliance was Poland, the key to control of Eastern Europe. Thereafter, the issue has increasingly been Germany, the key to control over Western Europe. Poland represented to Moscow the gate to the West, and thus the Kremlin in its wartime diplomacy adopted an attitude of utter intransigence on the question of Poland's future. Though in his memoirs Churchill later described the Polish issue as "the first of the great causes which led to the breakdown of the Grand Alliance," neither he nor his Atlantic partner, President Roosevelt, seemed to grasp the central strategic importance of the Polish issue; nor was either of them inclined to exploit Russia's initial weakness to obtain a satisfactory resolution of the Polish-Soviet dispute, initiated by the Soviet seizure of almost half of Poland in 1939 as a result of the Stalin-Ribbentrop agreement.

Stalin correctly saw in the territorial dispute the opportunity to transform Polish independence into dependence on Moscow. So did the Poles. Prior to the Teheran meeting, the Polish prime minister desperately warned Churchill (as recorded by Sir William Strang on September 9, 1943) that "what was at stake between Poland and Russia was not merely a question of frontiers but a question of general relations and indeed the question of the survival of Poland as an independent state. . . ."[1] A month later, Foreign Minister Anthony Eden reported to the British War Cabinet that the Polish prime minister had told him on October 6, "The general attitude of Stalin towards Poland, towards Germany and the Free German movement and towards questions touching other occupied countries, as well as his record and his whole mentality, implied more extensive ambitions than ambitions only in the eastern provinces of Poland which were strategically important to Poland but in no sense vital to Russia." Finally, on the eve of the Teheran meeting, Eden briefed the War Cabinet on November 22 that the Poles feared "that Russia's long-term aim is to set up a puppet government in Warsaw and turn Poland into a Soviet republic. . . ."

The British took a more benign view of Stalin's goals. Eden assured the Poles "that British experience suggested that Stalin was much less intransigent . . .," and his internal memorandum on preparations for the forthcoming Teheran Conference makes it clear that the United Kingdom was prepared to satisfy Stalihurchill and Roosevelt agreed to changes in the Polish frontiers, without any further consultation with the Poles, and more generally conceded to Moscow a preponderant role in the Balkans.

To make matters worse, while pressing the Poles to make territorial concessions to Moscow in the hope of assuaging Russian desires, the British and Americans were unwilling to offer the Poles any assurances regarding compensation in the West. Adopting the position that changes in Germany's frontiers must await the end of the war, London and Washington made the Polish plight more desperate. As a result, most Poles simply refused any compromise on the grounds that a truncated Poland could not survive as an independent entity, while others, shocked and embittered, increasingly saw in Moscow the only sponsor of major Polish territorial acquisition of Germany territory as a compensation for what was to be absorbed by Russia. The price, however, was the inevitable emergence of Polish dependence on Russia, and through it Soviet domination over Eastern Europe.

By the time of Yalta, not only was Poland occupied by the Red Army, but a new government, sponsored by Stalin, had been installed in Warsaw. At Yalta, the West exacted Soviet promises that the Soviet-installed government would be enlarged and would hold free elections, following which the West would recognize it, but Western leaders agreed not to have any binding obligations regarding the elections inserted into the joint communiqué issued at the conclusion of the Yalta Conference. As a result, how free elections were to be organized remained an exclusive Soviet prerogative, with the outcome thereby predetermined. (Indeed, the Western powers recognized the Warsaw government in mid-1945, even though—contrary to the Yalta agreement—no elections had been held.)

III

By finally foreclosing the issue of Poland in Russia's favor, Yalta opened the battle for the future of Germany. Eastern Poland had been incorporated into the Soviet Union, but the West continued to oppose major Polish expansion at Germany's expense. The Russians at first hesitated in deciding how extensively they ought to support Polish claims. But at the Potsdam Conference in July 1945, following Germany's final collapse, Stalin apparently concluded that with his armies firmly implanted in the middle of Germany he could afford to satisfy Polish needs (thereby permanently cementing Polish dependence on Russia), while continuing to wage his struggle for a preeminent Soviet role in Western Europe.

For Stalin, that struggle was the vital substance of his wartime alliance with the West. Late in 1943, on the eve of the Teheror a Central European confederation which might have presented an obstacle to Soviet domination over the region.

The Teheran Conference further nurtured Stalin's grandiose hopes that the British would be unable and the Americans unwilling to oppose his larger designs, which he revealed cautiously, while continuously probing the intentions and the will of his British and American interlocutors. Throughout, Stalin and his associates skillfully played on the anti-imperialist sentiments of the Americans to weaken the British role in any postwar arrangements and on the British rivalry with France to make certain that no center of effective power would emerge in postwar Europe. In the Soviet interpretation, Roosevelt's penchant for speaking of the world's "four policemen" could have had only one geopolitical meaning: America's central concern would be the Western Hemisphere, a weak China would be preoccupied with its own problems, and a bankrupt Britain would be enmeshed in its imperial dilemmas, leaving most of Eurasia to the care of the fourth policeman.

In testing western reactions to his design, Stalin used as bait two somewhat varying schemes for Europe. Though one will never know to what extent these plans were alternative scenarios or competing concepts, both plans provided for a major Soviet role in all of Europe. The two options were succinctly summed up in a conversation on August 31, 1943, between British Foreign Minister Eden and the Soviet ambassador to London, Ivan Maisky, as reported by Eden:

. . . Maisky continued that there were two possible ways of trying to organize Europe after the war. Either we could agree each to have a sphere of interest, the Russians in the East and ourselves and the Americans in the West. He did not himself think this was a good plan, but if it were adopted we should be at liberty to exclude the Russians from French Affairs, the Mediterranean and so forth, and the Russians would claim similar freedom in the East. If, on the other hand, we would both, and the United States also, agree that all Europe was one, as his Government would greatly prefer, then we must each admit the right of the other to an interest in all parts of Europe. If we were concerned with Czechoslovakia and Poland, and the United States with the Baltic States, then we must understand Russian concern in respect of France and the Mediterranean. . . .[2]

The latter variant was apparently advocated at least until Yalta by Maxim Litvinov, the former Soviet Commissar for Foreign Affairs and former ambassador to Washington. Postulated on the unstated assumption that America would disengage militarily from Europe but that at least a semblance of congeniality between the Soviet Union and its principal wartime allies would continue even after the war, and bound to appeal to the idealistic American dislike of spheres of influence, the plan envisaged not only a Soviet role in all of occupied Germany but in effect a thinly camouflaged arrangement for a Europe dominated indirectly by the Soviet Union, the only effective power in the region. British influence was to be confined to several narrow maritime enclaves, France was to play a negligible role, while continued Soviet-American accommodation would be tacitly premised on American noninvolvement in European affairs. There can be little doubt that the Soviets took seriously Roosevelt's repeated hints both at Teheran and even later at Yalta that the United States would not maintain a postwar military presence in Europe. Given their ideological cast, they must also have been reassured by Roosevelt's tendency to speak privately to Stalin in most negative terms both of the British and of the French, seeing in that confirma-

[1] This, and the other documents cited, are contained in the very useful collection edited by A. Polonsky, *The Great Powers and the Polish Question*, London: L.S.E., 1976. See also V. Mastny, *Russia's Road to the Cold War*, New York: Columbia University Press, 1979.

[2] Polonsky, *op, cit.*

tion of their theory of "inherent capitalist contradictions."

The alternative to this strategy of domination through Western acquiescence was associated with Litvinov's principal rival and successor at the helm for foreign affairs, Vyacheslav Molotov. It took more for granted that an American-Soviet collision would eventually occur, presumably after the expected U.S. disengagement from Europe and probably in the context of sharpened intercapitalist conflicts. Molotov's alternative strategy of exclusive control by fait accompli put more emphasis, therefore, on directly subordinating eastern Europe and as much of central Europe as possible, while vigorously asserting Soviet claims to a major role in the West and to a coequal veto-wielding status in relations with the United States. In more specific discussions regarding postwar arrangements for Germany, Stalin was careful to keep his options open. At times he seemed to be favoring a central German government, at other times he would opt for the fragmentation of Germany into several constituent states. In either case, he was always insistent that the Soviet Union have a major say in all of Germany, while making certain that no major West European power was reconstituted.

As the Soviet armies marched westward, Stalin's claims became more explicit both territorially and politically. In addition to retaining everything seized during the collaboration with Hitler, by late 1944 and early 1945 the Soviet Union made territorial demands on Norway (Bear Island and the Spitzbergen) and regarding the Far East (southern Sakhalin, the Kurile Islands, and a preponderant role in Manchuria and Outer Mongolia). Stalin also sought a share in controlling Tangier and a slice of the Italian colonies on the Mediterranean, in addition to proposals for joint action against Franco's Spain and increased political pressure on neutral Switzerland and Sweden. This was followed later by demands for territorial concessions by Turkey. Moreover, the Soviets consistently spoke of France as totally demoralized and worthless, underlining the proposition that Europe was a political vacuum.

Anglo-American surprise and protracted failure to come to grips with the scope of these Soviet ambitions is all the more remarkable when one considers the extent to which Stalin's aspirations mirrored traditional Russian goals. Indeed, they so closely replicated Tsarist objectives in World War I that one may suspect that old Russian planning papers were disinterred for Stalin's and Molotov's use. Some 30 years later, in late 1914, the Russian Council of Ministers had also considered the related problems of Poland and of Russian postwar objectives. The majority report focused on the restoration of a Polish kingdom, but under Imperial Russian sway, as Russia's major postwar objective. However, the minority report prepared by the more reactionary members went beyond that priority and defined Russian war objectives much more ambitiously.

Russia's general aims were stated as involving the "strengthening of Russia herself, in an ethnic, economic and strategic way"; in addition to "the possible weakening of Germanism as the chief enemy of Slavdom and Russia at the present time"; and to "the possible liberation of other Slavic peoples from the authority of Germany and Austria-Hungary (insofar as such liberation does not conflict with the direct interests of Russia)." To accomplish the above, Russia was to attain the following specific goals in order of importance:

(1) Completion of the historic task of uniting all sections of the Russian people by reuniting eastern Galicia, northern Bukovina and Carpathian Rus' with Russia.

(2) Realization of the historic tasks of Russia in the Black Sea by the annexation of Tsar'grad (Constantinople) and the Turkish Straits.

(3) Rectification of the borders of the Russian state at the expense of East Prussia and also in Asiatic Turkey.

(4) The weakening of Germany internally in every possible way by means of her complete territorial reconstruction on a new basis, with a possible decrease in Prussian territory to the advantage of France, Belgium, Luxemburg, Denmark and the smaller German states as well, and, perhaps, the restoration of the Kingdom of Hanover, Hesse-Nassau, etc.

(5) Unification and liberation of Poland within the widest possible boundaries, but, in any case, within limits which are ethnographic rather than historic (which would be contrary to the basic interest and entire history of Russia).

(6) Liberation of the remaining Austrian Slavs.[3]

What is striking about these war aims, drafted by the more nationalistic and reactionary members of the Council, is their identity with Soviet post-World War II objectives defined by Stalin and Molotov. Every one of the objectives became Stalin's: the incorporation of parts of Polish Galicia never previously held by Russia and of Czechoslovak Sub-Carpathia were identical with the first 1914 goal; the second objective was denied to the Soviets, but they did press for it in their conversations with the Western allies (presumably recalling that in the spring of 1915 France and Britain had conceded as much to Tsarist Russia); the third objective was obtained in East Prussia (again a surprise to Westerners), and the Soviets in 1945 pressed for territorial concessions from Turkey but without success; the fourth was achieved in a different form in Germany; the fifth pushed Poland further west than was thought possible in 1914 but with functionally the same result—the creation of a Poland highly dependent on Russia for its territorial integrity.

One can thus classify Soviet wartime objectives as falling into three categories: first, recovery of the territorial status quo ante as of June 1941; second, securing politically acquiescent regimes in east-central Europe; third, gaining a preponderant voice regarding the political organization of the rest of Europe. The Soviets were totally unyielding and quite open about the first objective; they were prepared, however, to camouflage the second objective if it served to promote the attainment of the third goal. It is easy to forget how uncertain at the time was America's postwar role in Europe, while American unwillingness during wartime to focus concretely on postwar issues fortified the expectation that it would again turn inward. As Soviet forces moved westward, their pursuit of the second objective became more brazen, and it assumed brutal manifestations when it dawned upon the Soviets that there might not be an American acquiescence to the attainment of the third objective. That realization dawned on Stalin and his colleagues with increasing intensity after Yalta.

[3] Gifford D. Malone, quoting *Russko-pol'skie otnoshenitia v period mirovoi voiny* (Moscow, 1926), in *Russian Diplomacy and Eastern Europe, 1914-1917*, New York: King's Crown, 1963, pp. 20-21, 139-40.

IV

Yalta can therefore be said to have initiated the postwar struggle for Europe. Yet it was hailed in the West as an unmitigated diplomatic triumph, foreshadowing a period of prolonged East-West accommodation. Forty years later this very same Yalta continues to evoke equally simplistic—though opposite—emotions. It is now the synonym for betrayal. At the time its decisions were said (according to a *New York Times* editorial of February 13, 1945) to "justify and surpass most of the hopes placed on this fateful meeting. . . they show the way to an early victory in Europe, to a secure peace and to a brighter world."

Sumner Wells might be accused of some partiality when he announced (in *The Washington Post* on February 28, 1945) that ". . . the Declaration of Yalta, whatever the future may bring forth, will always stand out as a gigantic step forward toward the ultimate establishment of a peaceful and orderly world." But even such an experienced observer as Walter Lippmann was not to be outdone. Writing in *The New York Herald Tribune* on February 15, 1945, Lippmann informed his readers that Churchill, Stalin and Roosevelt "have checked and reversed the normal tendency of a victorious coalition to dissolve as the war, which called it into being, approaches its end. . . . The military alliance is proving itself to be no transitory thing, good only in the presence of a common enemy, but in truth the nucleus and core of a new international order."

Skeptical voices were few and far between. *The Wall Street Journal* warned on February 16, 1945, that the Yalta deal on central Europe "can only lead to increasingly unsatisfactory relations between the United States and Russia"; while a perceptive Frenchman, Andre Visson, (writing in *The Washington Post* on February 18, 1945, in an article entitled "Big Powers and Small Nations") noted that the United States was finally becoming committed to the future of Europe and was showing signs of a willingness even to contest the Soviet domination over Eastern Europe—unlike at Teheran, where it seemed uninterested in postwar arrangements and willing to settle for "the division of Europe into two zones of influence."

In fact, Yalta was the last effrot by the wartime partners to consturct the postwar world jointly. Unlike Teheran, where Churchill was still clearly Roosevelt's equal, at Yalta the lead was taken by the Americans, foreshadowing the bipolar world that was in fact emerging. The real collision at Yalta was between Roosevelt's well-meaning vaguenesss about arrangements for Europe's postwar future and Stalin's studied vagueness about the extent of Russia's desire to dominate that future. The former desperately wnated to believe in postwar cooperation while the latter deliberately exploited that faith to create facts on the ground while pressing for Western acceptance of Soviet claims in both the west and the far east of the Eurasian continent.

As a result, the Yalta declarations were manifestly escapist in character. The provisions regarding free elections in Poland were at best a transparent fig leaf for outright Soviet domination, while the rhetoric concerning future peace simply obscured the emerging and very basic differences between the major powers. However, that rhetoric did serve to further delude Western public opinion regarding Russia's true intentions, thereby making it more difficult for

the Western democracies to cope effectively with the emerging East-West confrontation.

By failing to construct an agreed-upon world, while in effect sanctioning the concessions made earlier at Teheran, Yalta became subsequently the symbol of Europe's partition. The follow-on meeting at Potsdam was merely a contentious session to carve the spoils. It was at Yalta that the Westerners belatedly had their first inklings that the concession of Eastern Europe to Soviet domination might be the beginning of the contest for central and Western Europe, while to Stalin Western reticence regarding satisfaction of the wider Soviet goals foreshadowed a more difficult political struggle than apparently anticipated earlier. Henceforth, the increasingly overt preoccupation of Soviet policy became one of driving the United States out of Eurasia.

V

That preoccupation has endured for the 40 subsequent years—and today it is still the central motif of Soviet foreign policy. Its concomitant is the determination to prevent the emergence of a genuine Europe motivated by shared political will. The last four decades, however, also reveal an important strategic lesson: what has done to be seen as the legacy of Yalta—namely the partitioned Europe—can only be undone either in Soviet favor through Litvinov's more subtle design of domination through acquienscence, or to Europe's historical advantage by the emergence of a truly European Europe capable both of attracting Eastern Europe and of diluting Soviet control over the region. America does not have the power or the will to change basically the situation in Eastern Europe, while crude and heavily-handed Soviet efforts to intimidate West Europe merely consolidate the Atlantic connection.

Of the two principal sides, it has been the Soviet that has sought much more persistently than the American to achieve a geopolitical breakthrough, settling the fate of Eurasia. Yalta had stimulated Soviet anxieties that America might not in fact disengage totally from Europe; Potsdam reinforced them, while the subsequent announcement of the Marshall Plan confirmed Moscow's worst fears: America, contrary to Stalin's hopes and expectations, was becoming implanted on the continent, de facto checking the expansion of Soviet power.

Subsequent history has been punctuated by more overt and direct Soviet efforts to challenge that reality head-on—above and beyond the relentless attempts to undermine it. The political campaign against the Marshall Plan, and Stalin's open decision to keep both Czechoslovakia and Poland out of it, were undertaken in the context of the strategic conclusion that not only would America remain engaged in European affairs but that a protracted political conflict was not inevitable. The subsequent Berlin crisis was thus an important test of will, designed to challenge America's suddenly improvised determination to play a major role in the truncated Germany.

It is important to be clear about it: neither Stalin's blockade of Berlin, nor Khrushchev's Berlin crisis of a decade later, was about Berlin itself. In both cases, the stake was the American security connection with Western Europe. This is why both Stalin and Khrushchev were willing to risk even a period of very high tension—dangerously high tension—with America, something which Berlin itself did not merit. Had the Soviets prevailed, Germany would have been panicked, and the vaunted American commitment to the defense of Europe would have been rendered impotent. The geopolitical effect of a Soviet success in Berlin would have been to establish Soviet paramountcy over Western Europe.

Though the two Berlin crises were the most overt indicators of the enduring Soviet determination to sever the Atlantic security connection, Soviet diplomacy throughout the postwar era has pursued also the cardinal objective of ensuring that a geopolitically vital Europe does not surface as a competitor or even as a neighbor. Soviet foreign policy—using all its diplomatic leverage as well as such overt and hidden tools as the West European Communist parties and the myriad of fellow travelers—has been active in opposing such schemes as the European Defense Community, and it has above all persistently tried to place obstacles in the way of the Common Market's evolution toward a political personality. Even if Western Europe cannot be severed from America, it must at least be kept divided and weak.

The commitment to the goal of expelling America from Europe is not just lingering in the Kremlin. It animates the current Soviet leadership, a leadership more Stalinist in substance than any since 1953. Attempting to exploit the West European "peace movements" and unease regarding the anti-Soviet rhetoric of the Reagan Administration, the current Soviet leadership decided to elevate the INF (intermediate-range nuclear forces) issue into a new test of will, again making the Atlantic security connection the ultimate stake. The Soviet decision to refuse to negotiate with the United States on arms control issues unless the United States dismantles and removes its Pershing IIs and ground-launched cruise missiles is tantamount to an attempt to impose on America a public humiliation with wide-ranging strategic consequences. It is the functional equivalent to the earlier Berlin crises.

But the Soviet leadership has again overreached itself. Its heavy-handed tactics contributed to the defeat of the neutralist Social Democratic Party in Germany, to the discrediting of the unilateral disarmers in the Labour Party in Britain, and to the strong show of solidarity with America displayed by Europe on this issue. (Parenthetically, one may add that almost simultaneously the present Soviet leadership has stimulated in Japan the highest degree of anti-Sovietism since World War II.) It did so because it overestimated the depth of the neutralist sentiments and the extent of the West European, even the German, stake in the East-West détente. It may also have overestimated the impact on West European public opinion of the greatly increased Soviet strategic power, especially in comparison to the Berlin crises of the late 1940s and the late 1950s. The Soviet leaders may have calculated that the combination of a specifically West European interest in détente with the growing fear of Soviet military power (especially with the massive deployment of the SS-20s targeted on Western Europe) might stampede the West Europeans—even if not the Americans—into a unilateral accommodation. They thus relied too much on simple political intimidation.

Nonetheless, in addition to noting Soviet persistence in seeking to achieve the subordination of Western Europe, it is important not to be overly reassured by the Soviet failure. For that failure is due more to the crudeness of the Soviet tactics than to the resilience of Western Europe. The fact is that Western Europe as such has not emerged politically. In that respect the Soviet Union can be said to have achieved at least a part of what it has been seeking since Yalta. In the meantime, the continued division of Europe breeds growing resentment not only of the direct Soviet domination over Eastern Europe but also of the American role in Europe, a situation which more skillfull Soviet diplomacy could at some point more intelligently exploit.

The political reality is that America cannot undo Europe's partition, but the existence of that partition intensifies the American-Soviet rivalry which in turn perpetuates the partition. Though America has at times sought to loosen the bonds that both tie and subordinate Eastern Europe to Moscow, at the truly critical junctures America has chosen not to contest Soviet domination directly. American policy has aimed at carefully encouraging the peaceful evolution of a somewhat more pluralistic Eastern Europe, a process that is bound to take time and which can periodically be reversed by force, as through martial law in Poland in 1981. However, when the East German regime collapsed in 1953, when Hungary arose in 1956, when Czechoslovakia peacefully emancipated itself in 1968 only to be invaded by Soviet armed forces, the United States adopted a passive posture masked by anti-Soviet rhetoric. Whether more could have been done is debatable, but that not much was done is undeniable.

VI

American prudence is one reason why the Europeans sense that America cannot undo the division of Europe. The other reason is even more basic. America cannot undo the partition of Europe without in effect defeating Russia. And that the Russians must and will resist firmly—just as the direct expulsion of America from Western Europe would be resisted by America as an intolerable defeat. At the same time, the partition of Germany in the context of the partition of Europe makes both partitions a live issue. It ensures a continuing political struggle for the future of Germany and thus for the future of Europe. It locks America and Russia into a strategically central conflict, but with the stakes so high that neither can countenance a direct defeat. With divided Germany thus serving as the permanent catalyst for change, the issue of the future of Europe remains a live issue, despite the stalemate of the last 40 years.

The situation might have been altogether different if the division of Europe had not entailed simultaneously the division of Germany. If instead of the Elbe the geopolitical American-Soviet frontier had been fixed on the Rhine or on the Oder-Neisse line, the division of Europe into two spheres of influence would have been neater and politically easier to maintain. With the Rhine as the dividing line, the West European rump would have felt so threatened by the Soviet presence, backed by a Sovietized Germany, that henceforth its enduring preoccupation would have been to insure the closest possible ties with America, forgetting altogether about the fate of the Soviet-dominated central and eastern Europe. If, on the other hand, Soviet sway had been extended only to the Oder-Neisse line, the Poles and the Czechs would have been so fearful that an American-backed Germany might resume its traditional *Drang nach Osten* that the partition of Europe would have been of very secondary concern.

As it happens, the existing stalemate is increasingly resented by all Europeans. The

Germans—no longer dominated by feelings of war guilt, less mesmerized by the American ideal, distressed by the failure of Europe to become an alternative to divisive nationalisms—are naturally drawn to a growing preoccupation with the fate of their brethren living under an alien system. The notion that the destiny of a united Germany depends on a close relationship with Russia is not a new one in German political tradition. Frustration with the nation's division is giving it a new lease on life.

Moreover, for Germany especially but also for Western Europe as a whole, the East holds a special economic attraction. It has been the traditional market for West European industrial goods. As Western Europe discovers that in its fragmented condition it is becoming less competitive with the high-tech economies of America and Japan, the notion of a special economic relationship with the East becomes particularly appealing. The fear that America may be turning from the Atlantic to the Pacific has in this connection a self-fulfilling and a self-validating function: it justifies a wider economic, and potentially even a political, accommodation between an industrially obsolescent Western Europe and the even more backward Soviet bloc, a logical consumer for what Western Europe can produce.

More than most Europeans, the East Europeans, no longer expecting American liberation, long for a genuine Europe, which would free them from the Soviet yoke. That longing explains the extraordinary standing to this day in Eastern Europe of de Gaulle—simply because he raised the standard of "Europe to the Urals." It explains also the special appeal of the Pope, whose vision of Europe's spiritual unity has obvious political implications. But the East Europeans will settle for half a loaf if they cannot have the whole. Faced with the choice of exclusive Soviet domination, only occasionally contested by American policy, or of at least growing ties with even a politically weak Western Europe, the East Europeans clearly prefer the latter.

To register all of this is not to say that Europe will simply drift into a separate accommodation with the Soviet Union, fu the continued absence of a united Europe, the mounting American frustration with the low level of the European defense effort, and the inevitable appeal of escapist notions regarding disarmament, nuclear freezes, and the like could have a significant impact on both American and European public opinion. Indeed, under certain circumstances, one can even envisage a spontaneous American inclination to disengage from Europe, with conservatives advocating it out of irritation with European unwillingness to do more for common defense, and with liberals propounding it because of their current tendency to deal with difficult security matters by evasion. The U.S. deficit will, in any case, drive Congress toward a more critical look at the cost of the U.S. NATO commitment.

In Europe itself, such a more subtle Litvinov-type Soviet policy would aim not at the dismantling of NATO as such but at depriving it of any political or military substance. Exploiting the duality of German feelings and the growing ties between Bonn and East Berlin, it would seek to transform Germany into a quasi-neutral member of NATO, thereby alarming and further fragmenting Western Europe. Instead of concentrating on trying to inflict on America a visible and direct political defeat in Europe, it would play on European unwillingness to associate itself with America in the wider global and ideological rivalry with Russia, in order to achieve European acquiescence to a subordinate relationship with Moscow.

It is not self-fulfilling pessimism to note that a Europe dependent militarily, fragmented politically, and anachronistic economically remains a Europe more vulnerable to such blandishments. In brief, a sustained Soviet peace offensive poses the greater danger that Moscow finally might succeed in splitting Europe from America and thus, taking advantage of Europe's continued historical fatigue, attain finally a Yaltanized Europe.

VII

As President Mitterrand put it some two years ago, *"tout ce qui permettera de sortir de Yalta sera bon. . . ."* But how to escape from Yalta? Forty years later, there must be a better option for both Europe and America than either a partitioned and prostrated Europe that perpetuates the American-Soviet collision, or a disunited Europe divorced from America acquiescing piecemeal to Soviet domination over Eurasia. And there is such a third option: the emergence of a politically more vital Europe less dependent militarily on the United States, encouraged in that direction by an America guided by a timely historic vision, and leading eventually to a fundamentally altered relationship with Eastern Europe and with Russia.

This third option requires a long-term strategy of the kind that the West simply has not devised in dealing with the enduring post-Yalta European dilemma. The point of departure for such a long-term strategy has to be joint recognition of the important conclusion which the experience of the last several decades teaches. *The historic balance in Europe will be changed gradually in the West's favor only if Russia comes to be faced west of the Elbe rather less by America and rather more by Europe.*

Thoughtful Europeans realize, moreover, that the future of Europe is intertwined with the future of Germany and of Poland. Without spanning, in some non-threatening fashion, the division of Germany, there will not be a genuine Europe; but continuing Russian domination of Poland makes Russian control over East Germany geopolitically possible. Thus the relationship between Russia on the one hand and Germany and Poland on the other must be peacefully transformed if a larger Europe is ever to emerge.

Both Americans and Europeans must also face up to the implications of the fact that the division of Europe is not only the unnatural consequence of the destruction of Europe in the course of two world wars; in the long run it is also an inherently unstable and potentially dangerous situation. It is likely to produce new explosions in Easter Europe and it could also generate a basic and destabilizing reorientation in Western Europe, especially since for many Europeans the existence of the two alliances across the dividing line in the middle of Europe is seen as an extension of superpower efforts to perpetuate the status quo.

Accordingly, concentration on the purely military dimension of the East-West problem, or trying to get the West Europeans to hew to the U.S. line in the Middle East or in Central America, is not going to preserve Western unity. America has to identify itself with a cause which has deeply felt emotional significance to most Europeans. Undoing the division of Europe, which is so essential to its spiritual and moral recovery, is a goal worthy of the Western democracies and one capable of galvanizing a shared sense of historic purpose.

But that objective, so essential to Europe's restoration, cannot be accomplished as an American victory over Russia. Nor will it be achieved by an explicit Russian acceptance, through a negotiated agreement, of Eastern Europe's emancipation from Russian vassalage. Moscow will not yield voluntarily. A wider Europe can only emerge as a consequence of a deliberately but subtly induced process of change, by historical stealth so to speak, which can neither be quickly detected nor easily resisted.

The West must shape that process and give it historical direction. As the point of departure for seeking the common goal, one can envisage a strategy combining five broad political, economic and military dimensions. Some involve relatively simple acts and can be summarized succinctly; some require more complicated processes of change, are bound to be more controversial, and thus require a fuller justification.

*First*, on the symbolic plane, it would be appropriate for the heads of the democratic West as a whole, perhaps on February 4, 1985, to clarify jointly, through a solemn declaration, the West's attitude toward the historic legacy of Yalta. In publicly repudiating that bequest—the partition of Europe—the West should underline its commitment to a restored Europe, free of extra-European control. It should stress in its belief that there now exists a genuine European political identity, the heir to Europe's civilization, which is entitled to unfettered expression. It should affirm the right of every European nation to choose its sociopolitical system in keeping with its history and tradition. It should explicitly reject and condemn Moscow's imposition on so many Europeans of a system that is culturally and politically so alien to them. Finally, by drawing attention to the positive experience of neutral Austria and Finland, it should pledge that a more authentic Europe would not entail the extension of the American sphere of influence to the European state frontiers of the Soviet Union.

*Second*, and in direct connection with the renunciation of Yalta's burden, the West should simultaneously reconfirm its commitment to the Helsinki Final Act. This is absolutely essential, for otherwise the repudiation of Yalta could give the Soviets the convenient argument that the territorial integrity of Poland and of Czechoslovakia is thereby again endangered. The Helsinki agreements confirmed the durability of the existing frontiers in central and eastern Europe, and the eastern nations must be reassured on this score. At the same time, the Helsinki agreements legalized and institutionalized the notion that the West has a right to comment on the internal practices of East European governments and that respect of human rights is a general international obligation. Accordingly, the repudiation of Yalta's historic legacy should be accompanied by the reaffirmation of the West's commitment to peaceful East-West relations, to the maintenance of the existing territorial status quo, and to the indivisibility of the concepts of freedom and human rights.

Moreover, reaffirmation of the continued Western commitment to the Helsinki Final Act could help to resolve the potentially fatal European ambivalence regarding Germany. The fact is that, while the Europeans resent their historic partition, they fear almost as much a reunited Germany. There-

fore, the renunciation of Yalta's legacy—the division of Europe—should be accompanied by an explicit pledge, through the reaffirmation of Helsinki's continued relevance, that the purpose of healing the East-West rift in Europe is not to dismantle any existing state but to give every European people the opportunity to participate fully in wider all-European cooperation. In that context, the division of Germany need not be undone through formal reunification but by the gradual emergence of a much less threatening loose confederation of the existing two states.

*Third,* much in keeping with the spirit of these symbolic acts, Western Europe should strive to create the maximum number of opportunities for East European participation in various all-European bodies. There is today a proliferation of such institutions, both private and public. East Europeans should be encouraged quietly but systemically to increase their participation—even if initially only as observers—in such bodies as the European Parliament, as well as the myriad of more specialized technical agencies. The fostering in Eastern Europe of the European spirit, and of greater East European recognition that there is more to Europe today than meets the eye, is clearly in the interest of all Europe. But a new burst of energy in this regard is much needed.

It would also be appropriate for the major West European nations, as well as for America, to sponsor during the Yalta year of 1985—on either a private or public basis—a series of seminars and conferences on the future of post-Yalta Europe. A special effort should be made to invite East Europeans to participate, on whatever basis is possible, in deliberations designed to forge during that year a wider consensus on how bet to undo peacefully Yalta's legacy.

In addition, Western Europe should reactivate efforts previously initiated but lately dormant designed to encourage closer contacts and eventually even some form of collaboration between the Common Market and Eastern Europe. In different ways, both East Germany and Yugoslavia today have practical relationships with that important West European entity. Precisely because the present Soviet leadership has stepped up its efforts to integrate Eastern Europe into COMECON and thus to bind it to the Soviet economy, additional initiative on the part of the Common Market is now badly needed. Even if the East Europeans, under Soviet pressure, were to rebuff such Western efforts at closer contacts, exchange of information and some cooperative projects, the Western initiative would still have a positive effect. The recent East German willingness to risk Soviet displeasure at growing inter-German ties reflects the widespread desire as well as economic need of Eastern Europe for closer links with the rest of Europe. The continued economic stagnation of the Soviet-type economies makes the timing for greater Western activism in this regard particularly propitious.

*Fourth,* and in no way in conflict with the preceding, Europe should intensify its aid to those East Europeans who are struggling actively for the political emancipation of Eastern Europe. That struggle is the necessary concomitant and at least partially also the cause of evolutionary change in Eastern Europe. Only too often do West European well-wishers of a more independent Eastern Europe look askance at those in the East who undertake more direct forms of struggle. While cultivation of Eastern European officials enjoys a certain fashionable prestige in Western circles, tangible assistance to those resisting totalitarianism is viewed only too frequently as somehow "in the spirit of the cold war."

Yet a division of labor between America and Europe in which the former is seen as alone in supporting dissident "subversion" while the latter engages exclusively in offical courtship would be self-defeating. West Europeans should undertake to provide support for some of the activities that America has quite generously, for Europe's sake as well as for its own, sustained for more than three decades. The French recently have done so for the Polish Solidarity movement, and so have some other Europeans. Radio Paris has been gaining more East European listeners. But much more needs to be done. Germany, for example, after Chancellor Helmut Schmidt in effect endorsed Wojciech Jaruzelski's martial law in Poland, confined itself to truly humanitarian private philanthropy; it has not been as active as it could be in sustaining various forms of East European political activity designed to induce the existing regimes to transform themselves.

In subtle but sustained fashion West Europe could aid the East Europeans in such efforts, because in the age of transistors and mass communications totalitarian control can be pierced, with positive political effect. Western Europe should, after all, be a direct partner in the struggle for Europe's future, and a well-funded Franco-British-German-Italian consortium (a Foundation for a Post-Yalta Europe) to aid East European efforts to emancipate peacefully the eastern portion of Europe would be an appropriate and long overdue contribution.

*Fifth,* the time has come for a more fundamental rethinking of the relationship between Western security and political change in Europe as a whole. The West can make the needed adjustment, and America—since it plays the central military role—should take the lead to that end. America is needed in Europe to deter Russia not only from military aggression but from political intimidation. That is obvious and it justifies NATO and the American military presence on the continent. But an American military presence that reduces the incentive for the Europeans to unite politically, yet simultaneously increases the incentive for the Soviets to stay put militarily in central and eastern Europe, is a military presence not guided by a subtle political-historical calculus. A more sensitive calibration of the political-military equation is needed in order to safeguard Western Europe while promoting change in the East-West relationship.

If Europe is to emerge politically, it must assume a more direct role in its own defense. A Europe that plays a larger defense role will require a lesser, or at least a redefined, American military presence. A Europe that can defend itself more on its own is a Europe that is also politically more vital, while less challenging to the Soviet Union from a purely military point of view, than a Europe with a large American military presence in its very center. Such a Europe would then be better able to satisfy the East European yearning for closer association without such association being tantamount to an American defeat of Russia.

But Europe must be prodded to move in that direction. Left as it is, Europe's cultural hedonism and political complacence will ensure that not much is done. Even the modest 1978 NATO commitment to a three percent per annum increase in defense expenditures was not honored by most European states. America should, therefore, initiate a longer-term process to alter the nature of its military presence in Europe gradually, while making it clear to the Europeans that the change is not an act of anger or a threat (à la the Mansfield resolution) but rather the product of a deliberate strategy designed to promote Europe's unity and its historic restoration.

Ultimately, the United States in NATO should be responsible primarily for offsetting Soviet strategic power, thus deterring both a Soviet attack or nuclear blackmail. But on the ground, the defense of Europe over the next decade should become an even more predominantly European responsibility. The needed process of replacing gradually but not totally (and certainly not in Berlin) the U.S. ground combat forces could perhaps be accelerated if, through the Mutual and Balanced Force Reductions talks or otherwise, the Soviet Union were willing to reciprocate by comparable withdrawals of its own ground forces. But, in any case, it should be accompanied by appropriate European efforts to assume greater responsibility for the defense of Europe not only on a purely national basis but through enhanced European defense coordination.

The United States should particularly encourage efforts at increased Franco-German military cooperation and eventual integration. France has a historic awareness of a European identity while Germany chafes under Europe's partition. A Franco-Germany army would have the manpower, the resources, and the fighting potential to pick up the slack created by a gradual decrease in the American combat presence on the ground. The eventual fusion of these two national forces into a joint combat force would represent a giant step toward a politically more vital Europe, yet a Europe which would be less conflictual with the Soviet Union than a Europe hosting a large U.S. army and less threatening to Eastern Europe than a Europe with a powerful separate German army. A gradually reduced U.S. ground presence would in turn create pressure from even the existing East European regimes for a commensurate Soviet redeployment, thereby gradually creating a more flexible political situation.

To move Europe in this direction, the United States will have to take the first steps, even perhaps unilaterally through a ten-year program of annual cuts in the level of the U.S. ground forces in Europe. But these steps should be taken in the context of an articulated strategy that has a constructive political as well as military rationale. Its political purpose should be openly proclaimed: to create the setting for Europe's restoration and, through it, also for a more stable East-West relationship. It would also have to be made clear that some American combat forces would remain in Europe, as they do in Korea, thereby ensuring immediate American engagement in the event of hostilities. Moreover, continued American strategic protection of Europe should not remain confined only to the possible employment of nuclear weaponry. It should over time, with technological advance, be enhanced to include also some strategic defense. As strategic defense for America becomes more viable, it should be a major American goal to extend some of its protection to Europe as well.

A division of labor in NATO along the foregoing lines would make it much easier to consider by Yalta's fiftieth anniversary also those East-West security and political

arrangements which at the moment seem premature, unrealistic, or excessively threatening to America or to Russia. These could include demilitarized or nuclear-free zones or extension of the Austrian-type neutrality to other areas, including later even to a loosely confederated Germany. It would encourage a process of change permitting the latent or frustrated West and East European impulses for the restoration of Europe gradually to surface. Eventually, it would permit Europe to emerge, and to play a major role on the Eurasian continent, along with the Soviet Union, India and China, while helping to ensure through its links with America that no single power dominates that geopolitically vital continent.

VIII

The fiftieth anniversary of Yalta is only ten years away. It should be our shared goal to fashion by then political-military arrangements which, instead of perpetuating the division of Europe—and perhaps even prompting West Europe's political decay, create the preconditions for peacefully undoing Yalta. A Western Europe essentially self-reliant in regional defense, while covered by the U.S. system of nuclear deterrence and also eventually by U.S. strategic defense, would be a Western Europe more capable of pursuing a positive policy toward the East without fear of domination by Moscow. In the final analysis, only Europeans can restore Europe; it cannot be done for them by others.

To be sure, Moscow will resist the aspirations of the Europeans. No empire dissolves itself voluntarily—at least not until it becomes evident that accommodation to gradual dissolution is preferable to the rising costs of preserving the imperial system. So it will be also with the Soviet empire. Moscow will violently protest any Western disavowal of Yalta's legacy and will accuse the West of worsening East-West relations; that is only to be expected. But such public disavowal is the necessary point of departure for more focused efforts by all the Europeans gradually to undo their continent's division. Once that historic commitment has been made, these efforts, as recommended here, need not be either aggressive or initially even very explicit. As time passes, with the organic growth of a larger Europe gathering momentum, it will become more and more difficult for the Kremlin to resist a process that over time may acquire the hallmarks of historical inevitability. At some point, then, even the Soviets may find it useful to codify some new neutrality arrangements in central Europe and to reduce and eventually to remove their occupation forces.

One should not underestimate in this connection Moscow's adaptability. Despite his ruthlessness, even Stalin accommodated himself to the reality of an indpendent Catholic Church in Poland; Khrushchev to a Polish peasantry free from collectivization and to a separate Romanian foreign policy; Brezhnev to "goulash communism" in Hungary and to army rule in Poland. Why then should not the next generation of Soviet leaders be pressed also to come to terms with the fact that even the interests of the Soviet people would be better served by a less frustrated and oppressed east-central Europe, partaking more directly of the benefits of all-European cooperation?

As divided Europe enters the fifth decade after Yalta, it is important to reiterate that undoing Yalta cannot involve a precise blueprint or a single dramatic initiative. The shape of the future cannot be reduced to a neat plan, with specific phases and detailed agreements. Rather, it requires an explicit commitment and a sense of strategic direction for a process of change that is bound to have also its own dynamic. In any case, for America the emergence of a more vital Europe would be a positive outcome, for ultimately a pluralistic world is in America's true interest. Moreover, such a development would avert the major danger that if Yalta's legacy is not deliberately—though peacefully—undone in the East, it will eventually become the reality in the West. In other words, Yalta must be consigned to Europe's past if it is not to become Europe's future.

## UNITED STATES-JAPAN TRADE

Mr. DANFORTH. Mr. President, Senator BOREN and I announced on Friday our intention to offer a resolution that would link an opening of Japan's markets to extension of the limits on Japanese auto imports.

Obviously, we view the $123 billion trade deficit as a matter of the utmost gravity. The largest single contributor to this horrifying deficit is Japan, with which nation we posted a stunning deficit of $37 billion in 1984.

We believe that Japan must increase its purchases of American goods and services if it expects an end to the limits on its auto shipments to the United States. It is time that Japan's litany of empty promises give way to results. It is time for Japan to do what it says it intends to do: open its markets, and now.

I rise to advise the Senate that the following Senators will cosponsor our resolution when it is formally introduced:

Senators ABDNOR, ANDREWS, BAUCUS, BINGAMAN, BURDICK, DIXON, DODD, EAGLETON, FORD, GARN, HEFLIN, HEINZ, KENNEDY, LAUTENBERG, LEVIN, MITCHELL, PRESSLER, PROXMIRE, QUAYLE, RIEGLE, SIMON, SPECTER, and WARNER.

Several Senators have indicated a desire to prepare floor statements for the formal introduction of this resolution. Moreover, we expect that several additional cosponsors will join between now and the date of introduction.

I would take this opportunity to advise the Senate of the text of our resolution. I ask that the text be included at the end of my statement.

Let me say, Mr. President, that Senator BOREN and I are greatly encouraged by the initial response to our Dear Colleague letter, which was distributed on Tuesday.

The strong support which we are receiving suggests to me that we will be in a position to secure a rollcall vote in the Senate at an early date.

Clearly, Senator BOREN and I believe the time is right for Congress to send a clear, strong signal to Japan, and to the administration, that our bilateral trade deficit with Japan has to come down, and quickly.

I ask unanimous consent that the text of the resolution be printed in the RECORD.

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

DANFORTH-BOREN RESOLUTION ON UNITED STATES-JAPAN TRADE

Whereas, the United States merchandise trade deficit with Japan reached the unprecedented level of $37 billion in 1984—accounting for almost one-third of the entire United States deficit with the world;

Whereas, this unprecedented bilateral deficit was accumulated in spite of significant growth in the Japanese economy;

Whereas, the principles of free trade provide for trade flows between nations on the basis of each nation's comparative advantage;

Whereas, Japan has extensive access to the United States market for products where Japan has comparative advantage;

Whereas, United States exporters lack access to the Japanese market for manufactured goods, forest products, key agricultural commodities and certain services where the United States has comparative advantage;

Whereas, the high value of the dollar relative to the yen effectively subsidizes Japanese exports to the United States and taxes United States exports to Japan;

Whereas, despite the voluntary restraint, Japanese autos continue to account for approximately 2 million cars imported into the United States market—contributing over $20 billion to the bilateral trade deficit;

Whereas, years of negotiating with Japan to secure meaningful improvements in market access for competitive United States exports have been largely unsuccessful;

Whereas, many other countries experience comparable difficulty in obtaining access to the Japanese market;

Whereas, an end to the voluntary restraint on autos without a comparable improvement in access for competitive United States exports to the Japanese market will severely exacerbate the bilateral trade deficit;

Whereas, this deficit has the potential of undermining the entire range of bilateral relations between the United States and Japan;

Therefore, be it resolved that the voluntary restraint on Japanese autos not be ended until United States exports to Japan are substantially increased and the United States trade deficit with Japan is substantially reduced.

## STATE OF THE UNION ADDRESS—MESSAGE FROM THE PRESIDENT—PM 17

The VICE PRESIDENT laid before the Senate the following message from the President of the United States; which was ordered to lie on the table:

*To the Congress of the United States:*

Mr. Speaker, Mr. President, distinguished Members of the Congress, honored guests, and fellow citizens. I come before you to report on the state of our Union. And I am pleased to report that, after 4 years of united effort, the American people have brought forth a Nation renewed—

stronger, freer, and more secure than before.

Four years ago, we began to change—forever, I hope—our assumptions about Government and its place in our lives. Out of that change has come great and robust growth—in our confidence, our economy, and our role in the world.

Tonight, America is stronger because of the values we hold dear. We believe faith and freedom must be our guiding stars, for they show us truth, make us brave, give us hope, and leave us wiser than we were. Our progress began not in Washington, D.C., but in the hearts of our families, communities, workplaces, and voluntary groups which, together, are unleashing the invincible spirit of one great Nation under God.

Four years ago, we said we would invigorate our economy by giving people greater freedom and incentives to take risks, and letting them keep more of what they earned.

We did what we promised, and a great industrial giant is reborn. Tonight we can take pride in 25 straight months of economic growth, the strongest in 34 years; a 3-year inflation average of 3.9 percent, the lowest in 17 years; and 7.3 million new jobs in 2 years, with more of our citizens working than ever before.

New freedom in our lives has planted the rich seeds for future success:

For an America of wisdom that honors the family, knowing that as the family goes, so goes our civilization;

For an America of vision that sees tomorrow's dreams in the learning and hard work we do today;

For an America of courage whose servicemen and women, even as we meet, proudly stand watch on the frontiers of freedom;

For an America of compassion that opens its heart to those who cry out for help.

We have begun well. But it's only a beginning. We are not here to congratulate ourselves on what we have done, but to challenge ourselves to finish what has not yet been done.

We are here to speak for millions in our inner cities who long for real jobs, safe neighborhoods, and schools that truly teach. We are here to speak for the American farmer, the entrepreneur, and every worker in industries fighting to modernize and compete. And, yes, we are here to stand, and proudly so, for all who struggle to break free from totalitarianism; for all who know in their hearts that freedom is the one true path to peace and human happiness.

Proverbs tells us, without a vision the people perish. When asked what great principle holds our Union together, Abraham Lincoln said, "Something in [the] Declaration giving liberty, not alone to the people of this country, but hope to the world for all future time."

We honor the giants of our history not by going back, but forward to the dreams their vision foresaw. My fellow citizens, this Nation is poised for greatness. The time has come to proceed toward a great new challenge—a Second American Revolution of hope and opportunity; a revolution carrying us to new heights of progress by pushing back frontiers of knowledge and space; a revolution of spirit that taps the soul of America, enabling us to summon greater strength than we have ever known; and, a revolution that carries beyond our shores the golden promise of human freedom in a world at peace.

Let us begin by challenging conventional wisdom: There are no constraints on the human mind, no walls around the human spirit, no barriers to our progress except those we ourselves erect. Already, pushing down tax rates has freed our economy to vault forward to record growth.

In Europe, they call it "the American Miracle." Day by day, we are shattering accepted notions of what is possible. When I was growing up, we failed to see how a new thing called radio would transform our marketplace. Well, today many have not yet seen how advances in technology are transforming our lives.

In the late 1950's, workers at the AT&T semiconductor plant in Pennsylvania produced five transistors a day for $7.50 apiece. They now produce over a million for less than a penny apiece.

New laser techniques could revolutionize heart bypass surgery, cut diagnosis time for viruses linked to cancer from weeks to minutes, reduce hospital costs dramatically, and hold out new promise for saving human lives.

Our automobile industry has overhauled assembly lines, increased worker productivity, and is competitive once again.

We stand on the threshold of a great ability to produce more, do more, be more. Our economy is not getting older and weaker, it's getting younger and stronger; it doesn't need rest and supervision, it needs new challenge and greater freedom. And that word—freedom—is the key to the Second American Revolution we mean to bring about.

Let us move together with an historic reform of tax simplification for fairness and growth. Last year, I asked Treasury Secretary Regan to develop a plan to simplify the tax code, so all taxpayers would be treated more fairly, and personal tax rates could come further down.

We have cut tax rates by almost 25 percent, yet the tax system remains unfair and limits our potential for growth. Exclusions and exemptions cause similar incomes to be taxed at different levels. Low-income families face steep tax barriers that make hard lives even harder. The Treasury Department has produced an excellent reform plan whose principles will guide the final proposal we will ask you to enact.

One thing that tax reform will not be is a tax increase in disguise. We will not jeopardize the mortgage interest deduction families need. We will reduce personal tax rates as low as possible by removing many tax preferences. We will propose a top rate of no more than 35 percent, and possibly lower. And we will propose reducing corporate rates while maintaining incentives for capital formation.

To encourage opportunity and jobs rather than dependency and welfare, we will propose that individuals living at or near the poverty line be totally exempt from Federal income tax. To restore fairness to families, we will propose increasing significantly the personal exemption.

Tonight, I am instructing Treasury Secretary James Baker to begin working with congressional authors and committees for bipartisan legislation conforming to these principles. We will call upon the American people for support, and upon every man and woman in this chamber. Together, we can pass, this year, a tax bill for fairness, simplicity, and growth making this economy the engine of our dreams, and America the investment capital of the world—so let us begin.

Tax simplification will be a giant step toward unleashing the tremendous pent-up power of our economy. But a Second American Revolution must carry the promise of opportunity for all. It is time to liberate the spirit of enterprise in the most distressed areas of our country.

This Government will meet its responsibility to help those in need. But policies that increase dependency, break up families, and destroy self-respect are not progressive, they are reactionary. Despite our strides in civil rights, blacks, hispanics, and all minorities will not have full and equal power until they have full economic power.

We have repeatedly sought passage of enterprise zones to help those in the abandoned corners of our land find jobs, learn skills, and build better lives. This legislation is supported by a majority of you. Mr. Speaker, I know we agree: There must be no forgotten Americans. Let us place new dreams in a million hearts and create a new generation of entrepreneurs by passing enterprise zones this year.

Nor must we lose the chance to pass our Youth Employment Opportunity Wage proposal. We can help teenagers who have the highest unemployment rate find summer jobs, so they can

know the pride of work, and have confidence in their futures.

We will continue to support the Job Training Partnership Act, which has a nearly two-thirds job placement rate. Passage of tuition tax credits and education and health care vouchers will help working families shop for services they need.

Our Administration is already encouraging certain low-income public housing residents to own and manage their own dwellings. It is time all public housing residents have that opportunity of ownership.

The Federal Government can help create a new atmosphere of freedom. But States and localities, many of which enjoy surpluses from the recovery, must not permit their tax and regulatory policies to stand as barriers to growth.

Let us resolve that we will stop spreading dependency and start spreading opportunity; that we will stop spreading bondage and start spreading freedom.

There are some who say growth initiatives must await final action on deficit reductions. Well, the best way to reduce deficits is through economic growth. More businesses will be started, more investments made, more jobs created, and more people will be on payrolls paying taxes. The best way to reduce Government spending is to reduce the need for spending by increasing prosperity. Each added percentage point per year of real G.N.P. growth will lead to a cumulative reduction in deficits of nearly $200 billion over 5 years.

To move steadily toward a balanced budget we must also lighten Government's claim on our total economy. We will not do this by raising taxes. We must make sure that our economy grows faster than growth in spending by the Federal Government. In our Fiscal Year 1986 budget, overall Government program spending will be frozen at the current level; it must not be one dime higher than Fiscal Year 1985. Three points are key:

First, the social safety net for the elderly, needy, disabled, and unemployed will be left intact. Growth of our major health care programs, Medicare and Medicaid, will be slowed, but protections for the elderly and needy will be preserved.

Second, we must not relax our efforts to restore military strength just as we near our goal of a fully equipped, trained, and ready professional corps. National security is Government's first responsibility, so, in past years, defense spending took about half the Federal budget. Today it takes less than a third.

We have already reduced our planned defense expenditures by nearly $100 billion over the past 4 years, and reduced projected spending again this year. You know, we only have a military industrial complex until a time of danger. Then it becomes the arsenal of democracy. Spending for defense is investing in things that are priceless: peace and freedom.

Third, we must reduce or eliminate costly Government subsidies. For example, deregulation of the airline industry has led to cheaper airfares, but on Amtrak taxpayers pay about $35 per passenger every time an Amtrak train leaves the station. It's time we ended this huge Federal subsidy.

Our farm program costs have quadrupled in recent years. Yet I know from visiting farmers, many in great financial distress, that we need an orderly transition to a market-oriented farm economy. We can help farmers best, not by expanding Federal payments, but by making fundamental reforms, keeping interest rates heading down, and knocking down foreign trade barriers to American farm exports.

We are moving ahead with Grace Commission reforms to eliminate waste, and improve Government's management practices. In the long run, we must protect the taxpayers from Government. I ask again that you pass, as 32 States have now called for, an amendment mandating the Federal Government spend no more than it takes in. And I ask for the authority used responsibly by 43 Governors to veto individual items in appropriations bills. Senator MATTINGLY has introduced a bill permitting a 2-year trial run of the line-item veto. I hope you will pass and send that legislation to my desk.

Nearly 50 years of Government living beyond its means has brought us to a time of reckoning. Ours is but a moment in history. But one moment of courage, idealism, and bipartisan unity can change American history forever.

Sound monetary policy is key to long-running economic strength and stability. We will continue to cooperate with the Federal Reserve Board, seeking a steady policy that ensures price stability, without keeping interest rates artificially high or needlessly holding down growth.

Reducing unneeded red tape and regulations, and deregulating the energy, transportation, and financial industries, have unleashed new competition, giving consumers more choices, better services, and lower prices. In just one set of grant programs we have reduced 905 pages of regulations to 31.

We seek to fully deregulate natural gas to bring on new supplies and bring us closer to energy independence. Consistant with safety standards, we will continue removing restraints on the bus and railroad industries; we will soon send up legislation to return Conrail to the private sector, where it belongs; and we will support further deregulation of the trucking industry.

Every dollar the Federal Government does not take from us, every decision it does not make for us, will make our economy stronger, our lives more abundant, our future more free.

Our Second American Revolution will push on to new possibilities not only on Earth—but in the next frontier of space. Despite budget restraints, we will seek record funding for research and development.

We have seen the success of the space shuttle. Now we are going to develop a permanently-manned Space Station, and new opportunities for free enterprise. In the next decade, Americans and our friends around the world will be living and working together in space.

In the zero-gravity of space we could manufacture in 30 days lifesaving medicines it would take 30 years to make on Earth. We can make crystals of exceptional purity to produce super computers, creating jobs, technologies, and medical breakthroughs beyond anything we ever dreamed possible.

As we do all this, we will continue to protect our natural resources. We will seek reauthorization and expanded funding for the Superfund program, to continue cleaning up hazardous waste sites which threaten human health and the environment.

There is another great heritage to speak of this evening. Of all the changes that have swept America the past 4 years, none brings greater promise than our rediscovery of the values of faith, freedom, family, work, and neighborhood.

We see signs of renewal in increased attendance in places of worship; renewed optimism and faith in our future; love of country rediscovered by our young who are leading the way. We have rediscovered that work is good in and of itself; that it enables us to create and contribute no matter how seemingly humble our jobs. We have seen a powerful new current from an old and honorable tradition—American generosity.

From thousands answering Peace Corps appeals to help boost food production in Africa, to millions volunteering time, corporations adopting schools, and communities pulling together to help the neediest among us at home, we have refound our values—we have refound America. Private sector initiatives are crucial to our future.

I thank the Congress for passing equal access legislation giving religious groups the same right to use classrooms after school that other groups enjoy. But no citizen need tremble, nor the world shudder, if a child stands in a classroom and breathes a prayer. We ask you again—give chil-

dren back a right they had for a century-and-a-half or more.

The question of abortion grips our Nation. Abortion is either the taking of human life, or it isn't; and if it is—and medical technology is increasingly showing it is—it must be stopped.

It is a terrible irony that while some turn to abortion, so many others who cannot become parents cry out for children to adopt. We have room for these children; we can fill the cradles of those who want a child to love. Tonight I ask the Congress to move this year on legislation to protect the unborn.

In the area of education, we're returning to excellence, and again, the heroes are our people, not Government. We're stressing basics of discipline, rigorous testing, and homework, while helping children become computer-smart as well. For 20 years, Scholastic Aptitude Test scores of our high school students went down. But now they have gone up 2 of the last 3 years.

We must go forward in our commitment to the new basics, giving parents greater authority and making sure good teachers are rewarded for hard work and achievement through merit pay.

Of all the changes in the past 20 years, none has more threatened our sense of national well-being than the explosion of violent crime. One does not have to have been attacked to be a victim. The woman who must run to her car after shopping at night is a victim; the couple draping their door with locks and chains are victims; as is the tired, decent cleaning woman who can't ride a subway home without being afraid.

We do not seek to violate rights of defendants. But shouldn't we feel more compassion for victims of crime than for those who commit crime? For the first time in 20 years, the crime index has fallen 2 years in a row; we've convicted over 7,400 drug offenders, and put them, as well as leaders of organized crime, behind bars in record numbers.

But we must do more. I urge the House to follow the Senate and enact proposals permitting use of all reliable evidence that police officers acquire in good faith. These proposals would also reform the habeus corpus laws and allow, in keeping with the will of the overwhelming majority of Americans, the use of the death penalty where necessary.

There can be no economic revival in ghettos when the most violent among us are allowed to roam free. It is time we restored domestic tranquility. And we mean to do just that.

Just as we are positioned as never before to secure justice in our economy, we are poised as never before to create a safer, freer, more peaceful world.

Our alliances are stronger than ever. Our economy is stronger than ever. We have resumed our historic role as a leader of the free world—and all of these together are a great force for peace.

Since 1981, we have been committed to seeking fair and verifiable arms agreements that would lower the risk of war and reduce the size of nuclear arsenals. Now our determination to maintain a strong defense has influenced the Soviet Union to return to the bargaining table. Our negotiators must be able to go to that table with the united support of the American people. All of us have no greater dream than to see the day when nuclear weapons are banned from this Earth forever.

Each Member of the Congress has a role to play in modernizing our defenses, thus supporting our chances for a meaningful arms agreement. Your vote this spring on the Peacekeeper missile will be a critical test of our resolve to maintain the strength we need and move toward mutual and verifiable arms reductions.

For the past 20 years we have believed that no war will be launched as long as each side knows it can retaliate with a deadly counter-strike. Well, I believe there is a better way of eliminating the threat of nuclear war.

It is a Strategic Defense Initiative aimed at finding a non-nuclear defense against ballistic missiles. It is the most hopeful possibility of the nuclear age. But it is not well understood.

Some say it will bring war to the heavens—but its purpose is to deter war, in the heavens and on Earth. Some say the research would be expensive. Perhaps, but it could save millions of lives, indeed humanity itself. Some say if we build such a system, the Soviets will build a defense system of their own. Well, they already have strategic defenses that surpass ours; a civil defense system, where we have almost none; and a research program covering roughly the same areas of technology we're exploring. And finally, some say the research will take a long time. The answer to that is: "Let's get started."

Harry Truman once said that, ultimately, our security, and the world's hopes for peace and human progress, "lie not in measures of defense or in the control of weapons, but in the growth and expansion of freedom and self-government."

Tonight, we declare anew to our fellow citizens of the world: Freedom is not the sole prerogative of a chosen few; it is the universal right of all God's children. Look to where peace and prosperity flourish today. It is in homes that freedom built. Victories against poverty are greatest and peace most secure where people live by laws that ensure free press, free speech, and freedom to worship, vote, and create wealth.

Our mission is to nourish and defend freedom and democracy, and to communicate these ideals everywhere we can.

America's economic success is freedom's success; it can be repeated a hundred times in a hundred different nations. Many countries in East Asia and the Pacific have few resources other than the enterprise of their own people. But through low tax rates and free markets, they have soared ahead of centralized economies. And now China is opening up its economy to meet its needs.

We need a stronger and simpler approach to the process of making and implementing trade policy and will be studying potential changes in that process in the next few weeks.

We have seen the benefits of free trade and lived through the disasters of protectionism. Tonight, I ask all our trading partners, developed and developing alike, to join us in a new round of trade negotiations to expand trade and competition, and strengthen the global economy—and to begin it in the next year.

There are more than 3 billion human beings living in Third World countries, with an average per capita income of $650 a year. Many are victims of dictatorships that impoverish them with taxation and corruption. Let us ask our allies to join us in a practical program of trade and assistance that fosters economic development through personal incentives to help these people climb from poverty on their own.

We cannot play innocents abroad in a world that is not innocent. Nor can we be passive when freedom is under siege. Without resources, diplomacy cannot succeed; our security assistance programs help friendly governments defend themselves, and give them confidence to work for peace. Congress should understand that dollar for dollar security assistance contributes as much to global security as our own defense budget.

We must stand by all our democratic allies. And we must not break faith with those who are risking their lives—on every continent, from Afghanistan to Nicaragua—to defy Soviet-supported aggression and secure rights which have been ours from birth.

The Sandinista dictatorship of Nicaragua, with full Cuban Soviet-bloc support, not only persecutes its people, the church, and denies a free press, but arms and provides bases for communist terrorists attacking neighboring states. Support for freedom fighters is self-defense, and totally consistent with the O.A.S. and U.N. Charters. It is essential that the Congress continue all facets of our assistance to

Central America. I want to work with you to support the democratic forces whose struggle is tied to our own security.

Tonight I have spoken of great plans and great dreams. They are dreams we can make come true. Two hundred years of American history should have taught us that nothing is impossible.

Ten years ago a young girl left Vietnam with her family; part of the exodus that followed the fall of Saigon. They came to the United States with no possessions, and not knowing a word of English. The young girl studied hard, learned English and finished high school in the top of her class. This May is a big date on her calendar. Just 10 years from the time she left Vietnam, she'll graduate from the United States Military Academy at West Point. I thought you might like to meet an American hero named Jean Nguyen.

There's someone else here tonight. Born 79 years ago, she lives in the inner city, where she cares for infants born of mothers who are heroin addicts. The children, born in withdrawal, are sometimes even dropped at her doorstep. She heals them with love. Go to her house some night and maybe you'll see her silhouette against the window, as she walks the floor talking softly, soothing a child in her arms. Mother Hale of Harlem—she, too, is an American hero.

Your lives tell us that the oldest American saying is new again: Anything is possible in America if we have the faith, the will, and the heart. History is asking us, once again, to be a force for good in the world. Let us begin—in unity, with justice, and love.

RONALD REAGAN.

THE WHITE HOUSE, *February 6, 1985.*

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Finance, without amendment:

S. Res. 70. An original resolution authorizing expenditures by the Committee on Finance; referred to the Committee on Rules and Administration.

## 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. KASTEN (for himself and Mr. KENNEDY):

S. 423. A bill to make available supplemental appropriations for the fiscal year ending September 30, 1985, to meet famine relief requirements of Sub-Saharan Africa, and for other purposes; to the Committee on Appropriations.

By Mr. HOLLINGS (for himself and Mr. SYMMS):

S. 424. A bill to amend the Military Selective Service Act to provide for the reinstitution of the registration and classification of persons under such Act and to reinstate the authority of the President to induct persons involuntarily into the Armed Forces, and for other purposes; to the Committee on Armed Services.

By Mr. GOLDWATER (for himself, Mr. HATCH, Mr. CRANSTON, Mr. SYMMS, Mr. DECONCINI, Mr. ABDNOR, Mr. ANDREWS, Mr. BENTSEN, Mr. BYRD, Mrs. HAWKINS, Mr. HEINZ, Mr. INOUYE, Mr. JOHNSTON, Mr. LUGAR, Mr. MATTINGLY, Mr. MELCHER, Mr. SARBANES, Mr. STEVENS, Mr. ZORINSKY, Mr. DURENBERGER, and Mr. LEAHY):

S. 425. A bill to amend the Public Health Service Act to establish a National Institute of Arthritis and Musculoskeletal and Skin Diseases; to the Committee on Labor and Human Resources.

By Mr. WALLOP (for himself, Mr. SIMPSON, Mr. GARN, Mr. HECHT, Mr. GOLDWATER, Mr. HEFLIN, Mr. WILSON, Mr. LAXALT, Mr. CRANSTON, Mr. DENTON, Mr. CHAFEE, Mr. MURKOWSKI, and Mr. DODD):

S. 426. A bill to amend the Federal Power Act to provide for more protection to electric consumers; to the Committee on Energy and Natural Resources.

By Mr. KASTEN:

S. 427. A bill for the relief of Tirouhi Marcarian; to the Committee on the Judiciary.

By Mr. SYMMS:

S. 428. A bill to amend the United States Housing Act of 1937 to provide additional home ownership and resident management opportunities for families residing in public housing projects; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. HEINZ:

S. 429. A bill to extend the statute of limitations for fraud under the customs laws and to clarify the extent of Government access to grand jury proceedings; to the Committee on Finance.

By Mr. HEINZ (for himself, Mr. CHAFEE, Mr. GARN, and Mr. D'AMATO):

S. 430. A bill to amend and clarify the Foreign Corrupt Practices Act of 1977; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. KENNEDY (for himself, Mr. WEICKER, Mr. CRANSTON, Mr. MATHIAS, Mr. LEAHY, Mr. PACKWOOD, Mr. METZENBAUM, Mr. STAFFORD, Mr. PELL, Mr. CHAFEE, Mr. SIMON, Mr. DURENBERGER, Mr. BIDEN, Mr. ANDREWS, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BENTSEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BURDICK, Mr. CHILES, Mr. COHEN, Mr. DIXON, Mr. DODD, Mr. EAGLETON, Mr. EVANS, Mr. EXON, Mr. GLENN, Mr. GORE, Mr. HARKIN, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. PROXMIRE, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SPECTER, Mr. MITCHELL, Mr. DECONCINI, and Mr. JOHNSTON):

S. 431. A bill to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; to the Committee on Labor and Human Resources.

By Mr. LEVIN (for himself and Mr. COHEN):

S. 432. A bill to amend the Internal Revenue Code of 1954 to provide taxpayers a cause of action for wrongful levy on property and a stay of a levy during the period of an installment pay plan: to the Committee on Finance.

By Mr. DIXON:

S. 433. A bill to amend the Agricultural Act of 1949 to require the Secretary of Agriculture to make available to producers advance loans on the 1985 crop of certain commodities; ordered held at the desk.

By Mr. D'AMATO (for himself, Mr. STENNIS, Mr. GORE, and Mr. SIMON):

S. 434. A bill to extend the authorization of the Robert A. Taft Institute Assistance Act; to the Committee on Labor and Human Resources.

By Mr. BUMPERS:

S. 435. A bill to amend the Consolidated Farm and Rural Development Act to improve and streamline the provision of farm credit assistance through the consolidation of the real estate, operating, economic emergency, soil and water, limited resource, recreation, and rural youth loan programs into one Agricultural Adjustment Loan, to reduce paperwork and make the Farmers Home Administration loan process more responsive to farmers' needs, and for other purposes: to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. HATCH (for himself and Mr. THURMOND):

S. 436. A bill to amend the section 1979 of the Revised Statutes (42 U.S.C. 1983), relating to civil actions for the deprivation of rights, to limit the applicability of that statute to laws relating to equal rights, and to provide a special defense to the liability of political subdivisions of States; to the Committee on the Judiciary.

By Mr. QUAYLE:

S. 437. A bill to designate the Veterans' Administration Outpatient Clinic to be located in Crown Point, Indiana, as the "Adam Benjamin, Jr. Veterans' Administration Outpatient Clinic"; to the Committee on Veterans Affairs.

By Mr. MITCHELL (for himself, Mr. COHEN, Mr. CHAFEE, Mr. STEVENS, and Mr. MURKOWSKI):

S. 438. A bill to provide a lower rate of duty for certain fish netting and fishing nets; to the Committee on Finance.

By Mr. MITCHELL (for himself, Mr. COHEN, Mr. CHAFEE, Mr. BENTSEN, Mr. MATHIAS, Mr. STEVENS, Mr. MURKOWSKI, and Mr. PELL):

S. 439. A bill to make permanent the exemption from the Federal Unemployment Tax Act for services performed on certain fishing boats; to the Committee on Finance.

By Mr. TRIBLE:

S. 440. A bill to amend title 18, United States Code, to create an offense for the use, for fraudulent or other illegal purposes, of any computer owned or operated by certain financial institutions and entities affecting interstate commerce; to the Committee on the Judiciary.

By Mr. FORD (for himself and Mr. MCCONNELL):

S. 441. A bill to amend the Internal Revenue Code of 1954 to revise the withholding rules relating to certain pari-mutuel wagering payouts; to the Committee on Finance.

By Mr. SIMPSON (for himself, Mr. ARMSTRONG, Mr. BINGAMAN, Mr. DOMENICI, Mr. GARN, Mr. HART, Mr. HATCH, Mr. HECHT, Mr. LAXALT, and Mr. WALLOP):

S. 442. A bill to grant the consent of the Congress to the Rocky Mountain Low-Level Radioactive Waste Compact; to the Committee on the Judiciary.

By Mr. COHEN (for himself, Mr. MITCHELL, Mr. STEVENS, Mr. MURKOWSKI, and Mr. PELL):

S. 443. A bill to amend the Internal Revenue Code of 1954 to provide that certain fishermen who are treated as self-employed for social security tax purposes shall be treated as self-employed for pension plan purposes; to the Committee on Finance.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 444. A bill to amend the Alaska Native Claims Settlement Act; to the Committee on Energy and Natural Resources.

By Mr. HART:

S. 445. A bill to amend the Price-Anderson Act to remove the liability limits for nuclear accidents, to provide better economic protection for people living near nuclear powerplants and nuclear transportation routes, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DOMENICI:

S. 446. A bill for the transfer of certain interests in lands in Dona Ana County, New Mexico, to New Mexico State University, Las Cruces, New Mexico; to the Committee on Energy and Natural Resources.

By Mr. DECONCINI:

S. 447. A bill to amend the Sherman Act to prohibit a rail carrier from denying to shippers of certain commodities, with intent to monopolize, use of its track which affords the sole access by rail to such shippers to reach the track of a competing railroad or the destination of shipment and to apply Clayton Act penalties to monopolizing by rail carriers; to the Committee on the Judiciary.

By Mr. GRASSLEY:

S. 448. A bill to amend the Internal Revenue Code of 1954 to encourage contributions of equipment to postsecondary vocational education programs and to allow a credit to employers for vocational education courses taught by an employee without compensation and for temporary employment of full-time vocational education instructors; to the Committee on Finance.

By Mrs. HAWKINS:

S. 449. A bill to provide disaster relief through the Corps of Engineers for roads and beaches on the eastern coast of the State of Florida destroyed in fall 1984 storms; to the Committee on Environment and Public Works.

By Mr. BINGAMAN:

S. 450. A bill to establish a commission to study and make recommendations concerning the international trade and export policies and practices of the United States; to the Committee on Governmental Affairs.

By Mr. LEVIN:

S. 451. A bill to provide for an alternative to the present adversarial rule making procedure by establishing a process to facilitate the formation of regulatory negotiation commissions; to the Committee on Governmental Affairs.

By Mr. BRADLEY (for himself, Mr. DODD, and Mr. PELL):

S. 452. A bill to enact the Gifted and Talented Children's Education Act; to the Committee on Labor and Human Resources.

By Mr. GRASSLEY:

S. 453. A bill to amend the Internal Revenue Code of 1954 to safeguard taxpayer's rights; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. SYMMS, Mr. DURENBERGER, and Mr. BOREN):

S. 454. A bill to amend the Internal Revenue Code of 1954 to provide a 20-percent investment tax credit for certain soil or water conservation expenditures; to the Committee on Finance.

By Mr. GRASSLEY:

S. 455. A bill to permit a married individual filing a joint return to deduct certain payments made to an individual retirement plan established for the benefit of a working spouse; to the Committee on Finance.

By Mr. BOSCHWITZ (for himself and Mr. DURENBERGER):

S. 456. A bill providing for a 5-year extension of two patents relating to cardiac drugs; to the Committee on the Judiciary.

By Mr. CRANSTON (for himself, Mr. MURKOWSKI, Mr. DECONCINI, Mr. SIMPSON, Mr. SPECTER, and Mr. LEAHY):

S.J. Res. 47. Joint resolution designating the week beginning November 10, 1985, as "National Women Veterans Recognition Week"; to the Committee on the Judiciary.

By Mr. LEVIN (for himself, Mr. PACKWOOD, Mr. SYMMS, Mr. HOLLINGS, Mr. MOYNIHAN, Mr. DOLE, Mr. PRYOR, Mr. SASSER, Mr. NICKLES, Mr. MITCHELL, Mr. METZENBAUM, Mr. COCHRAN, Mr. PELL, Mr. MATSUNAGA, Mr. CHILES, Mr. MELCHER, Mr. BOREN, Mr. MCCLURE, Mr. DECONCINI, Mr. CRANSTON, Mr. DODD, Mr. STENNIS, Mr. HEFLIN, Mr. JOHNSTON, Mr. NUNN, Mr. SARBANES, Mr. GARN, Mr. STEVENS, Mr. PROXMIRE, Mr. MURKOWSKI, Mr. RIEGLE, and Mr. SIMON):

S.J. Res. 48. Joint resolution to designate the year of 1986 as the "Year of the Teacher"; to the Committee on the Judiciary.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. TRIBLE:

S. Res. 68. Resolution congratulating the people of Cyprus on the twenty-fifth anniversary of their independence, and supporting the establishment of a Cyprus Cooperative Development Fund to foster improved intercommunal relations on Cyprus; to the Committee on Foreign Relations.

By Mr. DOLE (for himself and Mr. BYRD):

S. Res. 69. Resolution to direct the Senate Legal Counsel to represent Senator Riegle and Senator Levin in "Lawrence Jasper and Family U.S.A. v. Federal National Mortgage Association, et al.," Civil Action No. 83-2896DT; considered and agreed to.

By Mr. PACKWOOD:

S. Res. 70. An original resolution authorizing expenditures by the Committee on Finance; from the Committee on Finance; to the Committee on Rules and Administration.

By Mr. DURENBERGER (for himself, Mr. BOSCHWITZ, and Mr. MELCHER):

S. Con. Res. 13. Concurrent resolution to require implementation of a modified debt recovery program; to the Committee on Agriculture, Nutrition, and Forestry.

## STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KASTEN (for himself and Mr. KENNEDY):

S. 423. A bill to make available supplemental appropriations for the fiscal year ending September 30, 1985, to meet famine relief requirements of Sub-Saharan Africa, and for other purposes; to the Committee on Appropriations.

EMERGENCY AFRICAN FAMINE RELIEF ACT

Mr. KASTEN. Mr. President, on behalf of myself and Senator KENNEDY, I am introducing legislation which addresses the immediate needs of those countries in Africa suffering from drought.

The needs of these countries for life sustaining assistance and basic rehabilitation is overwhelming. The American people have watched this tragedy unfold in nearly daily media reports. They have responded through private contributions with typical American generosity. We continue to receive devastating reports about human suffering, especially in the northern areas of Ethiopia and in Southeastern Sudan where tens of thousands of refugees are streaming across from Ethiopia searching for food. One such report describes a mortality rate which "exceeds the worst days of the Kampuchean crisis or the World War II siege of Leningrad."

The legislation Senator KENNEDY and I are introducing today is significantly different from most of the approaches that have been suggested thus far to provide relief for the famine victims. Unfortunately, different quarters of Congress have gotten bogged down in arguing over what funding level is necessary, although all seem to agree with the basic premise that we should provide 50 percent of the emergency food needs, and, of course, contribute a fair share for other disaster assistance relief. This has, in some cases, resulted in partisan controversy which should have no place in this discussion. Therefore, Senator KENNEDY and I are recommending an indefinite appropriation for food, disaster assistance, and refugee assistance in order to focus on the need and the commitment, a commitment which is already being led by the American people through their private contributions. The legislation also runs through fiscal year 1986 so that we can avoid the start and stop of considering additional supplementals for this crisis. In order to ensure congressional oversight, we have written into the legislation a 15-day notification requirement so that Congress will have ample opportunity to review the use which is made of these funds and authority.

Mr. President, I do not believe I need emphasize that quick action on this or similar legislation is absolutely necessary, and, therefore, hopefully within a few days of returning after the Lincoln Day recess we will be able to act on famine relief legislation for Africa.

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. 423

*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 "Emergency African Famine Relief Act of 1985".

SEC. 2. The following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to provide supplemental appropriations for the fiscal year ending September 30, 1985, and for other purposes, namely:

DEPARTMENT OF AGRICULTURE

PUBLIC LAW 480

For an additional amount for "Public Law 480", for agricultural commodities supplied in connection with dispositions aboard pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954, such sums as may be necessary to provide 50 percent of the unmet emergency food needs of Sub-Saharan African countries before October 1, 1986, which sums shall be available only for such purpose and which sums shall remain available until September 30, 1986: *Provided,* That the Committee on Appropriations of each House of Congess is notified fifteen days in advance of the obligation of any such sums.

BILATERAL ECONOMIC ASSISTANCE

FUNDS APPROPRIATED TO THE PRESIDENT

AGENCY FOR INTERNATIONAL DEVELOPMENT

INTERNATIONAL DISASTER ASSISTANCE

For an additional amount for "International disaster assistance", such sums as may be necessary for emergency disaster assistance needs of Sub-Saharan African countries before October 1, 1986, which sums shall be available only for such purpose and which sums shall remain available until September 30, 1986: *Provided,* That, notwithstanding any other provision of law, such assistance shall be available for the furnishing of seeds and fertilizer and for the carrying out of other basic agricultural rehabilitation: *Provided further,* That the Committee on Appropriations of each House of Congress is notified fifteen days in advance of the obligation of any such sums.

DEPARTMENT OF STATE

MIGRATION AND REFUGEE ASSISTANCE

For an additional amount for "Refugee and Migration Assistance", notwithstanding any other provision of law, such sums as may be necessary for emergency migration and refugee assistance needs of Sub-Saharan African countries before October 1, 1986, which sums shall be available only for such purpose and which sums shall remain available until September 30, 1986: *Provided,* That such sums may be utilized to replenish the United States Emergency Refugee and Migration Assistance Fund for commitments made for Sub-Saharan Africa in the fiscal year 1985: *Provided further,* That the Committee on Appropriations of each House of Congress is notified fifteen days in advance of the obligation of any such sums.

GENERAL PROVISIONS

Notwithstanding section 10 of Public Law 91-672 (22 U.S.C. 2412) and section 15 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2680), funds appropriated by this Act shall be available for obligation and expenditure.

SEC. 3. The Administrator of the agency primarily responsible for administering part I of the Foreign Assistance Act of 1961 shall have the responsibility for determining the emergency food and disaster assistance needs for which funds are appropriated by this Act.

Mr. KENNEDY. Mr. President, it is a privilege for me to join Senator KASTEN in offering this bipartisan response to the urgent need for famine relief in Africa.

We believe there is broad support in Congress for an immediate increase in the amount of food, medicine, and other relief now being sent to refugees and famine victims in Africa. Having just returned from Ethiopia and Sudan, where the situation is especially critical, I know that the need is enormous—and that America can make an enormous difference in saving lives and reducing the dimensions of this monumental tragedy.

Since the precise dollar level is difficult to establish because of the changing circumstances in the field, we have fashioned an open-ended urgent supplemental appropriations bill to give the President sufficient flexibility to meet the need, while also maintaining congressional oversight.

The Reagan administration and the American people deserve great credit for the response that has been made so far. I welcome Senator KASTEN's leadership in ensuring that the U.S. relief effort reaches the maximum feasible level now, when relief is needed most.

The legislation we are introducing today will accomplish this goal.

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By Mr. HOLLINGS (for himself and Mr. SYMMS):

S. 424. A bill to amend the Military Selective Service Act to provide for the reinstitution of the registration and classification of persons under such act and to reinstate the authority of the President to induct persons involuntarily into the Armed Forces, and for other purposes; to the Committee on Armed Services.

REINSTATING THE MILITARY DRAFT

Mr. HOLLINGS. Mr. President, I do not intend or think that we in the United States will draft anybody in 1985 or perhaps even in 1986, but the ominous signs arising on the horizon indicate that what was and has been desirable to the Senator from South Carolina relative to our personnel in the Armed Forces, namely, that there be a universal call, a shared sacrifice, a cross section of our society in our Armed Forces, is becoming more and more a necessity every day.

For instance, everyone is now quoting the Bible. It was Paul who said in his letter to the Corinthians, "If the sound of the trumpet be uncertain, then who shall prepare for the battle?"

We are not emitting an uncertain sound for our Volunteer Army and our preparedness. The fact is that at Budget Committee hearings today with Secretary Weinberger and the Chairman of our Joint Chiefs of Staff, General Vessey, the picture was portrayed that would give the belief that there was no worry whatever, concerning DOD manning problems. Neither one of these gentlemen expressed real concern since we are meeting our required volunteer callups at this particular time. The truth, however, is that the Delayed Entry Program [DEP] of the Armed Forces, which is the true indicator of the potential for meeting recruiting needs, indicates that in 1985 the recruiting of nonprior service accessions in 1985 will be difficult.

The fiscal year 1985 marketing plan for the Department of Defense indicates there is a 11-percent dropoff for the DEP for the year-long period ending May 1984. In other words, the DOD recruiters have signed 12,500 fewer people to the DEP than last year. The Army is off 19 percent, the Navy 16 percent, and the Marines 12 percent. More ominous, there was an 11-percent increase in reneging on contracts by those in the DEP in 1984 over a similar period in 1983.

I would emphasize that these facts are evidence of the stiff competition facing the DOD in meeting future recruiting needs.

I further emphasize, Mr. President, that our Reserve Force are seriously in jeopardy. To begin with, one must realize that our Reserves, both the Selected Ready Reserve and the Individual Ready Reserve, are way below their war-time mobilization strengths—the Selected Reserve by over 50,000, and the Individual Ready Reserve by as much as 200,000. This makes no sense to me. We have seen recent significant increases in defense spending from $145 billion in 1980 to an adjusted $300 billion in 1985, but relatively little concern by the Department of Defense about a mobilization capability.

As I described in my initial comment, it is desirable in this Senator's opinion to return to a universal draft, I clearly see down the road a demographic fact of life which will mandate and make a universal call necessary.

I ask unanimous consent at this time to print in the RECORD the table prepared by Dr. Charles Moskos, relative to the percent of males (age 19) required for 410,000 nonprior-service males forecast until 1993.

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

PERCENT OF MALES (AGE 19)—NON PRIOR SERVICE (NPS)—REQUIRED TO MEET PROJECTED RECRUITING STANDARDS

| Year | Males age 19 (thousands) | Percent of males required for 410,000 NPS male accessions annually[1] | | |
|---|---|---|---|---|
| | | All males | Eligible males[2] | Eligible males excluding college population[3] |
| 1983 | 2,086 | 19.7 | 29.3 | 43.8 |
| 1984 | 1,994 | 20.6 | 30.7 | 45.9 |
| 1985 | 1,889 | 21.7 | 32.4 | 48.3 |
| 1986 | 1,836 | 22.3 | 33.3 | 49.8 |
| 1987 | 1,797 | 22.8 | 36.1 | 53.9 |
| 1988 | 1,819 | 22.5 | 33.7 | 50.2 |
| 1989 | 1,864 | 22.0 | 33.7 | 49.0 |
| 1990 | 1,910 | 21.5 | 32.1 | 47.8 |
| 1991 | 1,750 | 23.4 | 35.0 | 52.2 |
| 1992 | 1,656 | 24.8 | 37.0 | 55.2 |
| 1993 | 1,622 | 25.3 | 37.8 | 56.3 |

[1] Assumptions of Annual NPS Entrants: 1. enlisted active force, 325,000; 2. enlisted reserve force, 45,000; 3. enlisted Guard force, 60,000; 4. enlisted total force, 430,000; 5. commissioned officers, 30,000; 6. total entrants, 460,000; 7. minus female entrants, 50,000; and 8. total male entrants, 410,000.
[2] Two-thirds considered eligible on physical, mental, and moral grounds.
[3] One-third of cohort considered college population.

Note.—Table prepared by Charles Moskos.

PROJECTED NON PRIOR SERVICE ENLISTED ACCESSIONS BY SERVICE AND MALE AND FEMALE

[In thousands]

| | Active | Reserves | Guard | Total |
|---|---|---|---|---|
| Army | 120–150 | 30–40 | 50–60 | 200–250 |
| Navy | 80–85 | 2–3 | ..... | 80–85 |
| Air Force | 65–70 | 2–4 | 6–8 | 75–80 |
| Marine Corps | 40–45 | 8–9 | ..... | 45–50 |
| Total Force | 305–350 | 42–56 | 56–68 | 400–470 |
| Average | 325 | 45 | 60 | 430 |

Note.—Table prepared by Charles Moskos.

Mr. HOLLINGS. The facts are that of those males age 19—eligible for the draft in 1993—every other one will have to volunteer in order to meet the nonprior service accession requirements. We now need about two of five but will soon need one of two. As that ratio goes down and the constraints come—such as an economic recovery and near full employment—what you are going to find in reality is that the Volunteer Army is not going to work. It will be viewed by all outside of the service as not working.

More than anything else, Mr. President, the draft I propose is not the one we had in the Vietnam war. You mention the word "draft." Everyone jumps right back to the war in Vietnam. Nothing dismayed this Senator more than the fact in the Vietnam days that if you had cash you were either in college or in Canada. You were not in the Service doing your duty. But prior to the institution of the All-Volunteer Force in July 1973, the Congress, in response to the inequitable deferment and exemption standards of Vietnam days, tightened eligibility standards and greatly limited deferments and exemptions. Under my proposal, we would observe those tightened standards. For example, high school students could be deferred until they graduate, but in no case extending beyond the age of 20. Those in college could continue studying until the end of the semester or if in their senior year until the end of that school year. But since we all share the benefits of life here in America, under this plan we ensure that we all help shoulder the burden of defending it.

Mr. President, we need the draft for many reasons—most importantly, we need it in order to remain true to the ideals which built this country.

This is the third consecutive Congress that I have introduced draft legislation in—and I believe the need has been and continues to be the most compelling, but unrecognized, priority facing us. The ability and willingness of our Nation to meet its future security needs and those of our allies hang in the balance. Unfortunately, like in other urgencies, such as with the massive deficits, the Congress reaches a gridlock when action on the draft is warranted and has failed in its responsibility to solve the problem before time runs out.

The Department of Defense continues to cite the success of the All-Volunteer Force in reaching all of DOD's recruiting objectives. I do not for 1 minute think that the American public and our military leaders are fooled by such statistical gimmicks. We have had a recession, and our young people need jobs. It's that simple. Unemployment has been excessively high for our teenagers—particularly young blacks—where else can these people turn? The AVF is often the employer of last resort.

The AVF is a product of the Vietnam mindset. Early in the 1970's, with America's morale sapped by our involvement in Vietnam, everyone wanted the easy way for America to defend itself without personal sacrifice. So we instituted the Volunteer Army, and with that problem moved beyond arm's length, we put the whole defense problem beyond arm's length. That Volunteer Army which no longer touches every neighborhood is forgotten in appropriations and removed from everyday life in America as far as most citizens are concerned.

That attitude must change. I continually warned my colleagues when the AVF was begun in 1973 that the proposed AVF would only institutionalize the inequities of the draft—inequities which could have been remedied with much less dislocation. The Army speaks proudly of how well the AVF works, that it draws from all walks of life. Do not be fooled by these comments. The decision of 1973 insured that our Nation's defense burden would rest for the most part with the poor, the black, and the disadvantaged for years to come. And without a cross-section of representation, we have no cross-section of support. Rather than an equal call on all, we perpetuated the rich man's undemocratic lie: "We'll pay for it."

The fact is we can never pay for it. We can appropriate to cure the pay deficiencies, as we did with the large pay and benefits packages of recent years, but the fact is these were only half-way measures that did not address our long-term needs. On one end we have the equivalent of a military Job Corps. On the other end, we have middle grade officers who take home paychecks larger than those of the highest paid civilian employees or Members of Congress.

Large problems are just around the corner for the AVF as all the demographic indicators warn that the pool of 17- to 21-year-old males—the largest grouping of potential recruits—is going to fall off sharply. The "Baby Boom" is history, and the prognosis is for a rapidly shrinking recruiting pot. In 1980, there were approximately 11 million males in the 17- to 21-year-old category. By 1990, this group is projected to total less than 9 million while continuing to shrink in future years.

In 1980, the AVF was attempting to recruit one of five males 17 to 21 years old. As I stated previously, by 1993, some estimates show that the AVF—in order to meet projected recruiting goals—must get one of two males of age 19 due to the competition from an improved economy and when higher education is once again within the economic means of most young people.

The DOD is already seeing the results of heavy competition for our youth. Although recruiting quotas for fiscal year 1984 were met by the military services, the number of young men and women signed into the Delayed Entry Program [DEP], the pipeline that provides an early snapshot of the numbers of young recruits entering the Armed Forces, is encountering serious shortfalls from past years' experiences. These shortfalls are coming at a time when the Army's recruiting needs are rising—a fiscal year 1985 recruiting nonprior service goal of roughly 140,000 versus the 134,000 in fiscal year 1984.

A draft of the Army's future recruiting strategy, fiscal year 1985 marketing plan, notes that DOD-wide contract accomplishment—those in the DEP—in the top mental categories—categories I-IIIA is off 11 percent for the year-long period ending May 1984. As I have said, it is reported that DOD recruiters have signed 12,500 fewer people to the DEP than last year. The Army is off 19 percent, the Navy 16 percent, and the Marines 12 percent.

Further evidence of the stiff competition from improving employment rates is that 11 percent more in the fiscal year 1984 DEP reneged on their contracts than did those in the fiscal year 1983 DEP.

Mr. President, how will we meet the recruiting objectives in the light of

competition and the demand for one out of two males. You and I both know that answer. It's money. We will once again be on the treadmill of escalating pay and benefits while diminishing arms for our troops and lessening our capability to defend ourselves and honor our worldwide commitments.

The all-volunteer approach has been a failure. It has failed to provide the necessary number of combat troops. It has failed to provide a quality defense force. And we have failed as a people to fairly and equitably distribute the burden of our national defense. Our Volunteer Forces are sadly unrepresentative of the society they serve. Over one-quarter of all new recruits are black—double their proportion in the population. The number of other minorities is growing. Further, the minority soldiers are overrepresented in combat formations such as tank, artillery, and infantry outfits, raising the specter of disproportionate casualties among minorities in wartime.

The cross-section approach of an equitable draft solves this problem. The burden would be shared by all. Exemptions can and must be kept to a minimum. Just prior to the institution of the All-Volunteer Force, and in response to the inequitable deferment and exemption standards which had been in place, we tightened eligibility standards and greatly limited deferments and exemptions. Under the proposal I am introducing today, we would observe those necessary and tightened standards. Specifically, deferments and exemptions would be limited to: First, persons on active duty, in the Reserves, or in advanced ROTC study; Second, surviving sons or brothers of those killed in war or missing-in-action; third, conscientious objectors and ministers; fourth, professions necessary to national health, like doctors; fifth, judges of courts of record and elected officials; and sixth, for students, short-term postponements of their military obligation. Those in high school could be deferred until they graduate, but in no case extending beyond age 20. And those in college could continue studying until the end of the semester or, if in their senior year, until the end of that school year. We all share the benefits of life in America; under my plan, we ensure that we all help shoulder the burden of defending it.

Mr. President, I realize that if this draft legislation is passed, the administration will not rush toward implementation of a full-scale draft for our Active Forces. But one critical factor must be considered by the DOD before rejecting out-of-hand the draft approach. This factor concerns the size and strength of U.S. Reserve Forces.

To begin with, one must realize that our Reserves, both the Selected Ready Reserve [SRR] and the Individual Ready Reserve [IRR], are way below their wartime mobilization strengths—the Selected Reserve by over 50,000 and the Individual Ready Reserve by as much as 200,000.

We have a need now to shore up these forces. A draft can do that. It is the sponsors' wish that President Reagan use the draft to build up to and sustain a Reserve force and capability that meets our mobilization need. That is the minimum that is required, and it is required as soon as possible.

The cost, the concept, the civil wrong of a Volunteer Army are bad enough, but more than anything, it has required a civilization. That process can keep the Army content and happy in peacetime, but in war it fairly well guarantees that the soldier will not fight. Anyone who has ever served in war realizes that the motivation to kill, to defend, to advance, to hold an untenable spot all springs from a unit loyalty—a loyalty developed from working together, playing together, training together, staying together, and sacrificing together. It is an inner discipline; it is a developed pride for the organization that you are a part of. But to give the Volunteer Army appearances of success and harmony, civilization has taken over. Soldiers stay off camp or fort with their wives, weekends are off with their families, promotions are made with little regard to merit, and the commander that breaks down his barracks and finds drugs can only turn in the drugs and not the man because civilian law has taken over and a warrant is required. Turning the Army into a microcosm of the office down the street does not suffice. The kind of camaraderie needed to weld an effective fighting force cannot flourish in an atmosphere where the military is a part-time chore. Defending America is not a 9-to-5 job.

More than anything else, again, Mr. President, conscience tells us that we need a cross-section of America in our Armed Forces. Defense is everyone's business.

For the most advantaged of society to be dependent upon the least advantage in our society for our defense is a dangerous anachronism.

The great need, Mr. President, today is not so much a demonstration of military power; the great need is a demonstration of will power.

You can take the MX's, the B-1's, and the billions and billions of dollars appropriated for defense, that makes us act like we are strong. But that does not prove strength. There is one single action that would send the proper signal to the Soviets that action is for a universal call on the people in our land to defend our country. Russia would know then and there that the President, the Congress, and the people of America were united and that we were committed to the defense of freedom. While, yes the call to reinstitute the draft and the various selective service boards and the bureaucracy with it might cost a little under $1 billion, in the end it will mean not only the country having a stronger defense, but we will save billions of dollars. I want to address the subject raised Monday by OMB Director Stockman and discussed in this Chamber yesterday.

Mr. Stockman called the military pension system a scandal, outrageous.

What is disturbing to me from my experience in both military and civilian life, with 35 years service in public office, is the typical approach of laying blame at the wrong source.

We have a very generous policy with respect to the military in order to try to develop that volunteer Army. We have over $1 billion that we expend recruiting, and the recruitment officers go out and they do not talk patriotism. You have seen the TV ad, "Where the action is," and everything else. We tell them, "Come on in where the action is, in the Army, Navy, Air Force, and Marines; get in the action. Run into the place and volunteer right away." What are they promised if they do? They are promised that if they stay in 20 years a lifetime retirement is theirs. The average retirement age now is at 42 years, and the life expectancy is 74, so they have 32 years coming on where they will receive total retirement and pension benefits. They will be paid way more out of the Army than what they were paid in the Army.

But that is what, Mr. President, you and I promised them. That is our policy.

When Mr. Stockman jumps on the military—and while I complain about not getting the quality personnel I want in the Volunteer Army—at least they have sense enough to know what the contract is. Remember they have been told, "Come on in, you have post exchange rights, and you have commissary rights," and the Grace Commission calls that waste, fraud, and abuse. "Come on in and you get this retirement and pension benefits," and Dave Stockman calls it outrageous and a scandal, and they are a little wary and wonder what is going on.

If Mr. Stockman is so senseless as to feel that somehow he cannot get them to yield, there is no reason to yield. They have been given a contract. They were given that inducement, and they do not want to see the promises reneged upon and unkept.

They are keeping their part of the contract. They are staying and working hard in the All-Volunteer Force. They say "Do not come now Mr. Congressman, because you have a problem, whether they be with revenues or overspending, on the massive deficits. Do not come now and change my contract. That is how you got me in."

That is the promise made, and my support of a military draft is not going to go back on the contract made with those in the All-Volunteer Force at this point. But, on the contrary, we must begin to educate the American public as to where we are headed and what is going to be needed and what should be desired.

We have many things later on to point out with respect to our military budget, which I supported and continue to support over the years.

We have a gridlock due to a "staff" infection. We have overstaffed militarily and civilian wise in staff in that Pentagon, but I will elaborate on that at a later time.

But for the present moment, with respect to universal call, let it be stated on behalf of the military that we promised a better retirement system than for civilians.

That is not to be justified by the Pentagon. That is to be justified in this Chamber. We set that policy affirmatively. We wanted to give them more because we had to try to induce them to come into the All-Volunteer Force. Now that we have all other troubles relative to the budget, do not go around wrangling with our military who are trying to do the job as best they can at the present time.

I still do not think, of course, that the best they can do is fulfilling the defense needs here in the United States, and I respectfully submit this universal draft bill, in conjunction with my esteemed colleague, the Senator from Idaho [Mr. SYMMS].

In fairness to ourselves as a people, we need the draft—a universal draft, not the kind with all the exemptions that caused so much bitterness during Vietnam—a draft that would reflect the true character of America's greatness. We must provide for the reinstitution of registration and classification and for the reinstatement of the President's authority to induct individuals. We cannot respond to crises around the world unless our forces are significantly improved. The Joint Chiefs tell us so.

Conscience tells us that we need a cross-section of America in our Armed Forces. Defense is everybody's business. It is everybody's responsibility. Even if we had the money to make the All Volunteer Army work, a professional army is un-American. It is an anathema to a democratic republic—a glaring civil wrong. Not until it makes an equal call on rich and poor alike, educated and uneducated, white and black, will it be a true reflection of us as a people. America benefits when serving alongside the high school dropout is the Harvard graduate who goes on to win the Navy cross. A free society defended by the least free is a dangerous contradiction.

The great need of the hour is not so much a demonstration of military power. The great need for America is willpower. We lack credibility. If it is strength that must be shown the Soviets in order to obtain arms control, then better than all the MX's and B-1's and billions and billions of dollars—a universal military draft will get them to take notice. Ever since Vietnam, we have receded and withdrawn, refusing to commit. The lesson should have been learned by now that a President's commitment counts for little unless it reflects the commitment of the people.

The direction of our foreign policy, the power of our newest weaponry, and the number of dollars in the defense budget are meaningless unless we, as a people, are committed to the task of protecting a nation and aiding our allies—allies who by and large do maintain systems of military conscription.

From all of these standpoints then, Mr. President, the lack of military cohesiveness, extravagant cost, and primarily the unequal sharing of equal responsibilities—America needs the draft.

Mr. President, in a recent interview printed in the October 1, 1984, edition of U.S. News and World Report, General Bernard Rogers, commander of NATO Armed Forces, spoke of the need for a universal draft. I ask unanimous consent that General Rogers' remarks be printed in the RECORD.

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

HOW NATO'S TOP OFFICER VIEWS THE ALLIANCE

Gen. Bernard Rogers, commander of NATO armed forces in Europe, has assessed for correspondents the challenges confronting the alliance. Excerpts:

*The real Soviet threat.*—The biggest challenge we face in NATO is getting the message across to our people that there is a threat to their freedom down the road.

I am not talking about an attack out of the blue. My major concern is that the Soviets will accomplish the objective they've set in Western Europe, that they'll be able, without ever having to fire a shot, to coerce us and intimidate us. That is the major menace we face.

*Reliance on nuclear arms.*—If we were attacked conventionally, under the guidance I have from my political authorities, I have no option but to fairly quickly request the release of nuclear weapons.

Under current conditions—not sufficient ammunition stocks, not sufficient trained manpower to replace battlefield losses and not sufficient pre-positioned material such as tanks and armored personnel carriers—I must make that request fairly quickly. I do not like that.

*Launching nuclear weapons.*—I would send an early notification of possible use of nuclear weapons to my political authorities and say to them, if I have to use [such weapons], this is what we're thinking about. It's these kinds of militarily significant targets.

*How long would it take?*—Not as long as you think. You see, we have exercises here twice a year [to test decision making]. Hopefully, by the time I would have to send forward a request to use nuclear weapons, the [political authorities] would have considered all of the aspects, and I could get an answer back quickly. . . .

And if I get attacked with nuclear weapons and there's no time for consultations, I can go directly to leaders of the nuclear powers and request the release of nuclear weapons. . . . All this would have to be decided at a political level. Don't ever forget that.

*Role of emerging technology.*—We infantrymen have a rule of thumb: If you can reduce the ratio against which you have to defend to no more than 3 of them to 1 of us—and you have properly organized your defensive position—you can succeed in your defense.

To me, it makes sense to build on what we already have. For example, if we were able to design a precision guided missile that has 30 submunitions within its warhead and each submunition was to search out an individual tank, you could get 20 hits out of 30. Say that weapon would cost $500,000. That would be pretty cost-effective.

*Europe's contribution to NATO.*—If we go to war tomorrow, 90 percent of the land forces and three quarters of the air and navy would be Western European. In addition, most people do not realize the massive amount of hidden costs that Western European nations pay. Conscription has a hidden cost, a social cost, a personal cost, a human cost. . . .

I also know that Western European nations provide many facilities for which they get no return, not in taxes, not in revenue or anything.

In the end, I don't think it does too much good to point the finger at each other.

*Need for a U.S. draft.*—We need the draft today. . . . I have maintained through the past seven years that for that purpose (providing skilled replacements) the U.S. should draft sufficient men to be trained in those combat skills [using] random selection so an individual would be eligible for only one year.

Mr. HOLLINGS. Mr. President, we should listen to the words once again of John F. Kennedy—"Ask not what your country can do for you: Ask what you can do for your country." Mr. President, there is no painless way that we can provide for the defense of freedom.

Mr. President, I ask unanimous consent to have the bill printed in the RECORD.

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

S. 424

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 3 of the Military Selective Service Act (50 U.S.C. 453 App.) is amended by inserting "(a)" before "Except" at the beginning of such section and by adding at the end thereof the following new subsection:

"(b) The President shall, at the earliest practicable date, but not later than 180 days after the date of the enactment of this subsection, begin the registration and classification of citizens and other persons described in subsection (a) of this section.".

SEC. 2. Section 17(c) of the Military Selective Service Act (50 U.S.C. App. 467(c)) is

amended by striking out "July 1, 1973" and inserting in lieu thereof "September 30, 1998".

Mr. SYMMS. Mr. President, I rise to compliment the Senator from South Carolina on his remarks. I agree with much of what he has had to say here today and I praise him for introducing this legislation and, in so doing, join with him as a cosponsor of the bill to amend the Military Selective Service Act to provide for the reinstitution of the registration and classification of persons under such act, and to reinstate the authority of the President to induct persons involuntarily into the Armed Forces, and for other purposes.

Mr. President, the major purpose of the bill—and I think Senator HOLLINGS spoke to it quite ably—is to enhance the credibility of the U.S. military capability. There is an old saying in politics; "What is perceived oftentimes becomes the truth." When we speak of politics we must recognize that our Armed Forces are an extension of the United States ability to project its political wishes.

President Reagan is a firm supporter of the volunteer armed forces. He is committed to that. He has certainly enhanced the capability of the United States with respect to the perception in which we are viewed around the world. The address he delivered to this Nation last night was heard not only in all the nooks and crannies of the United States, but also all parts of the world.

The leadership and confidence which President Reagan, who is the leader of the free world, exudes to our country provides a sense of optimism and sends a message that is much more important than how many dollars we have, how many weapons systems we have, how many MX's we have, or how many pieces of equipment we have. It provides the perception that the United States is willing to demonstrate its will to defend people who are trying to defend their own liberties in this world, whether they be the freedom fighters in Afghanistan or the people in Nicaragua.

I support this bill for its policy purposes only. This bill is to point out the need to maintain our national will and determination for a selfdefense. It will allow the President of the United States to develop the appropriate policy to meet the manpower needed for a strong military force. This policy would be for the 1990's and beyond.

That is the reason why I join Senator HOLLINGS in this legislation today. I think the time will come, as the manpower pool shrinks and as the economy continues to grow, that we will have to take a careful look at how much money we can afford with respect to our personnel costs and with respect to defense.

More important than the cost is the dedication, the sense of purpose, the sense of service, and the sense of commitment to this country that we need on the part of our young people, so that there is the attitude in the United States that if the call comes, we, the American people, are going to insure our peace and our freedom by whatever means necessary.

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By Mr. GOLDWATER (for himself, Mr. HATCH, Mr. CRANSTON, Mr. SYMMS, Mr. DECONCINI, Mr. ABDNOR, Mr. ANDREWS, Mr. BENTSEN, Mr. BYRD, Mrs. HAWKINS, Mr. HEINZ, Mr. INOUYE, Mr. JOHNSTON, Mr. LUGAR, Mr. MATTINGLY, Mr. MELCHER, Mr. SARBANES, Mr. STEVENS, Mr. ZORINSKY, Mr. DURENBERGER, and Mr. LEAHY):

S. 425. A bill to amend the Public Health Service Act to establish a National Institute of Arthritis and Musculoskeletal and Skin Diseases; to the Committee on Labor and Human Resources.

NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES ACT

Mr. GOLDWATER. Mr. President, it is my pleasure to once again introduce legislation to create a separate Arthritis Institute in the National Institutes of Health. As before, Senator CRANSTON, who authored the National Arthritis Act of 1974, and Senator HATCH, chairman of the Labor and Human Resources Committee, are joining me as coauthors of the bill. Also, Senator SYMMS, who has contributed much personal time to the advancement of this measure, and my colleague from Arizona, Mr. DECONCINI, are among the original coauthors. We are joined by several other Senators.

For 5 years, a number of us have attempted to get a bill enacted that would provide for concentrated research by a separate unit of the National Institutes of Health in the field of arthritis. The measure has passed the Senate twice before and last year, on October 9, just before adjournment, both Houses of Congress cleared the legislation, S. 540, and sent it to the White House where it was unfortunately vetoed on very weak grounds. In fact, I think much of the reasoning given in the veto message pertained to an earlier version of S. 540 and did not take account of substantial revisions which were made in conference.

As passed by Congress last October, S. 540 included other subjects relating to biomedical research and the NIH that were not in the bill as first introduced. We are today returning to the original, basic concept of establishing a new and separate institute devoted exclusively to arthritis related diseases. Those subjects that were later added to S. 540 and are unrelated to arthritis have been deleted from the bill we are introducing today. They can be addressed in a separate NIH bill.

Mr. President, over 40 million people in this country suffer from chronic arthritis and there is of now no known cure. There is not even any scientific knowledge of the origin of the problem, nor can we identify one single source. This bill will offer realistic hope to these people, who suffer from arthritis without having any real assurance that they are going to someday be rid of the problem.

In human terms, concentration of research efforts in a single institute can lead to developments that will ease or cure the miserable pain and immobility suffered by the millions afflicted with arthritis. Moreover, for a small investment in treating and preventing arthritis, it would ultimately save hundreds of millions of dollars to the Federal Government that are now spent in Medicare payments, Federal employee disability compensation and high health insurance premiums directly associated with arthritis.

The health community informs me that researchers are on the verge of breakthroughs in this area. All they need is a concentration of the research effort.

Mr. President, I hope that all of my colleagues will join with us in supporting the bill and transferring arthritis to a separate institute where something truly worthwhile can be accomplished, and 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. 425

*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 "National Institute of Arthritis and Musculoskeletal and Skin Diseases Act of 1985".

SEC. 2. (a) Title IV of the Public Health Service Act is amended by adding at the end thereof the following new part:

"PART J—NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

"ESTABLISHMENT OF INSTITUTE

"SEC. 481. There is established in the Public Health Service a National Institute of Arthritis and Musculoskeletal and Skin Diseases (hereafter in this part referred to as the 'Institute'). The Institute shall be headed by a Director.

"PURPOSE OF THE INSTITUTE

"SEC. 482. (a) The purpose of the Institute is the conduct and support of research and training, the dissemination of health information, and related programs with respect to arthritis and musculoskeletal and skin diseases, including sports-related disorders.

"(b)(1) Within one hundred and eighty days after the effective date of this part, the Director of the Institute, with the advice of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council established pursuant to section 483 (hereafter in this part referred to as the

'Advisory Council'), shall prepare and transmit to the Congress and the Director of the National Institutes of Health a plan for a national arthritis and musculoskeletal diseases program to expand, intensify, and coordinate the activities of the Institute respecting arthritis and musculoskeletal diseases. The program shall be coordinated with the other national research institutes of the National Institutes of Health to the extent that such institutes have responsibilities respecting arthritis and musculoskeletal diseases, and shall, at least, provide for—

"(A) investigation into the epidemiology, etiology, and prevention of all forms of arthritis and musculoskeletal diseases, including sports-related disorders, primarily through the support of basic research in such areas as immunology, genetics, biochemistry, microbiology, physiology, bioengineering, and any other scientific discipline which can contribute important knowledge to the treatment and understanding of arthritis and musculoskeletal diseases;

"(B) research into the development, trial, and evaluation of techniques, drugs, and devices used in the diagnosis, treatment (including medical rehabilitation), and prevention of arthritis and musculoskeletal diseases;

"(C) research on the refinement, development, and evaluation of technological devices that will replace or be a substitute for damaged bone, muscle, and joints and other supporting structures; and

"(D) the establishment of mechanisms to monitor the causes of athletic injuries and identify ways of preventing such injuries on scholastic athletic fields.

"(2) The plan transmitted pursuant to paragraph (1) shall include such comments and recommendations as the Director of the Institute determines appropriate.

"(3) The Director of the Institute shall carry out the national arthritis and musculoskeletal diseases program in accordance with the plan prepared under paragraph (1). The Director of the Institute shall periodically review and revise such plan, shall transmit any revisions of such plan to the Congress and the Director of the National Institutes of Health, and shall carry out the national arthritis and musculoskeletal diseases program in accordance with such revisions.

"(c) The Director of the Institute shall—

"(1) carry out programs of support for research and training (other than training for which National Research Service Awards may be made under section 472) in the diagnosis, prevention, and treatment of arthritis and musculoskeletal and skin diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

"(2) establish programs of evaluation, planning, and dissemination of knowledge relating to such research and training.

"NATIONAL ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES ADVISORY COUNCIL

"SEC. 483. (a) The Secretary shall establish a National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to advise, consult with, and make recommendations to the Secretary and the Director with respect to the activities of the Institute relating to arthritis and musculoskeletal and skin diseases.

"(b) The Advisory Council shall consist of the Secretary, who shall be chairman, the Chief Medical Director of the Veterans' Administration (or the Director's designee) and the Assistant Secretary of Defense for Health Affairs (or the Assistant Secretary's designee), each of whom shall be ex officio members, and fourteen members appointed by the Secretary without regard to the civil service laws. The fourteen members appointed by the Secretary shall be leaders in the fields of basic sciences, medical sciences, education, and nursing, and individuals from the public who are knowledgeable with respect to arthritis and musculoskeletal and skin diseases. At least one member appointed by the Secretary from the public shall be an individual who suffers from arthritis or musculoskeletal or skin diseases and at least one member appointed by the Secretary from the public shall be an individual who is a parent of an individual who suffers from arthritis or musculoskeletal or skin diseases. Nine of the members appointed by the Secretary shall be selected from leading medical or scientific authorities who are outstanding in the study, diagnosis, or treatment of arthritis and musculoskeletal and skin diseases.

"(c)(1) Each member of the Advisory Council who is appointed by the Secretary shall be appointed for a term of four years, except that—

"(A) the term of office of the members first appointed shall expire, as determined by the Secretary at the time of appointment, three at the end of one year, three at the end of two years, four at the end of three years, and four at the end of four years; and

"(B) any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

"(2) None of the members appointed to the Advisory Council by the Secretary shall be eligible for reappointment unless a year has elapsed since the end of the prior term of such member on the Council.

"ADVISORY BOARD

"SEC. 484. (a) The Secretary shall establish in the Institute the National Arthritis Advisory Board (hereafter in this part referred to as the 'Advisory Board').

"(b) The Advisory Board shall be composed of eighteen appointed members and nonvoting, ex officio members as follows:

"(1) The Secretary shall appoint—

"(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to arthritis, musculoskeletal diseases, and skin diseases; and

"(B) six members from the general public who are knowledgeable with respect to such diseases, including at least one member who is a person who suffers from such a disease and one member who is a parent of a person who suffers from such a disease.

Of the appointed members at least five, by virtue of training or experience, shall be knowledgeable in health education, nursing, data systems, public information, or community program development.

"(2) The following shall be ex officio members of the Advisory Board: the Assistant Secretary for Health, the Director of the National Institutes of Health, the Director of the Institute, the Director of the Centers for Disease Control, the Chief Medical Director of the Veterans' Administration, the Assistant Secretary of Defense for Health Affairs (or the designees of such ex officio members), and such other officers and employees of the United States as the Secretary considers necessary for the Advisory Board to carry out its functions.

"(c) Members of the Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Advisory Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Advisory Board.

"(d) The term of office of an appointed member of the Advisory Board is three years. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than ninety days after the date on which the vacancy occurred.

"(e) The members of the Advisory Board shall select a chairman from among the appointed members.

"(f) The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, and (through contracts or other arrangements) with such administrative support services and facilities, such information, and such services of consultants, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

"(g) The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

"(h) The Advisory Board shall—

"(1) review and evaluate the implementation of the plan prepared under section 482(b) and periodically make recommendations to the Director of the Institute for the updating of the plan to ensure its continuing relevance;

"(2) for the purpose of assuring the most effective use and organization of resources respecting arthritis and musculoskeletal and skin diseases, advise and make recommendations to the Congress, the Secretary, the Director of the National Institutes of Health, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

"(3) maintain liaison with other advisory bodies for Federal agencies involved in the implementation of such plan, the coordinating committee for such diseases, and with key non-Federal entities involved in activities affecting the control of such diseases.

"(i) In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

"(j) The Advisory Board shall prepare an annual report for the Secretary which—

"(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

"(2) describes and evaluates the progress made in such year in research, treatment, education, and training with respect to arthritis, musculoskeletal diseases, and skin diseases;

"(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in the fiscal year for which the report is made; and

"(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 482(b).

"(k) To carry out this section, there are authorized to be appropriated $300,000 for the fiscal year ending September 30, 1986, and each of the two succeeding fiscal years.

"(l) The National Arthritis Advisory Board in existence on the effective date of the National Institute of Arthritis and Musculoskeletal and Skin Diseases Act of 1985 shall terminate not later than ninety days after such date. The Secretary shall make appointments to the Advisory Board established under subsection (a) before the expiration of such ninety-day period. The members of the Advisory Board in existence on such date may be appointed, in accordance with subsections (b) and (d), to the Board established under subsection (a).

"INTERAGENCY COORDINATING COMMITTEES

"SEC. 485. (a) For the purpose of—

"(1) better coordination of the research activities of all the national research institutes relating to arthritis, musculoskeletal diseases, and skin diseases, including sports-related disorders; and

"(2) coordinating those aspects of all Federal health programs and activities relating to arthritis, musculoskeletal diseases, and skin diseases in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities,

the Secretary shall establish an Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and a Skin Diseases Interagency Coordinating Committee (hereafter in this section individually referred to as a 'Committee').

"(b) Each Committee shall be composed of the Directors (or their designees) of each of the national research institutes and divisions involved in research regarding the diseases with respect to which the Committee is established, the Chief Medical Director of the Veterans' Administration (or the Director's designee), the Assistant Secretary of Defense for Health Affairs (or the Assistant Secretary's designee), and representatives of all other Federal departments and agencies (as determined by the Secretary) whose programs involve health functions or responsibilities relevant to arthritis and musculoskeletal diseases or skin diseases, as the case may be. Each Committee shall be chaired by the Director of the National Institutes of Health (or the Director's designee). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

"(c) Not later than one hundred and twenty days after the end of each fiscal year, each Committee shall prepare and transmit to the Secretary, the Director of the National Institutes of Health, the Director of the Institute, and the Advisory Council a report detailing the activities of the Committee in such fiscal year in carrying out paragraphs (1) and (2) of subsection (a).

"INFORMATION CLEARINGHOUSE AND DATA SYSTEM

"SEC. 486. (a) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with arthritis and musculoskeletal and skin diseases, including where possible, data involving general populations for the purpose of detection of individuals with a risk of developing arthritis and musculoskeletal and skin diseases. There are authorized to be appropriated to carry out this subsection $1,000,000 for the fiscal year ending September 30, 1986, $1,500,000 for the fiscal year ending September 30, 1987, and $1,800,000 for the fiscal year ending September 30, 1988.

"(b) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of arthritis and musculoskeletal and skin diseases by health professionals, patients, and the public. There are authorized to be appropriated to carry out this subsection $1,000,000 for the fiscal year ending September 30, 1986, $1,500,000 for the fiscal year ending September 30, 1987, and $1,800,000 for the fiscal year ending September 30, 1988.

"ARTHRITIS AND MUSCULOSKELETAL DISEASES DEMONSTRATION PROJECTS

"SEC. 487. (a) The Secretary may make grants to public and private nonprofit entities to establish and support projects for the development and demonstration of methods for screening, detection, and referral for treatment of arthritis and musculoskeletal diseases, and for the dissemination of information on such methods to the health and allied health professions. Activities under such projects shall be coordinated with Federal, State, local, and regional health agencies, centers assisted under section 488, and the data system established under subsection (c).

"(b) Projects supported under this section shall include—

"(1) programs which emphasize the development and demonstration of new and improved methods of screening and early detection, referral for treatment, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

"(2) programs which emphasize the development and demonstration of new and improved methods for patient referral from local hospitals and physicians to appropriate centers for early diagnosis and treatment;

"(3) programs which emphasize the development and demonstration of new and improved means of standardizing patient data and recordkeeping;

"(4) programs which emphasize the development and demonstration of new and improved methods of dissemination of knowledge about the programs, methods, and means referred to in paragraphs (1), (2), and (3) of this subsection to health and allied health professionals;

"(5) programs which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information—

"(A) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

"(B) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive treatment, and control methods for arthritis and unapproved and ineffective drugs and devices for arthritis and musculoskeletal diseases; and

"(6) projects for investigation into the epidemiology of all forms and aspects of arthritis and musculoskeletal diseases, including investigations into the social, environmental, behavioral, nutritional, and genetic determinants and influences involved in the epidemiology of arthritis and musculoskeletal diseases.

"(c) The Director shall provide for the standardization of patient data and recordkeeping and for the collection, storage, analysis, retrieval, and dissemination of such data in cooperation with projects under this section, centers assisted under section 488, and other persons engaged in arthritis and musculoskeletal disease programs.

"(d) There are authorized to be appropriated to carry out this section $5,000,000 for the fiscal year ending September 30, 1986, and each of the two succeeding fiscal years.

"MULTIPURPOSE ARTHRITIS AND MUSCULOSKELETAL DISEASES CENTERS

"SEC. 488. (a) The Director of the Institute shall, after consultation with the Advisory Council, provide for the development, modernization, and operation (including staffing and other operating costs such as the costs of patient care required for research) of new and existing centers for arthritis and musculoskeletal diseases. For purposes of this section, the term 'modernization' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

"(b) Each center assisted under this section shall—

"(1)(A) use the facilities of a single institution or a consortium of cooperating institutions, and (B) meet such qualifications as may be prescribed by the Secretary; and

"(2) conduct—

"(A) basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of arthritis and musculoskeletal diseases and complications resulting from arthritis and musculoskeletal diseases, including research into implantable biomaterials and biomechanical and other orthopedic procedures;

"(B) training programs for physicians, scientists, and other health and allied health professionals;

"(C) information and continuing education programs for physicians and other health and allied health professionals who provide care for patients with arthritis and musculoskeletal diseases; and

"(D) programs for the dissemination to the general public of information—

"(i) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

"(ii) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive, treatment, and control methods and unapproved and ineffective drugs and devices.

A center may use funds provided under subsection (a) to provide stipends for health professionals enrolled in training programs described in paragraph (2)(B).

"(c) Each center assisted under this section may conduct programs to—

"(1) establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

"(2) disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping; and

"(3) develop community consultative services to facilitate the referral of patients to centers for treatment.

"(d) The Director of the Institute shall, insofar as practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of children affected by arthritis and musculoskeletal diseases.

"(e) Support of a center under this section may be for a period of not to exceed five years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate scientific review group established by the Director and such scientific review group has recommended to the Director that support of such center under this section should be extended.

"(f) There are authorized to be appropriated to carry out this section $12,000,000 for the fiscal year ending September 30, 1986, $15,000,000 for the fiscal year ending September 30, 1987, and $18,000,000 for the fiscal year ending September 30, 1988.

"BIENNIAL REPORT

"SEC. 489. (a) The Director of the Institute shall prepare and transmit to the Secretary, for transmission by the Secretary to the President and the Congress, a biennial report containing a description of the Institute's activities under the plan developed under section 482(b) and an evaluation of the activities of the centers supported under section 488.

"(b) The first report under subsection (a) shall be transmitted by the Director to the Secretary not later than the first November 30 which occurs at least eighteen months after the effective date of this part and shall relate to the two-fiscal-year period ending on the preceding September 30.".

(b)(1) Section 431(a) of such Act is amended by striking out "arthritis, rheumatism, and".

(2)(A) Subsection (a) of section 434 of such Act is amended—

(i) by striking out "Arthritis, Rheumatism, and"; and

(ii) by striking out "Arthritis, Diabetes," each place it appears and inserting in lieu thereof "Diabetes".

(B) Subsection (b) of such section is amended—

(i) by striking out "Arthritis, Diabetes," and inserting in lieu thereof "Diabetes"; and

(ii) by striking out "an Associate Director for Arthritis and Musculoskeletal and Skin Diseases,".

(C) Subsection (c) of such section is amended—

(i) by striking out "a subcommittee on arthritis and musculoskeletal and skin diseases," in the first sentence; and

(ii) by striking out "arthritis, musculoskeletal and skin diseases," in the last sentence.

(D) Subsection (d) of such section is amended—

(i) by striking out "the Associate Director for Arthritis and Musculoskeletal and Skin Diseases," in the matter preceding paragraph (1); and

(ii) by striking out "arthritis, musculoskeletal and skin diseases," in paragraph (1).

(E) Subsection (e) of such section is amended by striking out paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(F) The section heading of such section is amended by striking out "ARTHRITIS, DIABETES," and inserting in lieu thereof "DIABETES".

(3)(A) Subsection (a) of section 436 of such Act is amended—

(i) by striking out "arthritis, diabetes mellitus," in paragraph (1) and inserting in lieu thereof "diabetes mellitus";

(ii) by striking out "an Arthritis Interagency Coordinating Committee," in the matter following paragraph (2); and

(iii) by striking out the comma before "and a Digestive Diseases" in the matter following paragraph (2).

(B) Subsection (b) of such section is amended by striking out "Arthritis, Diabetes," and inserting in lieu thereof "Diabetes".

(4)(A) Subsection (a) of section 437 of such Act is amended by striking out "the National Arthritis Advisory Board," and by striking out the comma before "and the National Digestive Diseases".

(B) The first sentence of paragraph (2) of subsection (b) of such Act is amended by striking out "Arthritis, Diabetes," and inserting in lieu thereof "Diabetes".

(C) The last sentence of subsection (d) of such section is amended by striking out "and the National Arthritis Advisory Board".

(D) Subsection (g) of such section is amended by striking out "Arthritis, Diabetes," and inserting in lieu thereof "Diabetes".

(E) Paragraph (3) of subsection (h) of such section is amended by striking out "Arthritis , Diabetes," and inserting in lieu thereof "Diabetes".

(F) The section heading of such section is amended by striking out "DIABETES, ARTHRITIS," and inserting in lieu thereof "DIABETES".

(5) Sections 438 and 439 of such Act are repealed.

(6) Section 440 of such Act is amended by striking out "Arthritis, Diabetes," and inserting in lieu thereof "Diabetes".

(7) The second sentence of section 440A(a) of such Act is amended by striking out "Arthritis, Metabolism," and inserting in lieu thereof "Diabetes".

(8) The part heading for part D of title IV of such Act is amended by striking out "Arthritis, Diabetes," and inserting in lieu thereof "Diabetes".

(c)(1) There are transferred to the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases established under section 481 of the Public Health Service Act (as added by subsection (a) of this section) all functions of the Director of the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (as in effect on the day before the date of enactment of this Act) relating to arthritis and musculoskeletal and skin diseases).

(2) In order that the National Institute of Arthritis and Musculoskeletal and Skin Diseases established by section 481 of the Public Health Service Act (as added by subsection (a) of this section) may carry out programs and activities relating to arthritis and musculoskeletal and skin diseases at levels which are equivalent to the levels of programs and activities carried out with respect to arthritis and musculoskeletal and skin diseases by the National Institute of Arthritis, Diabetes, and Digestive Kidney Diseases on the day before the date of enactment of this Act, the Secretary of Health and Human Services, after consultation with the Comptroller General of the United States, shall transfer to the National Institute of Arthritis and Musculoskeletal and Skin Diseases established by section 481 of the Public Health Service Act (as added by subsection (a) of this section) the personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or be made available, in connection with the functions transferred by paragraph (1) of this subsection and the programs and activities relating to arthritis and musculoskeletal and skin diseases carried out by the National Institute of Arthritis, Diabetes, and Digestive Kidney Diseases on the day before the date of enactment of this subsection.

(d) For the fiscal year ending September 30, 1986, there are authorized to be appropriated such sums as may be necessary to establish the National Institute of Arthritis and Musculoskeletal and Skin Diseases under section 481 of the Public Health Service Act (as added by subsection (a) of this section) and to carry out the transfers made by subsection (c) of this section.

(e) The provisions of subsections (a), (b), (c), and (d) of this section and the amendments and repeals made by such subsections shall take effect on October 1, 1985.

Mr. HATCH. Mr. President, once again I join Senator GOLDWATER and my other colleagues in the Senate in sponsoring legislation to create a National Institute on Arthritis, Musculoskeletal and Skin Diseases at the National Institutes of Health. This marks the third Congress in which similar legislation has been introduced. Both Houses of Congress have separately and jointly passed legislation creating an arthritis institute, but we have yet to succeed in getting it signed into law.

Arthritis is our country's No. 1 cripple—36 million Americans of all ages are afflicted by this serious and sometimes fatal disease. An additional 1 million Americans are diagnosed as having arthritis each year. In my home State of Utah, more than 230,000 people are afflicted with arthritis. Most of the 100 or so forms of arthritis are caused by degenerative factors, and there is no known cure.

Without a cure, arthritis victims suffer throughout their life. The disease denies them the mobility and independence that otherwise healthy Americans enjoy. Arthritis victims are limited in the places they can go and the things they can do. Many victims find they must change jobs, abandon hobbies, or find new social interests that will fit in with their new life style. It is in the best interest of our citizens to focus a national research effort on the prevention, diagnosis, treatment, and eventual cure of arthri-

tis and other related debilitating diseases.

Billions of dollars are spent annually on arthritis—for research, prevention, treatment, and cures. For many victims, the pain is so great that they will try almost anything to relieve it. Americans spent almost $2 billion in 1984 on questionable and unproven remedies that promise fast, easy relief for arthritis. This represents a financial burden for the families of arthritis sufferers, and eventually robs our economy. A focused national research effort on arthritis can help curb the financial costs to families, employers, and the Government by reducing the costs of health care and disability.

Arthritis is not hopeless. Ours is the first generation that can ease the pain of most forms of arthritis. Arthritis victims are receiving more relief for their suffering now than they did a few years ago. This represents progress and provides hope for even more relief in the future. But "controlling" a problem is not a "cure." Much work remains to be done in arthritis research to more effectively treat, and to find the much needed cures for these diseases.

This is the hope my colleagues and I share along with the millions of arthritis sufferers. However, arthritis is not the only debilitating disease affecting our citizens. Many other musculoskeletal and skin diseases afflict Americans and limit their freedom and independence. There is neither sufficient scientific knowledge to understand their causes nor to provide adequate treatment to relieve pain and disability.

The establishment of a National Institute on Arthritis, Musculoskeletal and Skin Diseases represents a significant research investment. It is my hope that the scientific community will make major advances in the prevention, treatment, and cure of arthritis and skin diseases through a more concerted research effort. A greater Federal effort would also provide the incentive and encouragement to the private sector to support research programs which complement publicly funded research.

Strong public support for the creation of the arthritis institute helped push a similar bill through the 98th Congress. Thousands of people wrote to me in support of that bill. An article in one paper alone prompted more than 8,000 responses encouraging this effort. Most of these letters were written by individuals suffering from arthritis or members of their families—people with personal experience with the pain and suffering caused by arthritis. Now is the time for Congress to respond to their pleas by once again sending to the President legislation creating a National Institute on Arthritis.

I encourage all of my colleagues to join us in this legislative endeavor which offers hope to millions of suffering Americans.

Mr. CRANSTON. Mr. President, I am pleased to join once again with the distinguished Senator from Arizona [Mr. GOLDWATER] in reintroducing a bill to establish a National Institute of Arthritis and Musculoskeletal and Skin Diseases within the National Institutes of Health. If enacted, this legislation would help to promote our Nation's research efforts for some of the most prevalent and devastating diseases afflicting our society.

Mr. President, this marks the third time that Senator GOLDWATER and I have introduced a bill to establish a new National Arthritis Institute. We are joined in cosponsoring this legislation by many of our colleagues who were supporters of similar legislation that was proposed during the last two Congresses. In the 97th Congress, our bill, S. 1939, passed the Senate, and a similar measure was included in the House-passed H.R. 6457. However, no final action was taken on either of those measures. In the 98th Congress, the Senate passed S. 540—with 47 cosponsors—on May 24, 1984. The House-passed version of S. 540 included the Senate bill as one provision of a wide-ranging measure that would have reauthorized appropriations for the NIH. Both Houses agreed to the conference report on October 9, 1984. Unfortunately, despite strong bipartisan support in the House and the Senate, the President pocket-vetoed the bill.

Mr. President, the Senate has demonstrated overwhelmingly on two prior occasions its desire and intention to establish a National Institute of Arthritis and Musculoskeletal and Skin Diseases. I am hopeful that my colleagues will do so once again and that this time our effort to turn this legislation into law will be successful.

Mr. President, before describing the provisions of our bill, I would like to discuss briefly what we know about arthritis, its nature and incidence, and its costs to the Nation.

WHAT IS ARTHRITIS?

Arthritis is a form of musculoskeletal disease. It attacks the body's movable joints and connective tissues, sometimes resulting in systemic complications with critical damage to major organs. Actually, arthritis is a generic term covering more than 100 forms of diseases that afflict 37 million Americans—15 percent of the U.S. population. Approximately one out of every seven citizens has some form of arthritis. Each year, about 1 million more Americans fall victim to this painful and debilitating disorder. Over 20 million Americans suffer from arthritis severe enough that they seek a physician's help. In 1978, 549,000 hospitalizations were due to arthritis-related diseases.

Arthritis is usually thought of as a condition of old age. It affects more than 40 percent of people over age 65. But it afflicts old and young alike. A particularly devastating form of the disease is juvenile arthritis which affects over 250,000 children. The incidence of arthritis among children is now higher than that of polio during the most severe epidemics of the past. As in the case of cancer and heart conditions, when a chronic disease such as arthritis strikes a child, it can often be much more serious than an adult case. Juvenile arthritis can stunt growth, blind, cripple, and deform, and it can kill. Over half of the children afflicted with this disease carry crippling handicaps into their adult years.

An estimated 6.5 million Americans are victims of rheumatoid arthritis, the most devastating and crippling form of arthritis. It is a chronic disease that leads to permanent joint deformities and lifelong disability. Rheumatoid arthritis is especially insidious; it progresses rapidly and can be a systemic disease damaging other organs, such as the lungs, heart, or the eyes. This disease strikes individuals of all ages from the very young to the very old and affects women three times as often as men. Its cause is unknown.

Osteoarthritis is the most common form of arthritis. According to the National Health Examination Survey for 1960 to 1962, over 37.4 percent of the population aged 18 to 79 had some form of osteoarthritis. For those individuals age 75 and over, the incidence of the disease was as high as 86 percent. Due to aging trends in the population, the incidence of osteoarthritis is probably much higher than these figures would indicate.

Although osteoarthritis usually develops more slowly and is milder and less painful than rheumatoid arthritis, it is a progressive condition that can in its later stages produce extreme pain and disability. Over 10 million Americans have osteoarthritis severe enough to cause painful problems seriously affecting their ability to perform their daily activities and their jobs.

Osteoarthritis often develops after traumatic injury to a joint. According to a 1971 survey, there were 17 million significant injuries associated with sports and recreational activities plus 11 million disabling injuries resulting from non-sports-related accidents. Of these roughly 28 million accidents, about 80 percent, or 22 million, involved the musculoskeletal system—more than 2 million involved joint injuries. Despite the long-term consequences and the seriousness of posttraumatic osteoarthritis and the incidence of the disease, little research has been conducted in this special field.

Other arthritis-related diseases are particularly prevalent among women.

Osteoporosis, a disease resulting in brittle bones due to a loss of calcium from the bones, is a leading cause of nursing home placements. It occurs in varying degrees in many elderly persons. However, nearly 90 percent of women 75 years of age and older show x ray evidence of some degree of this disease.

Systemic lupus erthematosus, a potentially fatal connective tissue disease, is one of the most frequent, serious disorders in women of childbearing age. An estimated 50,000 new cases of this disease are diagnosed each year, indicating that the disease is far more common than it was formerly thought to be.

THE ECONOMIC COSTS OF ARTHRITIS

Mr. President, the financial costs of arthritis to patients, insurance companies, and taxpayers are staggering. The Arthritis Foundation estimated that in 1982, Americans paid $14.5 billion for costs related to arthritis—nearly 5 percent of our current national health-care bill. In 1980, approximately $1 billion of what was spent for arthritis was spent on quack remedies. The physical and emotional costs to the victims of the disease and their families are enormous.

In 1971, over 27 million workdays were lost to arthritis-related disabilities. This represented over $5 billion in wages lost to employees.

Individuals with arthritis account for about 19 percent of those receiving social security disability insurance—SSDI—benefits. Although many workers with arthritis remain on the job as long as possible, some 500,000 workers disabled by arthritis and forced by the intense pain and physical limitations that they suffer to leave their jobs are today collecting SSDI benefits. The cost to the Nation for these payments in fiscal year 1983 alone is estimated to have been $2.8 billion. If payments for their dependents are included, this figure is estimated to be as high as $3.3 billion.

THE NEED FOR A STRONGER APPROACH FOR ARTHRITIS RESEARCH

Mr. President, research is the best investment we can make to help arthritis sufferers. As the author of the National Arthritis Act of 1974—Public Law 93-640—and amendments to it in 1976 and 1980, I have long been acutely aware of the needs of and potential for research into arthritis and musculoskeletal and skin diseases. It is clear to me that we need a stronger approach to arthritis research. Although the National Arthritis Act of 1974 has been successsful in establishing sound strategies for the utilization of our national resources to wage a stronger attack against arthritis, and progress in biomedical research has substantially increased our knowledge of the disease, implementation of that law has fallen short of what should have been achieved and far short of what could be gained through an accelerated research effort into this important area of study.

The National Arthritis Act of 1974 provided for the design of a master arthritis research plan—the so-called national arthritis plan—to identify the areas of research to be pursued, the resources available for arthritis research, and the additional resources needed for research progress. The act also authorized the creation of research and demonstration centers to provide an opportunity for intensive interdisciplinary arthritis research as well as training in and demonstration of advanced diagnostic, prevention, treatment, and control methods related to arthritis. Unfortunately, the budget levels recommended under the plan for arthritis-related research within NIH have not been realized.

Part of the reason that arthritis and musculoskeletal and skin disease research has not received the focus and priority it warrants is that it is lumped within the current institute, NIADDK, with an incongruous mixture of disease categories. Congressional intent to focus research on arthritis-related diseases under the original National Institute of Arthritis and Metabolic Diseases has been diluted over time by the combination of so many disparate research programs under NIADDK. That Institute now includes in its mission—in addition to arthritis and musculoskeletal and skin diseases—diabetes, kidney diseases, digestive diseases, nutrition, endocrinology, urology, and hematology.

Within the current Institute, arthritis lacks the focus, direction, and visibility that are essential to a comprehensive and integrated research program addressing one of our country's major health problems. The existing structure has led to funding disparities within NIADDK. In the last 12 years, funding for arthritis research has grown from 7.8 percent of the total NIADDK budget in 1970 to 16.9 percent in 1982. By comparison, in 1970, diabetes funding amounted to 5.5 percent of that Institute's budget, and by 1982, funding for diabetes research had grown to 35.3 percent of the NIADDK's total budget.

The funding recommendations originally proposed under the national arthritis plan reflect the human and economic costs of arthritis and related diseases. To reduce those costs, we need to move far closer to the levels of support and national commitment called for in the plan.

Given the Reagan administration's shrinking budget for our overall Federal research effort, I believe we must develop policies for using limited financial resources more effectively and efficiently so that we can gain the maximum benefits for our efforts. By establishing a separate National Institute of Arthritis and Musculoskeletal and Skin Diseases, we would provide arthritis-related issues with the greater visibility they should have at the national level and hence enable researchers in these areas to compete more successfully for increasingly scarce resources. Most important, the creation of a separate institute for arthritis-related research would attract new, high quality scientists and lead to an accelerated, better coordinated research effort into the causes, prevention, and treatment of arthritis. These have been the results of the establishment of other institutes specializing in a one-family or other logical grouping of disorders such as the National Eye Institute and the National Institute on Aging. Thus, this legislation would facilitate the implementation of high-priority programs as authorized by the National Arthritis Act of 1974 and the national arthritis plan.

Mr. President, S. 540 in the 98th Congress included a provision requiring that a study be conducted of the effectiveness of the existing combinations of disease research programs within the individual institutes of NIH and of what standards should be applied in the future in establishing additional new institutes. Before any action was taken on the bill, the Assistant Secretary for Health, in the spring of 1983, contracted with the Institute of Medicine [IOM], of the National Academy of Sciences, to undertake such a study. The findings of the study were published in an October 1984 report entitled, "Responding to Health Needs and Scientific Opportunity: The Organizational Structure of the National Institutes of Health."

The report recommended five criteria for evaluating organizational changes within the NIH. I believe that the proposed new institute meets each of those criteria.

The first criterion states: "The activity of a new institute or other organizational entity must be compatible with the research and research training mission of NIH."

The new institute clearly meets this criterion; it would provide for the expansion of the current research effort on arthritis that currently is being carried out in the NIH and is, obviously, fully compatible with the mission of the NIH.

The second criterion states: "It must be demonstrable that the research area of a new institute is not already receiving adequate or appropriate attention."

Although arthritis and musculoskeletal and skin diseases afflict more than 15 percent of the total U.S. population, in 1983, just 2 percent of the entire NIH research budget is devoted to arthritis-related research. The Federal Government, through NIH, annually spends on arthritis research only $1.50 per person afflicted with arthri-

tis in this country. Several hundred times that amount each year is spent per patient on cancer research.

The level of support for arthritis research is simply not commensurate with the prevalence and severity of the disease. With 35 million people afflicted and an estimated annual cost of $18 billion in hospital costs, drugs, and lost productivity—in comparison, 10.5 million people have diabetes at an estimated annual cost of $10 billion—arthritis research receives less than one-half the funding of diabetes research.

The third criterion states: "There must be reasonable prospects for scientific growth in a research area to justify the investment of a new institute."

Research in arthritis, as with other disease research, relies on discoveries in the basic sciences—for instance, genetics, infectious agents, and immunology. Recent discoveries in those areas, such as genetic engineering and monoclonal antibodies, are enabling far-reaching advances to be made in understanding the causes of arthritis, and will be invaluable in the development of treatments for many forms of arthritis. The 1984 annual report of the National Arthritis Advisory Board concluded:

> The probabilities are high that in the next decade a cause of certain diseases will be elucidated, or that the specific immune response genes will be localized, or that the exact mechanisms of inflammatory responses will be defined. Perhaps an effective cure or prevention of one or more of these crippling, chronic diseases will be defined.

The Board also recommended that the Multipurpose Arthritis Centers Program be expanded to enable the swift and effective application of available knowledge for the treatment of patients with arthritis and related musculoskeletal diseases. There is no question that ample room for scientific growth and progress as well as good prospects for achieving them exist in arthritis research—and those are precisely the reasons for establishing an institute.

The fourth criterion states: "There must be reasonable prospects of sufficient funding for a new institute."

There has been repeated concern that the administrative costs associated with the establishment of a new institute would drain research dollars. However, because much of the administrative costs would be transferred from those presently allocated to the arthritis division, added costs were estimated in 1982 to total $1.8 million. Ongoing administrative costs could be further minimized through the sharing of support staffs and services, as recommended in the IOM report.

The current funding level for arthritis-related research is far short of that recommended in the national arthritis plan. The plan recommended that funds be doubled in 1977 for arthritis-related research and that thereafter funding be increased annually by about 20 percent through 1980. However, those levels of funding for arthritis within the NIADDK have never been realized. The result has been that, during the period 1977 through 1981, substantially less than half of the arthritis-related research grant applications that were approved for funding have been able to be funded by the NIADDK. At such time as additional resources are made available to NIH, arthritis-related research should clearly be one of the top priorities for new funding.

The fifth criterion states: "A proposed change in the NIH organizational structure should, on balance, improve communication, management, priority setting, and accountability."

Within the structure of the NIADDK, a separate division exists for the administration of research in arthritis and musculoskeletal and skin diseases. Likewise, diabetes, digestive diseases, and kidney research are each administered under individual division. Thus, separating the arthritis division from the remainder of the institute would not impose a new organizational system in the administration of those research areas.

The IOM report expressed concern that the benefits derived from a broad-based approach to research—in which many research areas are integrated—must be balanced against the need for increased visibility and focus. In the case of NIADDK, however, there is very little crossover of research interests among scientists investigating digestive diseases or diabetes, on the one hand, and arthritis, on the other. In fact, arthritis research shares more common ground with research ongoing at the Institute on Allergies and Infectious Diseases than it does with research in its present institute.

Arthritis research within the NIADDK is overshadowed by the research on diabetes and kidney diseases. A separate institute devoted to arthritis-related research—with enhanced visibility—would contribute to greater public accountability, and lead to more consistency in program missions.

Finally, the IOM report suggested seven alternative means to the establishment of a new institute for increasing visibility of a research area. They include publicizing the accomplishments of scientific research; forming a special advisory board; holding major conferences; upgrading organizational status; disseminating results of research to clinical centers; improving the grant application process; and forming an NIH-wide committee to develop research in the area.

As part of the national arthritis plan, begun 10 years ago, these recommendations have already been implemented to a substantial degree—the National Arthritis Advisory Board, for instance, has been active since 1977. Yet, the fact remains that the current effort falls far short of the activity level that could be considered commensurate with the magnitude or urgency of the disease.

ORGANIZATION OF THE NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

Mr. President, the statutory authority for the establishment of the new National Institute of Arthritis and Musculoskeletal and Skin Diseases would be patterned after that of other NIH research institutes. Thus, the new institute would be directed to undertake research and demonstrations related to the causes, prevention, and treatment of arthritis and musculoskeletal and skin diseases; to promote coordination of research programs in the public and private sector; to make grants for research; to establish an information clearinghouse and data system; and to conduct and support research training. This is the same mandate that the current NIADDK has with respect to arthritis and musculoskeletal and skin diseases. In addition, in very fitting recognition of the tremendous number of traumatic musculoskeletal injuries that Americans receive in sports and other recreational activities, the new institute would include in its focus research on sports-related disorders.

The National Institute of Arthritis and Musculoskeletal and Skin Diseases would receive its funding under the existing authority of section 301 of the Public Health Service Act, as is the case for most other NIH Institutes. Because the present organizational division pertaining to arthritis and musculoskeletal and skin diseases within NIADDK is already autonomous in many of its functions, the benefits to be gained from the greater visibility for such research would more than compensate for any increase in administrative costs—which is not likely to be substantial. In order to facilitate the administrative separation of the new institute from the present NIADDK, our bill would provide for the orderly and fair transfer to the new institute of all resources that are related to arthritis and musculoskeletal and skin disease research programs and activities currently being carried out by the NIADDK.

The legislation would also extend, for the next 3 fiscal years, the authorizations of appropriations, which would otherwise expire at the end of fiscal year 1985, for the National Arthritis and Musculoskeletal and Skin Diseases Data System, the National Arthritis and Musculoskeletal and Skin Diseases Information Clearinghouse, the Arthritis and Musculoskeletal Diseases Demonstration Projects, and the Mul-

tipurpose Arthritis and Musculoskeletal Diseases Centers.

CONCLUSION

Mr. President, we cannot afford to ignore the need to find ways to improve the quality of life for those unfortunate individuals who suffer from arthritis. An accelerated research effort in arthritis has great potential to bring us much closer to providing these millions of individuals with relief from their pain and the potential for full participation in everyday activities.

Thus, I urge my colleagues to support this important legislation, and I urge that the Committee on Labor and Human Resources, to which our bill will be referred, give it prompt and careful consideration. I pledge to my good friend the distinguished chairman [Mr. HATCH] who is a principal cosponsor of this measure, and the very able ranking Democratic Member [Mr. KENNEDY] my full cooperation and assistance in the further development and progress of this legislation.

Mr. SYMMS. Mr. President, I wish to add my strong support to those who have labored during the last 4 years to effect the establishment of a separate institute for arthritis and related diseases at the National Institutes of Health.

Arthritis is our Nation's No. 1 disabling disease, affecting nearly 37 million persons in America, or 1 of every 7 people. Those affected may suffer from any of the 100 distinct disease entities, ranging in scope and severity from scleroderma to gout, to ankylosing spondylitis, lupus, and rheumatoid arthritis.

Although arthritis and musculoskeletal diseases effect all ages, 40 percent of the population over 65 has a rheumatic disease. And, as our Nation's population ages, the prevalence of arthritis will increase as the elderly population expands from 10 percent to 20 percent by the year 2030.

The National Center for Health Statistics predicts that in the year 2000, less than 20 years from now, expenses attributable to arthritis will reach nearly $100 billion annually. Arthritis and other musculoskeletal diseases are responsible for major costs of workers' compensation, Social Security benefits, Medicare payments, and hospital and nursing home stays. And, regretfully, nearly $1 billion is spent annually by arthritis sufferers who purchase or seek out unproven drugs and treatments.

Of equal, if not greater importance, are the indirect personal losses in productivity resulting from lack of wages or inability to earn a livelihood, due to a limiting or disabling disease such as arthritis.

I believe that the magnitude of the human and economic impact of arthritis on the Nation demands the sharp national focus of this family of disease that only a separate institute can bring.

The National Arthritis Act of 1974 proposed the creation of a separate arthritis institute. The National Commission on Arthritis and Related Musculoskeletal Diseases, established by that act, set forth some 150 specific recommendations to be addressed in order to adequately promote a national attack on arthritis. The essence of the Commission's findings was that the vast impact of arthritis on the Nation has not been matched by a determination to accelerate research and training to improve the treatment of rheumatic diseases, to prevent them, and to find cures for them.

The health sciences are in an extraordinary period of advancement, and competition for research funds is keen. But the promising discoveries made in the arthritis field in recent years support our belief that with adequate funding and focused research priority, some forms of arthritis might be prevented, cures may be found, and therapies developed to improve the condition of arthritis victims.

As many of you know, I have actively supported the establishment of a separate institute for arthritis, along with Senators GOLDWATER, HATCH, CRANSTON, DOLE, and others. We believe that a separate institute would provide the environment for an accelerated research effort in arthritis, musculoskeletal and skin diseases. These diseases afflict more than 15 percent of the total U.S. population, but in 1983 just 2 percent of the entire NIH research budget was devoted to arthritis-related research.

I urge the support of my fellow Senators in approving this legislation to authorize in statute a National Institute of Arthritis and Musculoskeletal and Skin Diseases.

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By Mr. WALLOP (for himself, Mr. SIMPSON, Mr. GARN, Mr. HECHT, Mr. GOLDWATER, Mr. HEFLIN, Mr. WILSON, Mr. LAXALT, Mr. CRANSTON, Mr. DENTON, Mr. CHAFEE, Mr. MURKOWSKI, and Mr. DODD):

S. 426. A bill to amend the Federal Power Act to provide for more protection to electric consumers; to the Committee on Energy and Natural Resources.

ELECTRIC CONSUMERS PROTECTION ACT

● Mr. WALLOP. Mr. President, I am pleased to join with Senators SIMPSON, GARN, HECHT, GOLDWATER, HEFLIN, WILSON, LAXALT, CRANSTON, DENTON, CHAFEE, MURKOWSKI, and DODD today to introduce legislation which would clarify the procedures under which the Federal Energy Regulatory Commission [FERC] will relicense hydroelectric projects throughout the Nation in the years ahead.

Across the West, and indeed across the Nation the gold rush of the 1980's is underway. Today's fortune seekers are pursuing two things, water and gradient, to run electrical turbines. When new sites are unavailable for hydrodevelopment, utilities are competing for expiring FERC licenses coming up for renewal. Caught in the collision is the ratepaying public. The hydropower boom is thereby causing a reappraisal of the relicensing procedures established in the Federal Power Act of 1920 by Congress.

Specifically, my bill amends section 7 of the Federal Power Act by deleting all reference to section 15, which covers relicensing. The effect of this amendment is to clarify that the municipal preference does not apply in a relicense proceeding, whether or not the existing licensee is the applicant.

Section 15 of the Federal Power Act of 1920 is also amended to require the Federal Energy Regulatory Commission to consider, within the context of section 10(a) of the act, the existing licensee's plans for the next license term. If these plans comply with the section 10(a) public interest standards, a new license would be issued to the existing licensee. Section 10(a) of the Federal Power Act mandates an extensive inquiry into all factors relevant to the public interest in the development of the power potential of the Nation's water resources. This helps ensure that the plan adopted by the Commission is the best adapted to serve goals intended to achieve the most beneficial use of the waters. Conservation, recreation and commercial power are public interest considerations under the act.

Only if the Commission determines the existing licensee's plan does not comport with the section 10(a) standards would the Commission be authorized to issue the new license to a competing applicant. In that event the existing licensee who fails to get a successor license would be compensated by the new licensee for the facilities being turned over under a just compensation standard. This is a change from the law's present standard of net investment and severance damages which was set out in 1920 under vastly different economic conditions than those facing regulated utility companies today.

The need for these changes is quite clear. It is prompted by conflicting decisions rendered by the Federal Energy Regulatory Commission, and the fact that over 200 FERC regulated utility licenses are coming up for renewal by 1993. For those of you who wish the details, I refer you to my statement of May 24, 1984 in the CONGRESSIONAL RECORD at page S. 6451. The statement I made at the time I originally introduced the bill is reprinted there. It contains a relevant history of the Federal Power Act and some of the technological and regula-

tory changes which have taken place since the act's enactment some 65 years ago.

I will only reiterate that the current state of uncertainty is harmful to the present public interest. This is the case because FERC has reversed itself on this issue. In a 1980 ruling in city of Bountiful, UT, FERC held a municipal preference did apply against existing license holders at the time of relicensing. That opinion was subsequently affirmed by the Eleventh Circuit Court of Appeals.

However, FERC reversed its 1980 decision in 1983 in the Merwin Dam case when it interpreted the law not to include a municipal relicensing preference applicable against the existing licensee. Public power interests have appealed that decision. A decision at the circuit court level is expected this year. The losing side will undoubtedly seek review by the U.S. Supreme Court. Therefore unless Congress decides this issue now on a public policy basis, it is more than likely that the Supreme Court will at some point in the future be interpreting what our predecessors had in mind 65 years ago.

We, as a nation, have long passed the infancy stage of hydroelectric development. Since the 1930's private, investor-owned utilities have been heavily regulated by the States and the Federal Government. Contrary to the fears of the 1920 Congress, these private utilities did not monopolize the Nation's waterways as had been originally feared. Instead, they turned out to be the entities that serve most of the consumers of the Nation with electric power. I therefore believe the issue of preference on relicensing is an important consumer issue which Congress should decide given today's and tomorrow's prevailing economic conditions and changed public needs.

The public policy question which the 99th Congress must resolve is easily stated. It is simply whether or not we want to divest an existing licensee seeking a successor license of the plant and facilities built and paid for by the ratepayers of that licensee by transfering the license to a competing municipal applicant simply because of the status of that applicant, and nothing more. I believe that equity, along with changed times and circumstances, demands a revision of the Federal Power Act along the lines proposed by my bill.

Existing license holders may be private, investor-owned utilities, public, State or municipal utilities, rural electric cooperatives, private companies, or small entrepreneurs such as paper and aluminum enterprises which Congress has encouraged through PURPA and tax incentives to build small hydro projects.

When the time comes for these existing licensees to apply for a new license, they will have constructed, developed and maintained these projects for up to 50 years. In other words, in addition to having their customers benefit from the low cost hydroresources under Federal license, they will have been stewards of these federally regulated water resources in accordance with public interest standards in the law and incorporated in licenses issued by FERC.

I therefore believe that in a relicensing situation if an existing license holder has had an effective track record during the original license term, and demonstrates in its application for a new license and in FERC proceedings that it would continue to have the best adapted project as measured against the law's requirements and all competing applications, that it should receive a new license. In other words if there is any weight to be given in a relicense situation it should be to the existing licensee who took the risk and built the project in the first place.

In my view the optimal result for the public and the resource is achieved when the regulatory agency is required to make a decision on the merits based on public interest standards in the law and an opportunity exists for a competitor to show its plans are better than those of the existing licensee.

We would do a disservice to the public to shift an expiring license to a competitor municipal utility simply because of the Government ownership status of the utility, and nothing more.

It simply doesn't make sense to me to support a concept of preference in relicensing situations that allows one class of consumers served by private investor utilities to be discriminated against to favor another class of electric power customers who happen to live within the borders of a municipality. There is no net benefit to the public at large by applying a policy of preference in relicensing proceedings as there might be with the preference given to States and municipalities in the purchase of federally marketed power, or in initial license situations. Nor can it be said that such licenses would be forever lost to acquisition by municipal utilities. If municipalities have a real need for the facilities represented by the license they can use other provisions of the Federal Power Act to condemn them. In such situations the municipality must pay just compensation to the existing licensee.

Mr. President, let me suggest to you why the arguments advanced by those supporting preferential treatment for public entities in relicense proceedings don't hold water, or establish a public policy worth supporting.

Public power advocates argue that when original licenses expire, the physical assets should be turned over to public utilities in order that the water resources may be used for the benefit of the public.

The only conclusion which can be drawn from this position is that the approximately 73 million ultimate consumers of investor-owned utilities are not members of the public. Nor are the 9.5 million customers of rural electric cooperatives which have no licensing preference, or beneficiaries of private nonutility licensees included among the public.

But in the hands of Government-owned utilities, their advocates argue, 12.8 million customers will receive the benefits of federally regulated hydroelectric power without it passing through the tollgate of investor-owned utilities. In 1920 it was true that large investor-owned utilities had characteristics of natural monopolies which were capable of controlling most of the hydroelectric development in the country. By 1935, both the States and Federal Government stepped in to change dramatically the future of hydroelectric development in this country. The small private holding companies that had once characterized investor-owned utilities in the 1920's were broken up by Congress in the 1930's. Subsequently, State public utility commissions were established to regulate the rates of private utilities.

Today, every private utility's retail electric rates are subjected to comprehensive State regulatory control. Rarely is a private utility's request to increase its electric rate approved without substantial reductions. And, even then commissions only authorize a specified rate of return. A rate of return is by no means guaranteed under this system, and more often than not, the authorized return is not actually achieved. On the other hand, with but few exceptions, municipal utilities' electric rates are not subject to regulatory review. Therefore not only do private investor owned utilities serve the public that comprises their service area, but they are obliged to provide these customers with firm power to meet their needs even if the private investor-owned utility is unsuccessful in getting its FERC license renewed.

But the claim that a municipal preference in relicense situations is merely the device to return to the public domain a public asset or resource that was temporarily assigned to an original licensee for private use is a spurious argument in 1984, at best. Moreover, this claim erroneously characterizes the nature of the Federal interest involved in these projects.

The language of section 4(e) of the Federal Power Act demonstrates that Congress recognized that the Federal interest in hydroprojects is based only on ownership of public lands or Congress' power to regulate navigable streams as part of interstate or foreign

commerce. The Federal Government has no proprietary stake whatever in the navigable waters in this Nation. The Federal Government's only cognizable interest is strictly regulatory.

Nor are the project works of the existing licensee and the lands and flowage easements acquired by its public resources. Rather, these are private assets or resources devoted to public service. If Federal lands are used in a project, annual charges or rentals are paid on these lands under section 10(e) of the act by private licensees. Except for the States rights in the streambed, many of the projects which could be taken from existing licensees by application of a preference at relicensing are composed entirely of property interests assembled by developers with investment capital. Congress' commerce clause power to regulate and improve navigation subjects all works that could impede navigation to a dominant servitude for such Federal purposes as may be related to the proper exercise of that power. However, the servitude does not divest title from the owner of subjected property or create sua sponte a proprietary interest in the Federal Government.

Let me make a few other points about the arguments used by proponents of a municipal preference which I believe are inapplicable in this instance.

Advocates of the municipal preference in relicense proceedings argue that the preference is needed to allow municipal utilities to remain viable and to serve as yardsticks by which to judge the effectiveness of private utilities. They assert that they better serve the needs of the public because they are municipalities.

I, quite frankly, find it hard to understand this statement. As we know, States and municipalities and their customers already enjoy significant special privileges where power from navigable waterways is concerned. Their preference for power marketed from Federal hydroelectric projects has given their customers, who represent fewer than 14 percent of the electric customers in the country, access to 68.4 percent of the hydroelectric capacity in the country. With this amount of inexpensive hydropower available to them, they should certainly be viable without having to take existing projects away from those who developed and paid for them.

A recent economic analysis published in Public Utilities Fortnightly by two MIT professors shows that the value of existing facilities will be maximized by spreading the benefits widely and not concentrating them where the price of electricity is already well below the social marginal cost. "Adversary Hydro Relicensing Applications: Using Economic Efficiency Criteria," Public Utilities Fortnightly, December 20, 1984. Since Municipal utility rates are generally far lower than their neighboring regulated investor-owned utilities, I wonder as a matter of policy of the prudence of following a policy of preference at relicensing which would further concentrate even more low-cost hydroelectric power in municipal utilities to the detriment of the far larger segment of the public served by regulated investor-owned utilities.

Clearly, the public interest is much broader today, and it will be even broader still in the future than it was in 1920. Sixty-five years down the road from the time the Federal Power Act was initially passed I think it is time that Congress considered the preference at relicensing issue in light of the many changes that have taken place since then. When you consider the regulation of investor-owned utilities by the States, the shift from the private to the public sector in water power development, the development of all the best hydrosites in the Nation, the requirements for costly environmental controls, and the rampant inflation which has taken place in the decades since 1920 until just recently, it becomes clear that an existing licensee's request for a new license should be judged against the best adapted public interest standards in the law. Preference for a municipality based on status alone in a relicense proceeding simply is not in the present public interest.

The public interest today includes conservation and supply; the need to keep inflation under control; the potential disruption of a firm energy supply to millions of citizens being served by power in use under a FERC license; and the economic impact of a shift of that license to a competitor in a relicense situation. As a bottom line, it includes equity for the ratepayers. They are the power consumers, and they are the public.

The issue here is one of equity and fundamental fairness. A clarification of the law is needed to make relicense proceedings reflect today's times and today's needs.

The issue of equitable compensation if a license isn't renewed must also be addressed. As I indicated earlier, my legislation changes the compensation standard in the law. It would replace the law's net investment standard with a provision calling for just compensation. I know that the merit of doing this as part of the preference on relicensing issue is being questioned by some of my colleagues in the Senate, like Senator JOHNSTON, who did not include compensation language in his bill last session.

However, I believe a change in the compensation standard is an integral and necessary element of a complete legislative proposal on this issue.

As FERC said in the Merwin case, "The preference controversy is bottomed on the bargain cost-based—rather than value-related—price embodied in the 'net investment' concept."

Net investment seemed appropriate in 1920 when inflation was cyclical and temporary, usually followed by deflation. However, as the Commission in Merwin pointed out, "The Members of Congress in 1920 could not have foreseen the near constant inflation spanning the half-century following 1933 that has placed such great dollar values on privately owned hydroelectric properties and made them such bargains at cost-based relicensing prices."

Given the enormous windfall involved in the net investment price, which is the price of original construction more than 50 years ago, less depreciation and severance damages, the incentive to compete for a license in a renewal situation is not based so much on need as it is on greed. Let me explain what I mean.

The Administrative Law Judge's initial decision in the Merwin dam case reveals that under the net investment standards as defined in the act, the existing licensee would only have received $9.4 million for its project. The existing licensee argued that the 1988 present value replacement or alternative power cost would be $832.4 million. The FERC staff, on the other hand, calculated a 1988 present value for future power costs from a replacement thermal plant of $731.7 million.

The point is that whether you take the FERC staff calculation or that of the existing licensee, the difference between the true present day value of the hydro facilities and their original cost is tremendous. Who gets hurt? The ratepayers of the regulated investor-owned utility. Why do they get hurt? They get hurt because the investor-owned utility losing the license is required by law to serve its customers. The customers don't go with the license, only the facilities which the ratepayers of the losing existing licensee built and paid for are transferred under the license. Therefore, an economic windfall goes to the winning competitor.

If that competitor is a municipal applicant asserting "preference" at relicensing, given the fact that the cost-based net investment standard in the current law is such a bargain, it allows municipal competitors to compete using existing licensee's customers' money. In other words, in a relicense situation where the artificial and antiquated net investment standard is left unamended by Congress, the very promise of the windfall of the actual value of the facility versus its original "net investment" costs allows municipal competitors to spend enormous sums for improvements that may or may not be of any use. These proposed

changes would all be paid for out of the actual present day value of the licensed facilities.

If there were a good public policy reason for keeping the takeover payment at the 1920 cost of building hydroelectric facilities, instead of repayment for these facilities at a fair price, I might be persuaded to drop the compensation provision from my bill. However, I have heard all the arguments and yet I remain convinced that doing nothing with the compensation provisions upon the recapture of a facility in a relicense proceeding only exacerbates the problems of fundamental fairness facing us with the whole preference on relicensing issue.

Part of the reason is that a private licensee takes over a municipal project in a relicense proceeding, it must pay the value related price of just compensation for these facilities. Therefore the current act already has a dual standard built into it. If a private investor utility loses its license in a renewal proceeding, it would get only its original cost, less depreciation and severance damages. That's simply not fair.

Nor is it fair to assert, as municipal utilities do, that the customers of investor-owned utilities don't "deserve" a just compensation price because they knew they might lose the license at the end of the term when the license was first given. If that is the case, I wonder why the Federal Power Act was amended in the 1950's to provide that municipal entities receive "just compensation" if they lose their FERC licenses at relicensing. Is not what is good for the goose good for the gander?

If you take this legal theory to its logical end that the present day actual value of a license reverts to the licensor, which is in this case the Federal Government, then I don't see how or why a third party beneficiary new licensee is entitled to reap the windfall of a power to regulate navigable waterways given to the Federal Government by the commerce clause of the Constitution. The fact is that the licensing relationship is between the United States and the licensee. Third parties like municipal utilities are both strangers to the relationship and, at best, gratuitous beneficiaries of the act's pricing arrangements.

My bill would not in any way affect the Government's ability to itself take over a project under section 14 of the act and to pay only net investment for such a takeover. The just compensation provision operates only where some third party seeks to seize the benefits created by the current licensee and their customers.

The standard of "just compensation" in my bill is derived from the Constitution of the United States. It is precisely the language now used in section 14(a) of the Federal Power Act concerning compensation to be paid in a condemnation proceeding. Nothing more or less will do in a relicense proceeding. This is the case because the public in general receives no net benefit from the transfer of the license, and no Federal right is being violated or impaired. Therefore, fundamental fairness requires a revision of the compensation standard by third party takers of a license of just compensation. Anything less will substantially raise utility rates across-a-broad spectrum of the consuming public served by the losing licensee. That, in turn, will adversely impact on our present national policies to conserve energy and to make maximum benefit of our energy resources to the broadest segment of the public possible.

The Federal Power Act was originally founded on the dual principles of economic development and the Nation's water resources and its conservation. As we move with increasing speed to close out the chapters of the 20th century, let us do so with prudence and optimism. Conservation, both in water resource and in energy terms must be the watchword. Economic impacts of the transfers of power in use from one licensee to another and the ratepayers served by these competitors must be assessed in relicense proceedings. We have now, as we did not in 1920, a broad public interest to serve if we are to move this Nation to meet the challenges of the future.

Challenge sometimes means there is a need for change. In this particular case, I believe it is necessary for Congress to state clearly that no preference exists in relicensing. However, in so doing, I want to make one thing crystal clear. This legislation is not an attack on a State's or municipality's entitlement to preference in federally marketed power or in relicense situations. This bill is narrowly framed to obtain a narrow result. It is simply a call for equity in relicensing proceedings given today's energy and consumer needs.

Mr. President, in closing I would like to submit as part of the RECORD for use by my colleagues in the Senate and others who are interested in this subject some statistics. I have asked the Edison Electric Institute to run the current numbers on the hydroelectric projects currently under FERC license by State. I believe my colleagues will find this information useful.

In addition, I am advised by the Edison Electric Institute that presently, 177 FERC licenses held by investor-owned utilities will expire by December 31, 1993. These 177 projects represent 48 percent of the total number of projects licensed to investor-owned utilities.

To put this in perspective, although investor-owned utilities operate only 32 percent of the Nation's total hydroelectric installed capacity, they serve 76 percent of the Nation's ultimate customers. By comparison, public utilities, municipal and State projects serve approximately 13 percent of the Nation's ultimate customers, and they operate or have priority access to 68 percent of the Nation's total hydroelectric capacity, including Federal projects.

Home is where the heart is, Mr. President. Last, but not least, in my own home State of Wyoming regulated investor-owned utilities serve 112,699 customers. The rural electric cooperatives, which serve another important segment of the State's citizens with firm electric power, support the legislative initiative which I am proposing today. I would liked to commend them for their firm stance on an issue of importance to all consumers in the Nation. If this legislation is enacted it would protect all existing licensees equally. Equity is what this bill is all about.

Mr. President, I ask unanimous consent that the bill and other supporting material be printed in the RECORD.

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

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*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 "Electric Consumers Protection Act of 1985.".

SEC. 2. Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) is amended—

(1) by inserting "original" after "hereunder or"; and

(2) by striking out "and in issuing licenses to new licensees under section 15 hereof".

SEC. 3. Section 15(a) of the Federal Power Act (16 U.S.C. 808(a)) is amended—

(1) by striking out "is authorized to" and inserting in lieu thereof "shall";

(2) by striking out "original" each place it appears and inserting in lieu thereof "existing";

(3) by striking out "regulations, or" and inserting in lieu thereof "regulations unless the Commission determines, taking into account public benefits provided during the preceding license term, that such licensee's project or projects, as described in its application for a new license, will not meet the licensing standards set forth in section 10(a). If the Commission determines that the project or projects do not meet such standards, it is authorized"; and

(4) by striking out "such amount" and inserting in lieu thereof "just compensation in an amount that the Commission shall determine in accordance with due process of law,"; and by striking the comma after the words "to do".

APPENDIX C.—INVESTOR-OWNED UTILITY HYDROELECTRIC PROJECTS, JANUARY 1985

| State [1] and company [2] | Project name [3] | License No. [4] | License expiration date [5] | Installed capacity (nameplate megawatts) [6] | Generation (megawatt-hours) [7] | States [8] | County [9] |
|---|---|---|---|---|---|---|---|
| Alabama (9): Alabama Power Company | John H. Bankhead | 2165 | 8/31/2007 | 202.600 | 619,032.000 | AL | Tuscaloosa, Cullman, Walker. |
| | Coosa River | 2146 | 7/31/2007 | 691.000 | 2,792,519.000 | | Elmore, Chilton, Coosa, St. Clair, Talladega, Calhoun, Cherokee. |
| | Holt Lock and Dam | 2203 | 8/31/2015 | 40.000 | 194,024.000 | | Tuscaloosa. |
| | Jordan | 618 | 7/31/2007 | 100.000 | 245,490.000 | | Elmore. |
| | Martin Dam | 349 | 6/08/2013 | 154.200 | 514,869.000 | | Elmore, Tallapoosa. |
| | Mitchell | 82 | 7/31/2007 | 72.500 | 397,296.000 | | Chilton, Coosa. |
| | R.L. Harris | 2628 | 11/30/2023 | 135.000 | 125,585.000 | | Randolph, Clay. |
| | Thurlow | 2408 | 12/31/1993 | 58.000 | 327,167.000 | | Elmore, Tallapossa. |
| | Yates | 2407 | 12/31/1993 | 32.000 | 184,631.000 | | Elmore, Tallapossa. |
| Total | | | | 1,485.300 | 5,400,613.000 | | |
| Alaska (2): | | | | | | | |
| Alaska Electric Light and Power | Salmon Creek and Annex Creek | 2307 | 8/31/1988 | 9.100 | 41,601.600 | AK | Juneau Div. |
| Alaska Power and Telephone, Inc | Skagway Dewey | 1051 | 8/29/2007 | [11] 0.765 | [12] 2,440.000 | AK | Skagway-Yakutat Div. |
| Total | | | | 9.865 | 44,041.600 | | |
| Arkansas (1): Arkansas Power & Light Company | Carpenter and Remmel | 271 | 2/28/2003 | 65.300 | 201,375.000 | AR/MO | Hot Spring, Garland. |
| California (51): | | | | | | | |
| Pacific Gas and Electric Company | Angles | 2699 | 12/31/1995 | 1.400 | 8,247.000 | CA | Calaveras. |
| | Balch No. 1 & 2 | 175 | 4/30/2026 | 128.200 | 1,106,885.740 | | Fresno. |
| | Bucks Creek | 619 | 10/31/2004 | 66.000 | 416,811.300 | | Plumas. |
| | Chili Bar | 2155 | 7/31/2007 | 7.020 | 59,195.000 | | El Dorado. |
| | Crane Valley | 1354 | 4/30/1989 | 20.900 | 133,866.797 | | Madera, Fresno. |
| | De Sabla-Centerville | 803 | 10/11/2009 | 24.850 | 159,989.827 | | Butte. |
| | Drum-Spaulding | 2310 | 4/30/2013 | 163.853 | 953,659.191 | | Nevada, Placer, Sutter. |
| | El Dorado | 184 | 2/23/2002 | 20.000 | 36,858.728 | | El Dorado. |
| | Haas-Kings River | 1988 | [13] 3/31/1985 | 179.100 | 1,394,240.650 | | Fresno. |
| | Hatcreek No. 1 & 2 | 2661 | 9/30/2000 | 20.000 | 121,338.445 | | Shasta. |
| | Helms Pumped Storage | 2735 | 4/30/2026 | | | | Fresno. |
| | Kerckhoff | 96 | 11/30/2022 | 173.580 | 786,554.270 | | Fresno. |
| | Kern Canyon | 178 | 4/30/2005 | 8.480 | 82,164.000 | | Kern. |
| | Kilarc & Cow Creek | 606 | 3/27/2007 | 4.440 | 41,450.000 | | Shasta. |
| | McCloud-Pit | 2106 | 7/31/2011 | 338.400 | 2,264,876.215 | | Kings, Shasta. |
| | Merced Falls | 2467 | 2/28/2014 | 3.440 | 25,296.000 | | Mariposa, Shasta. |
| | Millseat Creek, Battle Creek | 1121 | 7/31/2026 | 36.056 | 105,039.917 | | Tehama. |
| | Mokelumne | 137 | [14] 11/23/1975 | 192.750 | 1,528,064.073 | | Amador. |
| | Narrows | 1403 | 7/31/1991 | 9.350 | 83,617.000 | | Yuba. |
| | Phoenix | 1061 | [15] 12/25/1980 | 1.600 | 16,130.000 | | Tuolumne. |
| | Pit No. 3, 4, & 5 | 233 | 10/31/2003 | 310.750 | 2,466,435.240 | | Shasta. |
| | Pit No. 1 | 2687 | 12/31/1995 | 56.000 | 415,331.117 | | Shasta. |
| | Poe | 2107 | 9/30/2003 | 142.830 | 940,142.400 | | Plumas. |
| | Potter Valley | 77 | 9/20/2033 | 9.040 | 65,397.000 | | Mendocino. |
| | Rock Creek-Cresta | 1962 | [16] 9/30/1982 | 180.900 | 1,410,269.000 | | Plumas, Tuolumne. |
| | Stanislaus-Spring Gap | 2130 | 12/31/2004 | 87.900 | 464,360.924 | | Calaveras. |
| | Tule River | 1333 | 4/30/1989 | 4.800 | 46,923.000 | | Tulare. |
| | Upper No. Fork Feather River | 2105 | 10/31/2004 | 338.700 | 2,338,805.586 | | Plumas. |
| | Utica (Murphys) | 2019 | 11/05/1996 | 3.600 | 29,603.000 | | Calaveras. |
| Pacific Power & Light Company | Klamath | [17] 2082 | 2/28/2006 | 151.000 | 1,059,866.000 | CA/ID/MT/OR/WA/WY | Siskiyou. |
| Southern California Edison Company | Big Creek No. 1 & 2 | 2175 | 2/28/2009 | 127.750 | 1,231,872.748 | CA | Fresno. |
| | Big Creek No. 2A & 8 | 67 | 2/28/2009 | 138.500 | 1,253,008.880 | | Fresno, Madera. |
| | Big Creek No. 3 & 6 | 120 | 2/28/2009 | 142.950 | 1,366,533.200 | | Fresno. |
| | Big Creek No. 4 | 2017 | 2/28/1999 | 84.400 | 762,458.170 | | Fresno. |
| | Bishop Creek | 1394 | 11/30/1986 | 24.700 | 205,193.450 | | Inyo. |
| | Borel | 382 | 2/28/2005 | 9.200 | 86,921.986 | | Kern. |
| | Kern River No. 1 | 1930 | 4/30/1996 | 27.800 | 197,426.593 | | Kern. |
| | Kern River No. 3 | 2290 | 12/31/1993 | 32.000 | 283,425.220 | | Kern. |
| | Kaweah | 298 | [18] 8/06/1974 | 6.900 | 65,541.941 | | Tulare. |
| | Lake Tho. A. Edison | [19] 2086 | 8/31/2003 | | | | Tuolumne. |
| | Lower Tule | 372 | 6/14/2000 | 2.000 | 22,692.600 | | Tulare. |
| | Lundy | 1390 | 11/30/1986 | 3.000 | 14,861.040 | | Mono. |
| | Lytle Creek | 1932 | 4/30/1996 | 0.400 | 4,152.185 | | San Bernardino. |
| | Mammoth Pool | 2085 | 11/30/2007 | 130.300 | 1,225,983.800 | | Fresno. |
| | Mill Creek No. 2 & No. 3 | 1934 | 4/30/1996 | 2.000 | 18,747.120 | | San Bernardino. |
| | Poole | 1388 | [20] 11/30/1986 | 10.000 | 46,143.302 | | Mono. |
| | Portal | 2174 | 3/31/2005 | 10.000 | 45,924.290 | | Fresno. |
| | Rush Creek | 1389 | [21] 11/30/1986 | 8.400 | 67,639.740 | | Mono. |
| | San Gorgonio | 344 | 4/26/2003 | 2.300 | 6,867.817 | | Riverside. |
| | Santa Ana No. 1 & No. 2 | 1933 | 4/30/1996 | 4.000 | 33,013.237 | | San Bernardino. |
| | Santa Ana No. 3 | 2198 | 4/30/2009 | 1.200 | 11,549.800 | | San Bernardino. |
| Total | | | | 3,452.739 | 25,511,374.539 | | |
| Colorado (4): | | | | | | | |
| Public Service Co. of Colorado | Boulder Canyon | 1005 | 8/31/2009 | 20.000 | 20,000.000 | CO | Boulder. |
| | Cabin Creek | 2351 | 2/28/2014 | 300.000 | 108,522.000 | | Clear Creek. |
| | Georgetown | 2187 | 12/31/1993 | 1.000 | 6,683.600 | | Clear Creek. |
| | Salida Hydro No. 1 & No. 2 | 2275 | 12/31/1993 | 2.000 | 7,790.000 | | Chaffee. |
| Total | | | | 323.000 | 142,995.600 | | |
| Connecticut (3): | | | | | | | |
| The Connecticut Light and Power Company | Falls Village | 2597 | 8/30/2001 | 9.000 | 42,581.420 | CT | Litchfield. |
| | Housatonic | 2576 | 7/31/2001 | 74.900 | 240,468.755 | | Litchfield. |
| | Scotland | 2662 | 8/31/2012 | 2.000 | 8,860.000 | | New London. |
| Total | | | | 85.900 | 291,910.175 | | |
| Georgia (11): | | | | | | | |
| Georgia Power Company | Bartletts Ferry | 485 | 12/14/2014 | 65.000 | 432,954.782 | GA | Harris. |
| | Chattahoochee | 2177 | 12/31/2004 | 116.000 | 633,468.480 | | Macon. |
| | Flint River Res. | 1218 | 9/30/2001 | 5.000 | 28,922.000 | | Dougherty. |
| | Langdale | 2341 | 12/31/1993 | 1.000 | 5,240.000 | | Troup. |
| | Lloyd Shoals | 2336 | 12/31/1993 | 14.000 | 40,205.050 | | Butts. |
| | Morgan Falls | 2237 | 2/28/2009 | 17.000 | 66,637.597 | | Fulton. |
| | Riverview | 2350 | 12/31/1993 | 1.000 | 3,126.000 | | Harris. |
| | Sinclair | 1951 | 8/31/1997 | 45.000 | 137,522.200 | | Baldwin. |
| | Tugaloo and Tallulah | 2354 | 12/31/1993 | 167.000 | 511,068.270 | | Rabun, Habersham. |
| | Wallace | 2413 | 5/31/2020 | 321.000 | 411,069.000 | | Putnam. |

APPENDIX C.—INVESTOR-OWNED UTILITY HYDROELECTRIC PROJECTS, JANUARY 1985—Continued

| State [1] and company [2] | Project name [3] | License No. [4] | License expiration date [5] | Installed capacity (nameplate megawatts) [6] | Generation (megawatt-hours) [7] | States [8] | County [9] |
|---|---|---|---|---|---|---|---|
| South Carolina Electric & Gas Company | Stevens Creek | 2535 | 12/31/1993 | 19.000 | 96,253.000 | SC | Columbia. |
| Total | | | | 771.000 | 2,366,466.379 | | |
| Idaho (16): | | | | | | | |
| Idaho Power Company | American Falls | 2736 | 2/38/2025 | 92.340 | 686,560.000 | ID/NV/OR | Power. |
| | Bliss | 1975 | 2/28/1998 | 75.000 | 577,767.000 | | Gooding. |
| | C.J. Strike | 2055 | 11/30/2000 | 82.800 | 698,761.000 | | Owyhee. |
| | Cascade | 2848 | 1/31/2031 | 6.210 | 576.000 | | Valley. |
| | Hells Canyon | [22] 1971 | 7/31/2005 | 1,166.900 | 8,799,468.000 | | Washington. |
| | Lower Salmon | 2061 | 12/23/1997 | 60.000 | 430,915.000 | | Twin Falls. |
| | Malad | 2726 | 7/31/2004 | 20.700 | 189,766.000 | | Gooding. |
| | Shoshone Falls | 2778 | 5/31/1999 | 12.500 | 97,325.000 | | Jerome. |
| | Swan Falls | 503 | 6/30/2010 | 10.265 | 78,095.000 | | Ada. |
| | Twin Falls | 18 | 6/10/1984 | 8.437 | 75,120.000 | | Twin Falls. |
| | Upper Salmon | 2777 | 5/31/1999 | 34.500 | 277,324.000 | | Gooding. |
| Utah Power & Light Company | Ashton & St. Anthony | 2381 | 12/31/1987 | 6.300 | 43,010.000 | ID/UT/WY | Fremont. |
| | Grace & Cove | 2401 | 10/01/2001 | 40.500 | 242,176.675 | | Caribou. |
| | Oneida | 472 | 6/30/2000 | 30.000 | 176,149.000 | | Franklin. |
| | Soda | 20 | 7/04/2003 | 14.000 | 82,268.000 | | Caribou. |
| The Washington Water Power Company | Cabinet Gorge | 2058 | 1/09/2001 | 200.000 | 1,162,261.000 | ID/MT/WA | Bonner. |
| Total | | | | 1,860.452 | 13,617,541.675 | | |
| Illinois (2): | | | | | | | |
| Commonwealth Edison Company | Dixon | 2446 | 12/31/1993 | 3.000 | 11,929.000 | IL | Lee. |
| South Beloit Water, Gas and Electric Company | Rockton | 2373 | 12/31/1993 | 1.100 | 6,349.000 | IL | Winnebago. |
| Total | | | | 4.100 | 18,278.000 | | |
| Indiana (3): | | | | | | | |
| Indiana & Michigan Electric Company | Elkhart | 2651 | 5/31/2000 | 3.400 | 17,364.000 | IN/MI | Elkhart. |
| | Twin Branch | 2579 | 12/31/1993 | 7.300 | 3,678.000 | | St. Joseph. |
| Public Service Company of Indiana, Inc | Markland | 2211 | 4/30/2011 | 81.000 | 331,857.000 | IN | Ohio. |
| Total | | | | 91.700 | 352,899.000 | | |
| Kentucky (2): | | | | | | | |
| Kentucky Utilities Company | Lock No. 7 | 539 | [23] 8/18/1976 | 2.000 | 5,809.000 | KY/TN | Mercer. |
| Louisville Gas and Electric Company | Ohio Falls | 289 | 11/10/2005 | 80.320 | 351,614.000 | KY | Jefferson. |
| Total | | | | 82.320 | 357,423.000 | | |
| Maine (32): | | | | | | | |
| Bangor Hydro-Electric Company | Ellsworth & Graham | 2727 | 12/31/1987 | 8.900 | 36,741.200 | ME | Hancock. |
| | Howland | 2721 | 9/30/2000 | 1.875 | 10,239.400 | | Penobscot. |
| | Medway | 2666 | 3/31/1999 | 3.440 | 26,213.200 | | Penobscot. |
| | Milford | 2534 | 12/31/1990 | 6.400 | 49,890.500 | | Penobscot. |
| | Orono | 2710 | 12/31/1993 | 2.332 | 15,777.600 | | Penobscot. |
| | Stanford | 2600 | 12/31/1987 | 3.800 | 19,346.000 | | Penobscot. |
| | Stillwater | 2712 | 12/31/1993 | 1.950 | 11,786.200 | | Penobscot. |
| | Veazie | 2403 | 12/31/1987 | 8.400 | 61,082.700 | | Penobscot. |
| Central Maine Power Company | Automatic | 2555 | 12/31/1993 | 0.800 | 3,814.576 | ME | Kennebec. |
| | Bar Mills | 2194 | 6/30/2005 | 4.000 | 21,962.300 | | York. |
| | Bonny Eagle | 2529 | 12/31/1993 | 7.200 | 51,614.317 | | York. |
| | Cataract | 2528 | 12/31/1987 | 7.690 | 43,446.125 | | York. |
| | Deer Rips-Androscoggin-Gulf Island | 2283 | 12/31/1993 | 29.340 | 201,365.687 | | Androscoggin. |
| | Flagstaff Res. | [24] 2612 | 12/31/1997 | | | | Somerset. |
| | Fort Halifax | 2252 | 12/31/1993 | 1.500 | 7,730.400 | | Kennebec. |
| | Harris | 2142 | 12/31/2001 | 75.000 | 222,307.650 | | Somerset. |
| | Hiram | 2530 | 11/30/2022 | 2.400 | 20,134.990 | | Cumberland. |
| | North Gorham | 2519 | 12/31/1993 | 2.250 | 10,902.631 | | Cumberland. |
| | Oakland | 2559 | 12/31/1993 | 2.800 | 12,167.000 | | Kennebec. |
| | Rice Rips | 2557 | 12/31/1993 | 1.600 | 7,227.200 | | Kennebec. |
| | Shawmut | 2322 | 1/31/2021 | 8.650 | 55,186.920 | | Kennebec. |
| | Skelton | 2527 | 12/31/1993 | 16.800 | 100,550.300 | | York. |
| | Topsham (Brunswick) | 2284 | 2/28/2029 | 19.600 | 101,856.320 | | Androscoggin. |
| | Union Gas | 2556 | 12/31/1993 | 1.500 | 7,013.200 | | Kennebec. |
| | West Buxton | 2531 | 12/31/1987 | 7.925 | 35,186.510 | | York. |
| | Weston | 2325 | 12/31/1993 | 12.000 | 75,445.245 | | Somerset. |
| | Williams | 2335 | 12/31/1987 | 13.000 | 89,231.687 | | Somerset. |
| | Wyman | 2329 | 12/31/1993 | 72.000 | 326,829.400 | | Somerset. |
| Maine Public Service Company | Caribou | 2367 | 12/31/1993 | 0.800 | 5,308.000 | ME | Aroostook. |
| | Millinocket Lake | 2366 | 6/30/1992 | | | | Piscataquis. |
| | Squa Pan | 2368 | 12/31/1990 | 1.500 | 1,493.000 | | Aroostook. |
| Rumford Falls Power Company | Rumford Falls | 2333 | 12/31/1993 | [25] 36.800 | [26] 285,335.000 | Industrial | Oxford. |
| Total | | | | 362.252 | 1,917,185.258 | | |
| Maryland (2): | | | | | | | |
| Pennsylvania Electric Company | Deep Creek | 2370 | 12/31/1993 | 19.200 | 26,628.000 | NY/PA | Garrett. |
| Susquehanna Electric Company | Conowingo | 405 | 9/01/2014 | 474.480 | 1,738,785.000 | Wholesale | Harford. |
| Total | | | | 493.680 | 1,765,413.000 | | |
| Massachusetts (6): | | | | | | | |
| Holyoke Water Power Company | Connecticut Canal | 2004 | 8/31/1999 | 42.100 | 153,559.278 | MA | Hampden. |
| New England Power Company | Deerfield River | [27] 2323 | 12/31/1993 | 11.000 | 33,234.000 | MA/VT | Franklin. |
| | Fife Brook | 2669 | 3/31/2020 | 78.000 | 308,689.000 | | Franklin. |
| Western Massachusetts Electict Company | Gardner Falls | 2334 | 12/31/1993 | 3.600 | 16,084.500 | MA | Franklin. |
| | Northfield Mt. | [28] 2485 | 4/31/2018 | 160.700 | 148,488.990 | | Franklin. |
| | Turners Falls | 1889 | 4/30/2018 | 56.700 | 269,299.700 | | Franklin. |
| Total | | | | 352.100 | 929,355.468 | | |
| Michigan (33): | | | | | | | |
| Alpena Power Company | Hillman | 2419 | 12/31/1993 | 0.250 | 669.954 | MI | Alpena. |
| | Thunder Bay River | 2404 | 12/31/1993 | 7.000 | 34,211.600 | | Alpena. |
| Consumers Power Company | Alcona | 2447 | 12/31/1993 | 8.000 | 27,689.750 | MI | Alcona. |
| | Calkins Bridge | 785 | 4/10/2010 | 2.600 | 13,290.000 | | Allegan. |
| | Cooke | 2450 | 12/31/1993 | 9.000 | 28,117.100 | | Alcona. |
| | Croton | 2468 | 12/31/1993 | 9.000 | 43,932.000 | | Nawaygo. |

APPENDIX C.—INVESTOR-OWNED UTILITY HYDROELECTRIC PROJECTS, JANUARY 1985—Continued

| State [1] and company [2] | Project name [3] | License No. [4] | License expiration date [5] | Installed capacity (nameplate megawatts) [6] | Generation (megawatt-hours) [7] | States [8] | County [9] |
|---|---|---|---|---|---|---|---|
| | Five Channels | 2453 | 12/31/1993 | 6.000 | 26,171.700 | | Alcona. |
| | Foote | 2436 | 12/31/1993 | 9.000 | 32,382.800 | | Alcona. |
| | Hardy | 2452 | 12/31/1993 | 30.000 | 103,643.500 | | Nawaygo. |
| | Hodenpyl | 2599 | 12/31/1993 | 18.000 | 41,563.500 | | Manistee. |
| | Loud | 2449 | 12/31/1993 | 4.000 | 20,505.647 | | Alcona. |
| | Ludington P.S. | [29] 2680 | 6/30/2019 | 1,978.800 | 2,788,155.000 | | Mason. |
| | Mio | 2448 | 12/31/1993 | 5.000 | 16,155.700 | | Oscoda. |
| | Rogers | 2451 | 12/31/1993 | 6.800 | 33,273.000 | | Mecosta. |
| | Tippy | 2580 | 12/31/1993 | 20.000 | 57,840.000 | | Manistee. |
| | Webber | 2566 | 4/01/2001 | 3.300 | 15,118.800 | | Ionia. |
| Indiana & Michigan Electric Company | Buchanan | 2551 | 12/31/1993 | 4.100 | 13,181.000 | IN/MI | Berrien. |
| Lake Superior District Power Company | Saxon Falls | 2610 | 12/31/1989 | 1.250 | 13,127.000 | MI/WI | Gogebic. |
| | Superior Falls | 2587 | 12/31/1993 | 1.320 | 14,814.552 | | Gogebic. |
| Michigan Power Company | Mottville | 401 | 9/18/2003 | 1.680 | 8,259.000 | MI | St. Joseph. |
| Upper Peninsula Power Company | Prickett | 2402 | 12/31/1993 | 2.200 | 8,746.000 | MI | Baraga. |
| | Victoria | 1864 | 12/31/1988 | 12.000 | 86,996.000 | | Gogebic. |
| Wisconsin Electric Power Company | Big Quinnesec Falls | 1980 | 2/28/1998 | 19.500 | 128,813.000 | MI/WI | Dickinson. |
| | Brule | 2431 | 12/31/1993 | 5.335 | 20,084.000 | | Iron. |
| | Chalk Hill | 2394 | 6/30/1993 | 7.800 | 46,274.000 | | Menominee. |
| | Hemlock Falls | 2074 | 10/31/2001 | 2.800 | 15,378.000 | | Iron. |
| | Kingsford | 2131 | 6/30/2004 | 7.200 | 36,052.000 | | Dickinson. |
| | Lower Paint | 2072 | 12/31/2001 | 0.100 | 719.000 | | Iron. |
| | Michigamme | 1759 | 12/31/2001 | 19.944 | 136,938.000 | | Iron, Dickinson. |
| | Michigamme Falls | 2073 | 10/31/2001 | 9.600 | 55,547.000 | | Iron. |
| | Sturgeon River | 2471 | 12/31/1993 | 0.800 | 5,479.000 | | Dickinson. |
| | White Rapids | 2357 | 12/31/1993 | 8.000 | 45,661.000 | | Menominee. |
| Wisconsin Public Service Corporation | Grand Rapids | 2433 | 12/31/1993 | 7.020 | 42,302.000 | MI/WI | Menominee. |
| Total | | | | 2,227.399 | 3,961,090.603 | | |
| Minnesota (8): | | | | | | | |
| Minnesota Power | Blanchard | 346 | 8/24/2003 | 12.000 | 92,966.000 | MN | Todd. |
| | Little Falls | 2532 | 12/31/1993 | 4.700 | 34,268.000 | | Todd. |
| | Pillager | 2663 | 5/11/1997 | 1.500 | 10,436.000 | | Morrison. |
| | Praire River | 2361 | 12/31/1993 | 1.100 | 2,577.000 | | Ithasca. |
| | St. Louis | 2360 | 12/31/1993 | 85.300 | 557,260.000 | | Carlton, St. Louis. |
| | Sylvan | 2454 | 12/31/1993 | 3.400 | 16,387.000 | | Morrison. |
| | Winton | 469 | 10/31/2003 | 4.000 | 31,272.000 | | Lake. |
| Northern States Power Company | Hennepin Island | 2056 | 12/31/2000 | 20.400 | 181,421.000 | MN/ND/SD | Hennepin. |
| Total | | | | 132.400 | 926,587.000 | | |
| Missouri (3): | | | | | | | |
| The Empire District Electric Company | Ozark Beach | 2221 | 8/31/1993 | 16.000 | 72,830.400 | AR/KS/MO/OK | Tanney. |
| Union Electric Company | Osage | 459 | 2/28/2006 | 172.000 | 691,668.500 | IA/IL/MO | Miller. |
| | Taum Sauk | 2277 | 6/30/2010 | 408.000 | 23,089.600 | | Iron. |
| Total | | | | 596.000 | 787,588.500 | | |
| Montana (9): | | | | | | | |
| Montana Light & Power Company | Lake Creek | 2594 | 11/30/2011 | [30] 4.500 | [31] 28,855.000 | MT | Lincoln. |
| The Montana Power Company | Flint Creek | 1473 | 6/30/1988 | 1.100 | 6,348.000 | MT/WY | Granite. |
| | Kerr | 5 | [32] 5/22/1980 | 197.000 | 1,100,750.810 | | Lake. |
| | Milltown | 2543 | 12/31/1993 | 3.000 | 16,663.179 | | Missoula. |
| | Missouri-Madison | 2188 | 11/30/1998 | 260.000 | 2,253,420.390 | | Cascade, Gallatin, Lewis & Clark, Madison. |
| | Mystic Lake | 2301 | 12/31/2009 | 12.000 | 43,475.240 | | Stillwater. |
| | Thompson Falls | 1869 | 12/31/2015 | 30.000 | 319,899.000 | | Sanders. |
| Pacific Power & Light Company | Big Fork | 2652 | 4/30/1990 | 4.150 | 31,654.000 | CA/ID/MT/OR/WA/WY | Flathead. |
| The Washington Water Power Company | Noxon Rapids | 2075 | 4/30/2005 | 282.880 | 1,783,371.000 | ID/MT/WA | Sanders. |
| Total | | | | 794.630 | 5,584,436.609 | | |
| New Hampshire (8): | | | | | | | |
| New England Power Company | Fifteen Miles Falls | 2077 | 7/31/2001 | 291.000 | 698,457.000 | MA/VT | Grafton. |
| | Vernon | [33] 1904 | 4/30/2018 | 24.000 | 122,284.200 | | Cheshire. |
| | Wilder | [34] 1892 | 4/30/2018 | 34.000 | 170,386.200 | | Grafton. |
| Public Service Company of New Hampshire | Amoskeag | 1893 | 12/31/2005 | 16.000 | 85,079.300 | NH/VT | Merrimack, Hillsborough. |
| | Ayers Island | 2456 | 12/31/1993 | 8.000 | 46,018.000 | | Grafton, Belknap. |
| | Eastman Falls | 2457 | 12/31/1987 | 6.000 | 13,204.000 | | Merrimack. |
| | Gorham | 2288 | 12/31/1993 | 2.000 | 14,259.000 | | Coos. |
| | J. Brodie Smith | 2287 | 12/31/1993 | 15.000 | 107,006.070 | | Coos. |
| Total | | | | 396.000 | 1,256,693.770 | | |
| New Jersey (1): Jersey Central Power & Light Company. | Yarks Creek | 2309 | 2/28/2013 | 386.900 | 238,594.000 | NJ | Warren. |
| New York (26): | | | | | | | |
| Niagara Mohawk Power Corporation | Beaver | 2645 | 12/31/1993 | 46.000 | 204,934.000 | NY | Herkimer, Lewis. |
| | Beebee Island | [35] 2538 | 12/31/1993 | 7.000 | 32,802.000 | | Jefferson. |
| | Black River | 2569 | 12/31/1993 | 29.000 | 164,359.000 | | Jefferson. |
| | E.J. West | 2318 | 12/31/1993 | 20.000 | 57,922.800 | | Saratoga. |
| | Granby | 2837 | 3/31/2020 | 5.000 | 20,340.000 | | Oswego. |
| | Green Island | 13 | 3/02/2011 | 6.000 | 28,821.600 | | Albany. |
| | Hoosic | 2616 | 12/31/1993 | 18.000 | 67,915.100 | | Rensselaer. |
| | Hudson | 2482 | 12/31/1993 | 84.000 | 423,017.000 | | Washington, Saratoga. |
| | Hydraulic Race | 2424 | 6/30/1991 | 5.000 | 12,912.000 | | Monroe. |
| | Mechanicville | 2500 | 12/31/1993 | 5.000 | 12,654.300 | | Saratoga. |
| | Oak Orchard | 3452 | 7/01/2021 | [36] 0.350 | 1,273.500 | | Orleans. |
| | Oswego River | 2474 | 12/31/1993 | 18.000 | 63,056.000 | | Oswego. |
| | Raquette | 2084 | 1/31/2002 | 102.000 | 432,782.000 | | St. Lawrence. |
| | Raquette | 2320 | 12/31/1993 | 46.000 | 308,325.000 | | St. Lawrence. |
| | Raymondville-Norfolk-Norwood | 2330 | 12/31/1993 | 12.000 | 83,698.000 | | St. Lawrence, Franklin. |
| | School-St. Cohoes | 2539 | 12/31/1993 | 39.000 | 151,813.600 | | Schenectady. |
| | Stewarts Bridge | 2047 | 8/31/2000 | 30.000 | 117,316.300 | | Saratoga. |
| | Stuyvesant Falls | 2696 | 8/30/2005 | 3.000 | 5,643.400 | | Columbia. |
| New York State Electric & Gas Corporation | Keuka | 2852 | 2/28/2003 | 2.000 | 2,737.000 | NY | Steuben. |
| | Rainbow Falls & Taylor Pond | 2835 | 10/31/2002 | 3.000 | 13,657.800 | | Clinton, Essex. |
| | Saranac | 2738 | 4/12/2006 | 24.100 | 164,483.100 | | Clinton. |
| | Upper Mechanicville | 2934 | 3/31/2021 | 16.530 | 18,202.000 | | Saratoga. |
| | Waterloo & Seneca Falls | 2438 | 12/31/1993 | 10.000 | 13,964.000 | | Seneca. |
| Rochester Gas and Electric Corporation | Station No. 2 | 2582 | 12/31/1993 | 6.500 | 41,476.000 | NY | Monroe. |
| | Station No. 26 | 2584 | 12/31/1993 | 3.000 | 10,739.000 | | Monroe. |

APPENDIX C.—INVESTOR-OWNED UTILITY HYDROELECTRIC PROJECTS, JANUARY 1985—Continued

| State [1] and company [2] | Project name [3] | License No.[4] | License expiration date [5] | Installed capacity (nameplate megawatts) [6] | Generation (megawatt-hours) [7] | States [8] | County [9] |
|---|---|---|---|---|---|---|---|
| | Station No. 5 | 2583 | 12/31/1993 | 38.250 | 141,656.00 | | Monroe. |
| Total | | | | 578.730 | 2,596,500,500 | | |
| North Carolina (14): | | | | | | | |
| Carolina Power & Light Company | Blewett Falls Lake & Tillery | 2206 | 4/30/2008 | 109.000 | 380,988.000 | NC/SC | Madison, Anson. |
| | Walters | 432 | [37] 11/22/1976 | 108.000 | 434,507.000 | | Haywood. |
| Duke Power Company | Catawba | [38] 2232 | 8/31/2008 | 804.940 | 2,007,424.000 | NC/SC | Burke, Catawaba, Gaston, Iredell, Lincoln. |
| | Idols | 2585 | 7/31/2000 | 1.411 | 3,856.00 | | Forsyth. |
| | Spencer Mountain | 2607 | 12/31/1993 | 0.640 | 2,140.00 | | Gaston. |
| Nantahala Power & Light Company | Bryson | 2601 | 7/31/2005 | 1.000 | 5,369.000 | NC | Swain. |
| | Dillsboro | 2602 | 7/31/2005 | 0.225 | 1,154.000 | | Jackson. |
| | East Fork | 2698 | 2/01/2006 | 26.000 | 112,049.000 | | Jackson. |
| | Franklin | 2603 | 7/31/2005 | 1.000 | 3,995.000 | | Macon. |
| | Mission | 2619 | 8/31/2005 | 2.000 | 9,495.000 | | Cherokee. |
| | Nantahala | 2692 | 2/28/2006 | 43.000 | 261,957.000 | | Macon. |
| | Queens Creek | 2694 | 9/30/2001 | 1.000 | 4,934.000 | | Macon. |
| | Tuckasegee & Thorpe | 2686 | 1/30/2006 | 25.000 | 119,581.000 | | Jackson. |
| Virginia Electric and Power Company | Gaston & Roanoke Rapids | 2009 | 1/31/2001 | 278.000 | 785,643.000 | NC/VA/WV | Halifax, Northampton. |
| Total | | | | 1,401.216 | 4,133,092.000 | | |
| Ohio (1): Ohio Power Company | Racine | 2570 | 11/30/2023 | 48.000 | 126,386.000 | OH | Meigs. |
| Oregon (13): | | | | | | | |
| Pacific Power & Light Company | Bend | 2643 | 12/31/1993 | 1.110 | 7,642.000 | CA/ID/MT | Deschutes. |
| | Klamath | [39] 2082 | 2/28/2006 | | | OR/WA/WY | Klamath. |
| | North Umpqua | 1927 | 1/29/1997 | 186.000 | 1,087,178.000 | | Douglas. |
| | Powerdale | 2659 | 2/28/2000 | 6.000 | 22,415.000 | | Hood River. |
| | Prospect No. 3 | 2337 | 12/31/1988 | 7.200 | 51,801.000 | | Jackson. |
| | Prospect No. 1,2,4 | 2630 | 7/01/2005 | 36.760 | 309,732.000 | | Jackson. |
| | Wallowa Falls | 308 | 2/28/1986 | 1.100 | 6,177.000 | | Wallowa. |
| Portland General Electric Company | Bull Run | 477 | 11/16/2004 | 21.000 | 103,152.000 | OR | Clackamas. |
| | North Fork | 2195 | 8/31/2006 | 92.000 | 556,936.000 | | Clackamas. |
| | Oak Grove | 135 | 8/31/2006 | 51.000 | 256,099.000 | | Clackamas. |
| | Round Butte & Pelton | 2030 | 12/31/2001 | 344.300 | 1,827,694.000 | | Jefferson. |
| | Sullivan | [40] 2233 | 12/31/2004 | 15.400 | 96,467.000 | | Clackamas. |
| Idaho Power Company | Hells Canyon | [41] 1971 | 7/31/2005 | | | ID/NV/OR | Baker, Wallowa. |
| Total | | | | 761.870 | 4,325,293.000 | | |
| Pennsylvania (8): | | | | | | | |
| Cleveland Electric Illuminating Company, The | Sennecca | [42] 2280 | 11/30/2015 | 422.400 | 512,327.000 | OH | Warren. |
| Pennsylvania Electric Company | Piney | 309 | 10/12/2002 | 28.800 | 66,083.000 | NY/PA | Clarion. |
| | Warrior Ridge | 2372 | 12/31/1993 | | | | Huntingdon. |
| Pennsylvania Power & Light Company | Holtwood | 1881 | [43] 9/01/2014 | 108.000 | 597,056.000 | PA | Lancaster. |
| | Wallenpaupack | 487 | 9/30/2004 | 40.000 | 103,009.000 | | Pike. |
| Philadelphia Electric Company | Muddy Run P.S. | 2355 | 8/31/2014 | 800.000 | 979,405.000 | PA | Lancaster. |
| Safe Harbor Water Power Corp [44] | Safe Harbor | 1025 | 4/22/2030 | 230.000 | 956,077.000 | Wholesale | Lancaster. |
| York Haven Power Company | York Haven | 1888 | 9/01/2014 | 19.600 | 123,811.000 | Wholesale | York. |
| Total | | | | 1,648.800 | 3,337,768.000 | | |
| South Carolina (12): | | | | | | | |
| Duke Power Company | Buzzard Roost | 1267 | 2/10/1985 | 15.000 | 52,543.000 | NC/SC | Greenville. |
| | Catawba | [45] 2232 | 8/31/2008 | | | | Fairfield, Kershaw, Lancaster, York. |
| | Gaston Shoals | 2332 | 12/31/1993 | 9.140 | 32,329.000 | | Cherokee. |
| | Hollidays Bridge | 2465 | 12/31/1993 | 3.500 | 14,378.000 | Anderson. | |
| | Keowee & Jocassee | 2503 | 8/31/2016 | 750.000 | 1,087,214.000 | | Pickens. |
| | Ninety Nine Islands | 2331 | 12/31/1993 | 18.000 | 61,592.000 | | Cherokee. |
| | Saluda | 2406 | 12/31/1993 | 2.400 | 7,921.000 | | Greenville. |
| South Carolina Electric & Gas Company | Columbia Hydro | 1895 | 6/30/2000 | 11.000 | 36,816.000 | SC | Richland. |
| | Neal Shoals | 2315 | 12/31/1993 | 5.200 | 28,390.000 | | Chester |
| | Parr Shoals | 1894 | 6/30/2020 | 526.000 | 441,182.000 | | Fairfield, Newberry. |
| | Saluda | 516 | [46] 8/04/1977 | 198.000 | 290,667.000 | | Newberry. |
| Lockhart Power Company | Lockhart | 2620 | 3/31/2000 | 12.300 | 82,628.600 | SC | Chester. |
| Total | | | | 1,550.540 | 2,135,660.600 | | |
| Utah (7): | | | | | | | |
| Utah Power & Light Company | American Fork | 696 | 10/31/2000 | 1.000 | 3,709.000 | ID/UT/WY | Utah. |
| | Beaver | 814 | [47] 8/31/1979 | 2.400 | 8,630.000 | | Beaver. |
| | Cutler | 2420 | 12/31/1993 | 30.000 | 232,952.000 | | Box Elder. |
| | Olmsted | 596 | [48] 10/20/1975 | 12.700 | 57,708.000 | | Utah. |
| | Pioneer | 2722 | 8/31/2000 | 5.000 | 11,772.000 | | Weber. |
| | Stairs | 597 | 6/30/2000 | 1.000 | 6,515.000 | | Salt Lake. |
| | Weber | 1744 | [49] 6/30/1970 | 2.500 | 14,128.000 | | Weber. |
| Total | | | | 54.600 | 335,414.000 | | |
| Vermont (19): | | | | | | | |
| Central Vermont Public Service Corporation | Arnold Falls | 2399 | 12/31/1993 | 0.400 | 1,786.000 | VT/NY | Caledonia. |
| | Cavendish | 2489 | 12/31/1993 | 1.400 | 6,199.000 | | Windsor. |
| | Gage | 2397 | 12/31/1993 | 0.700 | 3,179.000 | | Caledonia. |
| | Fairfax | 2205 | 12/31/1987 | 16.900 | 111,787.000 | | Franklin, Chittenden. |
| | Middlebury & Lower | 2737 | 7/01/2000 | 2.300 | 7,697.000 | | Addison. |
| | Passumpsic | 2400 | 12/31/1993 | 0.700 | 3,972.000 | | Caledonia. |
| | Pierce Mills | 2396 | 12/31/1993 | 0.300 | 1,437.000 | | Caledonia. |
| | Taftsville | 2490 | 12/31/1993 | 0.500 | 1,583.000 | | Windsor. |
| | Weybridge | 2731 | 05/31/1980 | 3.000 | 14,531.000 | | Addison. |
| Citizens Utilities Company | Clyde | 2306 | 12/31/1993 | 6.400 | 27,666.400 | AR/ID/VT | Orleans. |
| Green Mountain Power Corporation | Essex No. 19 | 2513 | 12/31/1993 | 7.200 | 33,462.900 | VT | Chittenden. |
| | Vergennes No. 9 | 2674 | 5/31/1999 | 2.400 | 10,772.700 | | Addison. |
| | Waterbury No. 22 | 2090 | 8/31/2001 | 5.520 | 17,542.300 | | Washington. |
| New England Power Company | Bellows Falls | 1855 | 4/30/2018 | 41.000 | 344,813.000 | MA/VT | Windham. |
| | Deerfield River | [50] 2323 | 12/31/1993 | | | | Windham. |
| | Vernon | [51] 1904 | 4/30/2018 | | | | Windham. |
| | Wilder | [52] 1892 | 4/30/2018 | | | | Windsor. |
| Vermont Marble Company | Center Rutland | 2445 | 12/31/1993 | [53] 0.275 | [54] 1,632.000 | Industrial | Rutland. |
| | Otter Creek | 2558 | 3/31/2012 | [55] 6.930 | [56] 42,660.000 | | Rutland, Addison. |
| Total | | | | 95.925 | 630,720.300 | | |

APPENDIX C.—INVESTOR-OWNED UTILITY HYDROELECTRIC PROJECTS, JANUARY 1985—Continued

| State [1] and company [2] | Project name [3] | License No. [4] | License expiration date [5] | Installed capacity (nameplate megawatts) [6] | Generation (megawatt-hours) [7] | States [8] | County [9] |
|---|---|---|---|---|---|---|---|
| Virginia (9): | | | | | | | |
| Appalachian Power Company | Byllesby & Buck | 2514 | 12/31/1993 | 30.100 | 126,966.000 | VA/WV | Carroll. |
| | Claytor | 739 | 6/30/2011 | 75.000 | 284,285.000 | | Pulaski. |
| | Leesville & Smith Mt. Lakes | 2210 | 3/31/2010 | 587.594 | 593,512.000 | | Bedford, Pittsylvania, Campbell. |
| | Niagara | 2466 | 12/31/1993 | 2.400 | 8,467.000 | | Roanoke. |
| | Reusens | 2376 | 12/31/1993 | 12.500 | 40,866.000 | | Lynchburg. |
| The Potomac Edison Company | Luray & Newport | 2425 | 12/31/1993 | 3.000 | 15,779.000 | MD/VA/WV | Page. |
| | Shenandoah | 2509 | 12/31/1993 | 0.862 | 1,724.000 | | Page. |
| | Warren | 2391 | 12/31/1993 | 0.750 | 2,770.000 | | Warren. |
| Virginia Electric and Power Company | Cushaw Res. | 906 | 6/16/2008 | 7.500 | 20,814.300 | NC/VA/WV | Amherst. |
| Total | | | | 719.706 | 1,095,183.300 | | |
| Washington (8): | | | | | | | |
| Pacific Power & Light Company | Condit | 2342 | 12/31/1993 | 9.600 | 54,523.000 | CA/ID/MT, OR/WA/WY | Klickitat. |
| | Merwin | [57] 935 | 12/11/2009 | 136.000 | 647,359.000 | | Clark. |
| | Swift No. 1 | 2111 | 4/30/2006 | 204.000 | 833,587,000 | | Skamania. |
| | Yale | 2071 | 4/30/2001 | 108.000 | 665,886.000 | | Clark. |
| Puget Sound Power & Light Company | Baker | 2150 | 4/30/2006 | 158.400 | 675,662.000 | WA | Skagit. |
| | Snoqualmie Falls | 2493 | 12/31/1993 | 41.990 | 269,008.700 | | King. |
| The Washington Water Power Company | Meyers Falls | 2544 | 12/31/1993 | 1.200 | 4,777.000 | ID/MT/WA | Stevens. |
| | Spokane River | 2545 | 8/01/2007 | 114.000 | 853,378.000 | | Spokane, Lincoln. |
| Total | | | | 773.190 | 4,004,180.700 | | |
| West Virginia (7): | | | | | | | |
| Kanawha Valley Power Company [58] | London-Marmet | 1175 | 1/31/2014 | [59] 28.800 | [60] 162,488.000 | Wholesale | Kanawha. |
| | Winfield | 1290 | 1/31/2014 | [61] 14.760 | [62] 104,905.000 | | Putnam. |
| The Potomac Edison Company | Dam No. 5 | 2517 | 12/31/2003 | 1.120 | 6,851.000 | MD/VA/WV | Berkeley. |
| | Dam No. 4 | 2516 | 12/31/2003 | 1.000 | 4,338.000 | | Berkeley. |
| | Harpers Ferry | 2515 | 12/31/1993 | 0.600 | 1,588.000 | | Jefferson. |
| | Millville | 2343 | 12/31/1987 | 2.840 | 14,139.000 | | Jefferson. |
| West Penn Power Company | Lake Lynn | 2459 | 12/31/1993 | 51.000 | 121,647.000 | PA | Preston. |
| Total | | | | 100.120 | 415,956.000 | | |
| Wisconsin (42): | | | | | | | |
| Consolidated Water Power Company | Biron No. 2 | 2192 | 6/30/2000 | 3.300 | 26,111.000 | WI | Wood. |
| | Du Bay | 1953 | 6/30/1991 | 7.200 | 54,850.000 | | Portage. |
| | Stevens Point | 2110 | 6/30/2000 | 3.840 | 32,256.000 | | Portage. |
| | Wisconsin Rapids | 2256 | 7/31/1993 | 4.680 | 33,091.000 | | Wood. |
| | Wisconsin River Division | 2590 | 6/30/1993 | 1.800 | 8,303.000 | | Portage. |
| Lake Superior District Power Company | Big Falls | 2390 | 12/31/1993 | 7.780 | 50,485.592 | MI/WI | Rusk. |
| | Hayward | 2417 | 12/31/1993 | 0.170 | 1,636.048 | | Sawyer. |
| | Orienta | 2564 | 12/31/1993 | 0.800 | 3,113.090 | | Bayfield. |
| | Thornapple | 2475 | 12/31/1993 | 1.400 | 10,384.810 | | Rusk. |
| | White River | 2444 | 12/31/1993 | 1.000 | 5,971.500 | | Ashland. |
| North Central Power Company, Inc | Arpin | 2684 | 4/30/2019 | [63] 1.450 | [64] 8,574.000 | WI | Shawano. |
| | Winter | 2064 | 11/30/2001 | [65] 0.600 | [66] 2,864.000 | | Sawyer. |
| Northern States Power Company (Wisconsin) | Cedar Falls | 2697 | 1/30/2001 | 6.000 | 40,549.400 | WI | Dunn. |
| | Chippewa Falls | 2440 | 12/31/1993 | 21.600 | 93,186.400 | | Chippewa. |
| | Cornell | 2639 | 11/30/2023 | 30.900 | 111,773.300 | | Chippewa. |
| | Eau Claire | 2670 | 9/20/2000 | 9.500 | 58,688.000 | | Eau Claire. |
| | Holcombe | 1982 | 6/30/1998 | 33.800 | 127,564.600 | | Chippewa. |
| | Jim Falls | 2491 | 9/26/1983 | 14.400 | 89,975.600 | | Chippewa. |
| | Menomonie | 2181 | 3/31/2005 | 5.400 | 27,839.400 | | Dunn. |
| | Trego | 2711 | 3/31/1993 | 1.200 | 9,263.042 | | Washburn. |
| | Wissota | 2567 | 6/30/2000 | 36.000 | 192,791.100 | | Chippewa. |
| Northwestern Wisconsin Electric Company | Black Brook | 2894 | 12/31/2020 | 0.648 | 2,395.400 | WI | Polk. |
| Wisconsin Electric Power Company | Oconto Falls | 2523 | 12/31/1993 | 1.320 | 8,615.000 | MI/WI | Oconto. |
| | Pine | 2486 | 12/31/1993 | 3.600 | 24,359.000 | | Florence. |
| | Weyauwega | 2550 | 12/31/1993 | 0.440 | 917.000 | | Waupaca. |
| Wisconsin Power and Light Company | Beloit | 2348 | 12/31/1993 | 0.380 | 3,473.000 | WI | Rock. |
| | Janesville-Central | 2347 | 12/31/1993 | 0.250 | [67] 3,156.213 | | Rock. |
| | Janesville-Monteray | 2346 | 12/31/1993 | 0.250 | ([68]) | | Rock. |
| | Shawano | 710 | [69] 7/19/1977 | 0.700 | 4,927.000 | | Shawano. |
| Wisconsin Public Service Corporation | Alexander | 1979 | [70] 6/30/1974 | 4.200 | 25,177.000 | MI/WI | Lincoln. |
| | Caldron Falls | 2525 | 12/31/1993 | 6.400 | 23,303.000 | | Marinette. |
| | Grandfather Falls | 1966 | [71] 12/31/1987 | 17.240 | 125,655.900 | | Lincoln |
| | High Falls | 2595 | 12/31/1993 | 7.000 | 21,219.000 | | Marinette. |
| | Jersey | 2476 | 12/31/1993 | 0.512 | 3,319.000 | | Lincoln. |
| | Johnson Falls | 2522 | 12/31/1993 | 3.520 | 14,806.000 | | Marinette. |
| | Otter Rapids | 1957 | 6/30/1990 | 0.500 | 3,029.000 | | Vilas. |
| | Peshtigo | 2581 | 12/31/1993 | 0.584 | 4,218.000 | | Marinette. |
| | Potato Rapids | 2560 | 12.31/1993 | 1.380 | 7,270.000 | | Marinette. |
| | Sandstone Rapids | 2546 | 12/31/1993 | 3.840 | 16,310.000 | | Marinette. |
| | Tomahawk | 1940 | 12/31/1986 | 2.600 | 14,144.000 | | Lincoln. |
| | Wausau | 1999 | 6/30/1995 | 5.400 | 35,452.000 | | Marathon. |
| Wisconsin River Power Company [72] | Petenwell-Castle Rock | 1984 | 1/31/1998 | 35.000 | 259,428.000 | Wholesale | Adams. |
| Total | | | | 288.584 | 1,590,444,395 | | |

[1] State designations represent the state in which the project is located. This may not coincide with the state in which the company serves ultimate customers. 'electric utilities with hydroelectric projects licensed by the Federal Energy Regulatory Commission.
[3] Federal Energy Regulatory Commission.
[4] Federal Energy Regulatory Commission.
[5] Federal Energy Regulatory Commission as of March 31, 1984.
[6] Federal Energy Regulatory Commission, Form 1 (1983), except as noted.
[7] Federal Energy Regulatory Commission, Form 1 (1983), except as noted.
[8] Represents states in which ultimate customers are served by company as of December 31, 1983. "Catalogue of Investor-Owned Electric Utility Companies Operating in the United States," 24th edition (EEI) and other EEI sources.
[9] U.S. Department of Energy, Energy Information Administration.
[11] Energy Information Administration, Form 759 (1983).
[12] Energy Information Administration, Form 759 (1983).
[13] Competing application filed by Consortium of 17 Cities and Districts.
[14] Relicense application filed 12/26/1972. Competing application filed 4/9/1974 by City of Santa Clara as License No. 2745.
[15] Relicense application filed 12/21/1979. Competing application filed by Tuolumne Regional Water District as License No. 4309.
[16] Relicense application filed 9/28/1979. Competing application filed by Consortium of 15 Cities and Districts.
[17] Project also located in Oregon. Installed capacity and generation are for California and Oregon.
[18] Relicense application filed as of May 3, 1983.
[19] Reservoir only.
[20] Competing application filed by City of Vernon.
[21] Competing application filed by June Lake Public District.

[22] Project also located in Oregon. Installed capacity and generation are for Idaho and Oregon.
[23] Relicense application filed as of May 3, 1983.
[24] Reservoir only.
[25] Energy Information Administration, Form 759 (1983).
[26] Energy Information Administration, Form 759 (1983).
[27] Project also located in Vermont. Installed capacity and generation are for Massachusetts and Vermont.
[28] Jointly-owned with The Connecticut Light and Power Company. Installed capacity and generation are for both companies.
[29] Jointly-owned with The Detroit Edison Company (49%). Installed capacity and generation are for both companies.
[30] Energy Information Administration, Form 759 (1983).
[31] Energy Information Administration, Form 759 (1983).
[32] Relicense application filed as of May 3, 1983. Competing application filed by Salish and Kootenai tribes as License No. 2776.
[33] Project also located in Vermont. Installed capacity and generation are for New Hampshire and Vermont.
[34] Project also located in Vermont. Installed capacity and generation are for New Hampshire and Vermont.
[35] Jointly-owned with Beebee Island Corporation (17.2%). Installed capacity and generation are for Niagara Mohawk Power Corporation only.
[36] Energy Information Administration, Form 759 (1983).
[37] Relicense application filed as of May 3, 1983.
[38] Project also located in South Carolina. Installed capacity and generation are for North Carolina and South Carolina.
[39] Project also located in California. See California for installed capacity and generation for California and Oregon.
[40] Jointly-licensed with Crown Zellerbach and Publishers Paper Company. Installed capacity and generation are for Portland General Electric Company only.
[41] Project also located in Idaho. See Idaho for installed capacity and generation for Idaho and Oregon.
[42] Jointly-owned with Pennsylvania Electric Company (20%). Installed capacity and generation are for both companies.
[43] According to Pennsylvania Power & Light Company, the original license listed the expiration date as 9/1/2004 in error.
[44] Jointly-owned by Baltimore Gas and Electric and Pennsylvania Power & Light Company.
[45] Project also located in North Carolina. See North Carolina for installed capacity and generation for North Carolina and South Carolina.
[46] Relicense application filed as of May 3, 1983.
[47] Application to delete filed on 5/13/1976.
[48] Relicense application filed as of May 3, 1983. Competing application filed by Consortium of 8 Cities and Districts.
[49] Relicense application filed as of May 3, 1983. Competing application filed 7/19/1974 by City of Bountiful as License No. 2747.
[50] Project also located in Massachusetts. See Massachusetts for installed capacity and generation for Massachusetts and Vermont.
[51] Project also located in New Hampshire. See New Hampshire for installed capacity and generation for New Hampshire and Vermont.
[52] Project also located in New Hampshire. See New Hampshire for installed capacity and generation for New Hampshire and Vermont.
[53] Energy Information Administration, Form 759 (1983).
[54] Energy Information Administration, Form 759 (1983).
[55] Energy Information Administration, Form 759 (1983).
[56] Energy Information Administration, Form 759 (1983).
[57] Relicense application filed 4/26/1976. Competing application filed by Clark-Cowlitz Joint Operating Agency.
[58] Subsidiary of Appalachian Power Company.
[59] Energy Information Administration, Form 759 (1983).
[60] Energy Information Administration, Form 759 (1983).
[61] Energy Information Administration, Form 759 (1983).
[62] Energy Information Administration, Form 759 (1983).
[63] Energy Information Administration, Form 759 (1983).
[64] Energy Information Administration, Form 759 (1983).
[65] Energy Information Administration, Form 759 (1983).
[66] Energy Information Administration, Form 759 (1983).
[67] Includes generation for Wisconsin Power and Light Company License No. 2346 (Janesville-Monteray).
[68] Generation included with Wisconsin Power and Light Company License No. 2347 (Janesville-Central).
[69] Relicense application filed 11/8/1976. Competing application filed by Shawano Municipal Utilities.
[70] Relicense application filed as of May 3, 1983.
[71] Competing application filed by Wisconsin Public Power Incorporated System.
[72] Jointly-owned by Wisconsin Power and Light Company and Wisconsin Public Service Corporation.

Note.—Total installed capacity (nameplate, megawatts), 21,994.318; total generation (megawatt-hours), 90,398,460.971; total number of States (total represents the number of States in which projects are located), 32; total number of companies (total includes investor-owned electric utilities which wholly-own and jointly-own projects), 76; total number of projects (projects located in more than 1 State (6) are included only once, therefore, the sum of the States' project totals (within parentheses by each State name) will not equal total number of projects), 366; total number of projects subject to relicensing through 1993, 177.

JANUARY 1985.

## TABLE 1.—NUMBER OF CUSTOMERS OF INVESTOR-OWNED UTILITIES HAVING PROJECTS CURRENTLY BEING SOUGHT BY MUNICIPALITIES AND NUMBER OF ELECTRIC CUSTOMERS OF COMPETING MUNICIPALITIES

| State/Utility | Project sought by municipalities | Number of utility customers [1] | Competing municipality | Number of municipal customers [2] |
|---|---|---|---|---|
| California: | | | | |
| Pacific Gas and Electric Co | Mokelumne, No. 137 | 3,594,107 | City of Santa Clara | 35,389 |
| | Phoenix, No. 1061 | 3,594,107 | Tuolumne Regional Water District | 0 |
| | Rock Creek/Cresta No. 1962 | 3,594,107 | Consortium of 15 cities and districts | 644,268 |
| | Haas-Kings River No. 1988 | 3,594,107 | Consortium of 17 cities and districts | 667,379 |
| Southern California Edison Co | Poole, No. 1388 | 3,325,279 | City of Vernon | 2,097 |
| | Rush Creek, No.1389 | 3,325,279 | June Lake Public Utility District | 0 |
| Utah: Utah Power & Light Co | Olmsted, No. 596 | 478,812 | Consortium of eight cities and districts | 38,410 |
| | Weber River, No. 1744 | 478,812 | City of Bountiful | 10,389 |
| Washington: Pacific Power & Light Co | Merwin, No. 935 | 650,418 | Clark-Cowlitz Joint Operating Agency | 121,530 |
| Wisconsin: | | | | |
| Wisconsin Power & Light Co | Shawano, No. 710 | 305,661 | Shawano Municipal Utilities | 4,120 |
| Wisconsin Public Service Co | Grandfather Falls, No. 1966 | 293,005 | Wisconsin Public Power Incorporated System.[3] | 75,604 |
| | | 8,647,282 | | 954,918 |

[1] Total system customers taken from "Catalogue of Investor-Owned Electric Utility Companies," 24th Ed., Published 1984, (EEI).
[2] "Directory of Electric Utilities," 1984–85 (McGraw-Hill).
[3] 28 municipalities.

JANUARY 1985.

## TABLE 2.—ANNUAL FUEL COSTS FOR EQUIVALENT GENERATION

| State/Utility | Project | 1983 capacity [1] (nameplate) (MW) | 1983 generation [1] (kWh) (in millions) | Annual fuel cost for equivalent generation [2] | Competitor |
|---|---|---|---|---|---|
| California: | | | | | |
| Pacific Gas & Electric Co | Mokelumne, No. 137 | 192.8 | 1,528.1 | $104,367,092 | City of Santa Clara. |
| | Phoenix, No. 1061 | 1.6 | 16.1 | 1,099,592 | Tuolumne Regional Water District. |

TABLE 2.—ANNUAL FUEL COSTS FOR EQUIVALENT GENERATION—Continued

| State/Utility | Project | 1983 capacity [1] (nameplate) (MW) | 1983 generation [1] (kWh) (in millions) | Annual fuel cost for equivalent generation [2] | Competitor |
|---|---|---|---|---|---|
| | Rock Creek/Cresta, No. 1962 | 180.9 | 1,410.3 | 96,321,551 | Consortium of 15 cities and districts. |
| | Haas-Kings River, No. 1988 | 179.1 | 1,394.2 | 95,221,919 | Consortium of 17 cities and districts. |
| Southern California Edison Co | Poole, No. 1388 | 10.0 | 46.1 | 508,807 | City of Vernon. |
| | Rush Creek, No. 1389 | 8.4 | 67.6 | 746,108 | June Lake Public District. |
| Utah: Utah Power & Light Co | Olmsted, No. 596 | 12.7 | 57.7 | 818,102 | Consortium of eight cities and districts. |
| | Weber River, No. 1744 | 2.5 | 14.1 | 199,933 | City of Bountiful. |
| Washington: Pacific Power & Light Co | Merwin, No. 935 | 136.0 | 647.4 | 5,963,142 | Clark-Cowlitz Joint Operating Agency. |
| Wisconsin: | | | | | |
| Wisconsin Power & Light | Shawano, No. 710 | 0.7 | 4.9 | 76,097 | Shawano Municipal Utilities. |
| Wisconsin Public Service Co | Grandfather Falls, No. 1966 | 17.2 | 125.7 | 2,560,781 | Wisconsin Public Power Incorporated System. [3] |
| | | 741.9 | 5,312.2 | 307,883,124 | |

[1] Federal Energy Regulatory Commission, Form 1 (1983).
[2] Annual fuel costs for equivalent generation are expressed in 1983 dollars and are determined by using 1983 company prices for replacement fuel; the calculations do not take into account future fuel costs or normalized water conditions. Calculations were made using the formula shown in Appendix A. Company-specific fuel cost figures as shown in "The Cost and Quality of Fuels for Electric Utility Plants." (DOE/EIA-091, 1983) are used.
[3] 28 municipalities.

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## APPENDICES

### APPENDIX A

Average annual hydro generation can be expressed in terms of the cost of "equivalent barrels of oil." The national average transformation number of 576 kWh per barrel of oil can be used with company-specific oil costs per barrel.

Step 1: 148,452 (avg. Btu per gal of oil) × 42 gal. per bbl = 6,234,984 Btu per bbl ÷ 10,831 (avg. Btu per kWh) = 576 kWh per bbl.

Step 2: The utility's 1983 hydro generation ÷ 576 kWh/bbl oil × the utility's cost per bbl = equivalent oil fuel savings.

A comparable calculation can be made using coal. The national average transformation number of 2,015 kWh per ton of coal can be used with company-specific coal costs per ton.

Step 1: 10,517 (avg. Btu per lb. coal) × 2,000 lb. per ton = 21,034,000 Btu per ton coal ÷ 10,438 (avg. Btu per kWh) = 2,015 kWh per ton.

Step 2: The utility's 1983 hydro generation ÷ 2,015 kWh/ton coal × the utility's cost per ton = equivalent coal fuel savings.

The source for the figures in each Step 1 of the above calculations is the EEI 1983 Statistics of Fuel Used to Generate Electricity by the Electric Utility Industry.

The source for the company-specific delivered price per barrel of oil and ton of coal is The Cost and Quality of Fuels for Electric Utility Plants (DOE/EIA-0191, 1983).

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### APPENDIX B.—*1983 electric customers served by investor-owned utilities and municipal utilities* [1]

| | *Customers* |
|---|---|
| New England: | |
| Maine: | |
| Investor | 522,067 |
| Municipal | 12,867 |
| New Hampshire: | |
| Investor | 384,772 |
| Municipal | 8,869 |
| Vermont: | |
| Investor | 193,592 |
| Municipal | 39,099 |
| Massachusetts: | |
| Investor | 2,006,639 |
| Municipal | 295,879 |
| Rhode Island: | |
| Investor | 383,272 |
| Municipal | 3,065 |
| Connecticut: | |
| Investor | 1,222,059 |
| Municipal | 56,143 |
| Middle Atlantic: | |
| New York: | |
| Investor | 6,438,047 |
| Municipal | 137,011 |
| New Jersey: | |
| Investor | 2,888,909 |
| Municipal | 44,967 |
| Pennsylvania: | |
| Investor | 4,572,198 |
| Municipal | 69,926 |
| East North Central: | |
| Ohio: | |
| Investor | 3,865,780 |
| Municipal | 275,436 |
| Indiana: | |
| Investor | 1,720,438 |
| Municipal | 210,131 |
| Illinois: | |
| Investor | 4,180,773 |
| Municipal | 176,868 |
| Michigan: | |
| Investor | 3,337,544 |
| Municipal | 235,014 |
| Wisconsin: | |
| Investor | 1,702,251 |
| Municipal | 187,768 |
| West North Central: | |
| Minnesota: | |
| Investor | 1,067,272 |
| Municipal | 260,716 |
| Iowa: | |
| Investor | 927,897 |
| Municipal | 175,717 |
| Missouri: | |
| Investor | 1,449,382 |
| Municipal | 295,296 |
| North Dakota: | |
| Investor | 193,082 |
| Municipal | 10,984 |
| South Dakota: | |
| Investor | 166,069 |
| Municipal | 41,648 |
| Nebraska: | |
| Investor | ..... |
| Municipal | 734,777 |
| Kansas: | |
| Investor | 714,798 |
| Municipal | 231,846 |
| South Atlantic: | |
| Delaware: | |
| Investor | 187,092 |
| Municipal | 37,047 |
| Maryland: | |
| Investor | 1,479,709 |
| Municipal | 26,505 |
| District of Columbia: | |
| Investor | 203,276 |
| Municipal | ..... |
| Virginia: | |
| Investor | 1,814,936 |
| Municipal | 109,037 |
| West Virginia: | |
| Investor | 810,469 |
| Municipal | 3,485 |
| North Carolina: | |
| Investor | 1,796,450 |
| Municipal | 369,247 |
| South Carolina: | |
| Investor | 847,467 |
| Municipal | 181,732 |
| Georgia: | |
| Investor | 1,405,499 |
| Municipal | 238,217 |
| Florida: | |
| Investor | 3,987,866 |
| Municipal | 762,502 |
| East South Central: | |
| Kentucky: | |
| Investor | 881,047 |
| Municipal | 168,981 |
| Tennessee: | |
| Investor | 34,858 |
| Municipal | 1,450,876 |
| Alabama: | |
| Investor | 1,015,074 |
| Municipal | 327,708 |
| Mississippi: | |
| Investor | 483,155 |
| Municipal | 112,402 |
| West South Central: | |
| Arkansas: | |
| Investor | 647,120 |
| Municipal | 109,023 |
| Louisiana: | |
| Investor | 1,350,982 |
| Municipal | 124,197 |
| Oklahoma: | |
| Investor | 1,027,795 |
| Municipal | 164,601 |
| Texas: | |
| Investor | 4,718,373 |
| Municipal | 919,325 |
| Mountain: | |
| Montana: | |
| Investor | 288,571 |
| Municipal | ..... |
| Idaho: | |
| Investor | 366,117 |
| Municipal | 32,591 |
| Wyoming: | |
| Investor | 155,574 |
| Municipal | 20,074 |
| Colorado: | |
| Investor | 931,842 |
| Municipal | 239,792 |
| New Mexico: | |
| Investor | 400,116 |
| Municipal | 51,602 |
| Arizona: | |
| Investor | 715,327 |
| Municipal | 409,596 |
| Utah: | |
| Investor | 427,220 |
| Municipal | 107,777 |
| Nevada: | |
| Investor | 370,395 |
| Municipal | 12,851 |

| | |
|---|---|
| Pacific: | |
| Washington: | |
| Investor | 850,110 |
| Municipal | 1,031,600 |
| Oregon: | |
| Investor | 942,486 |
| Municipal | 171,526 |
| California: | |
| Investor | 7,839,316 |
| Municipal | 2,284,030 |
| Alaska and Hawaii: | |
| Alaska: | |
| Investor | 13,233 |
| Municipal | 43,158 |
| Hawaii: | |
| Investor | 319,449 |
| Municipal | ..... |
| Total: Investor customers | 74,247,765 |
| Total: Municipal customers | 13,013,509 |

[1] Directory of Electric Utilities, 1984-1985 (McGraw-Hill) for municipals. The municipals also include public power districts and state projects. Rural electric cooperatives which are not considered "municipalities" under Part I of the Federal Power Act are not included in the municipal figures. The Statistical Yearbook of the Electric Utility Industry, 1983, for the investor-owned utilities.

## NONPUBLIC HYDROELECTRIC PROJECTS LICENSED BY FEDERAL ENERGY REGULATORY COMMISSION, JANUARY 1985

[Excludes electric utilities]

| State [1] | Company | Project name | License No. | License expiration date | Installed capacity (nameplate, kilowatts) |
|---|---|---|---|---|---|
| AK (4) | Alaska Packers, Assn., Inc | Chignik | 620 | 10/04/2005 | 50 |
| | C.W.C. Fisheries | Dry Spruce | 1432 | 10/26/1988 | 75 |
| | Danner, George & Fenster, James P | Danner-Fenster | 4641 | 7/31/2031 | 12 |
| | Mathews, Rich & Smith, Peter | Jetty Lake | 3017 | 6/30/2030 | 50 |
| Total | | | | | 187 |
| AZ (2) | Lincoln National Life Ins. Co | Irving & Childs | 2069 | 12/31/1994 | 7,000 |
| | Phelps Dodge Corp | Blue Ridge | 2304 | 12/31/2012 | 2,800 |
| Total | | | | | 9,800 |
| CA (1) | Townsend, Donald R | Fire Mountain Lodge | 1992 | 4/30/2010 | 15 |
| Total | | | | | 15 |
| CO (2) | New Jersey Zinc Co | Falls Creek | 1553 | 6/27/2000 | 330 |
| | Woods Lake Ranch | Woods Lake | 3410 | 1/31/2003 | 30 |
| Total | | | | | 360 |
| GA (2) | Fieldcrest Mills, Inc | Eagle & Phenix | 2655 | 12/31/1993 | 4,260 |
| | Graniteville Company | Graniteville | 2935 | 9/30/2001 | 1,200 |
| Total | | | | | 5,460 |
| ID (4) | Ellis, Wayne R | Clifford Rosenbalm | 3073 | 12/31/2004 | 8 |
| | Island Park Resorts, Inc | Ponds Lodge | 1413 | 10/31/2004 | 200 |
| | Mackay Bar Corp | Hettinger | 3041 | 10/31/2010 | 12 |
| | Pickell, Jack W | Slaughter Creek | 2794 | 8/30/2006 | 20 |
| Total | | | | | 240 |
| IL (1) | Hydro-Op One Associates | Dayton | 287 | 4/10/2004 | 3,680 |
| Total | | | | | 3,680 |
| KS (1) | Bowersock Mls. and Power Co | Kansas River | 2644 | 12/31/1987 | 1,850 |
| Total | | | | | 1,850 |
| ME (25) | Augusta Dev. Corp | Edwards | 2389 | 12/31/1993 | 3,500 |
| | Diamond Inter. Corp | Great Works | 2312 | 3/31/2002 | 4,580 |
| | Georgia Pacific Corp | Grand Lake Reservoir | 2618 | 9/30/2000 | 0 |
| | do | Forest City Reservoir | 2660 | 8/31/2000 | 0 |
| | do | Vanceboro Reservoir | 2492 | 3/01/2016 | 0 |
| | Great Northern Paper Co | Ripogenus | 2572 | 12/31/1993 | 37,530 |
| | Great Northern Nekoosa Corp | Great Northern Storage | 2634 | 4/30/2000 | 0 |
| | do | Mataceunk | 2520 | 12/31/1987 | 19,200 |
| | do | Penobscot | 2458 | 12/31/1993 | 40,550 |
| | International Paper Co | Androscoggin | 2375 | 9/30/1999 | 9,600 |
| | Kennebec Water Power Co | Moosehead Lake | 2671 | 12/31/1993 | 0 |
| | Madison Paper Industries | Abenaki | 2364 | 4/30/2004 | 3,650 |
| | do | Anson | 2365 | 12/31/1993 | 6,000 |
| | do | Brassua Reservoir | 2615 | 12/31/1993 | 0 |
| | do | Moxi Reservoir | 2613 | 12/31/1993 | 0 |
| | Maine Hydro Dev. Corp | Barkers Mill | 2808 | 1/31/2019 | 1,500 |
| | do | Goose | 2804 | 2/29/2020 | 149 |
| | Milstar Manufacturing Corp | Lockwood | 2574 | 12/31/1993 | 4,800 |
| | S.D. Warren Company | Dundee | 2942 | 9/30/2001 | 2,400 |
| | do | Gambo | 2931 | 9/30/2000 | 1,900 |
| | do | Little Falls | 2941 | 5/31/2000 | 1,000 |
| | do | Mallison Falls | 2932 | 5/31/2000 | 800 |
| | do | Saccarappa | 2897 | 10/01/1999 | 1,350 |
| | Scott Paper Company | Winslow | 2611 | 12/31/1993 | 3,730 |
| | Union Water Power Co., The | Lewiston Falls | 2302 | 12/31/1993 | 30 |
| Total | | | | | 142,269 |
| MA (16) | Aquamac Corporation | Aquamac | 2927 | 10/01/1999 | 250 |
| | Boott Mills ETAL | Lowell Hydro | 2790 | 4/30/2023 | 6,140 |
| | Hammermill Paper Co | Turners Falls | 2622 | 2/28/1991 | 937 |
| | do | Woronoco | 2631 | 9/01/2001 | 2,690 |
| | Lawrence Hydro Assoc | Lawrence | 2800 | 11/30/2028 | 16,800 |
| | Linweave, Inc | Albin Mill (A wheel) | 2768 | 2/28/1991 | 250 |
| | do | Albin Mill (D wheel) | 2766 | 2/28/1991 | 400 |
| | do | Crocker Mill | 2758 | 2/28/1991 | 280 |
| | do | Crocker Mill (C wheel) | 2770 | 2/28/1991 | 240 |
| | do | Linweave Warehouse (A wheel) | 2772 | 2/28/1991 | 460 |
| | do | Linweave Warehouse (D wheel) | 2775 | 2/28/1991 | 360 |
| | do | Mt. Tom Mill | 2497 | 2/28/1991 | 400 |
| | do | Nonotuck Mill | 2771 | 2/28/1991 | 400 |
| | Merrimack Paper Co | Merrimack | 2928 | 10/30/1999 | 1,088 |
| | North Canal Waterworks | North Canal | 5906 | 7/31/2002 | 2,520 |
| | Premoid Corp | West Springfield | 2608 | 12/31/1993 | 0 |

NONPUBLIC HYDROELECTRIC PROJECTS LICENSED BY FEDERAL ENERGY REGULATORY COMMISSION, JANUARY 1985—Continued

[Excludes electric utilities]

| State [1] | Company | Project name | License No. | License expiration date | Installed capacity (nameplate, kilowatts) |
|---|---|---|---|---|---|
| Total | | | | | 33,215 |
| MI(3) | Escanaba Paper Co | Escanaba | 2506 | 12/31/1993 | 9,190 |
| | Niagara of Wisc. Paper | Little Quinnesec Fls.[2] | 2536 | 6/30/1993 | 8,388 |
| | Watervliet Paper Co | Watervliet | 2374 | 12/31/1990 | 300 |
| Total | | | | | 17,878 |
| MN(4) | Blandin Paper Company | Grand Rapids | 2362 | 12/31/1993 | 2,100 |
| | Ford Motor Company | Twin city | 362 | 6/06/2003 | 17,900 |
| | Potlatch Corporation | Brainerd | 2533 | 12/31/1993 | 3,342 |
| | do | Cloquet | 2363 | 12/31/1993 | 6,514 |
| Total | | | | | 29,856 |
| NV(1) | Cord, Virginia Kirk | Leidy Creek | 1746 | 9/30/1991 | 200 |
| Total | | | | | 200 |
| NH(6) | James River-New Hampshire Elec. Inc | Cascade | 2327 | 12/31/1993 | 7,200 |
| | do | Cross | 2326 | 12/31/1993 | 3,220 |
| | do | Gorham | 2311 | 12/31/1993 | 4,800 |
| | do | Riverside | 2423 | 12/31/1993 | 7,600 |
| | do | Sawmill | 2422 | 12/31/1993 | 3,174 |
| | do | Shelburne | 2300 | 12/31/1993 | 3,720 |
| Total | | | | | 29,714 |
| NY(10) | Beaver Falls Power Co | Beaver River | 2593 | 12/31/1987 | 1,500 |
| | Cornell University | Cornell University | 3251 | 6/30/2021 | 1,500 |
| | Finch Pruyn and Co | Glen Falls | 2385 | 12/31/1993 | 9,840 |
| | Georgia Pacific Corp | Black | 2548 | 12/31/1988 | 6,755 |
| Hampshire Paper Co | Emeryville | | 2850 | 5/31/2012 | 1,740 |
| | Hydro Power Inc | Hoosic Falls | 2487 | 12/31/1993 | 0 |
| | International Paper Co | Palmer Falls & Curtis [3] | 2609 | 4/30/2000 | 12,500 |
| | James River-Groveton Inc | Natural Dam | 2851 | 4/30/2012 | 1,020 |
| | Moreau Manufacturing Corp | Feeder Dam | 2554 | 12/31/1993 | 6,000 |
| | Stapenhorst F.W.E. Inc | Colliersville | 2788 | 2/28/2019 | 1,450 |
| Total | | | | | 42,305 |
| NC(3) | Saranac Energy Corp | Lake Tahoma | 4021 | 6/30/2022 | 240 |
| | Utilities Holding Company | Cascade | 2541 | 12/31/1993 | 825 |
| | Yadkin Inc | Yadkin Falls | 2197 | 4/30/2008 | 201,000 |
| Total | | | | | 202,065 |
| OR(2) | California Pacific Utilities Co | Rock Creek | 1986 | 6/29/1996 | 800 |
| | Crown Zellerbach Corp | Willamette [4] | 2233 | 12/31/2004 | 41,360 |
| Total | | | | | 42,160 |
| RI(2) | Roosevelt Hydro Electric Co | Elizabeth Webbing Mills | 3037 | 6/30/2021 | 700 |
| | Valley Industries, Inc | Centerville | 3010 | 12/31/2022 | 0 |
| Total | | | | | 700 |
| SC(3) | Aquenergy Systems, Inc | Piedmont | 2428 | 12/31/1987 | 1,000 |
| | Pacolet Manufacturing Co | Pacolet S.C | 2621 | 1/31/2012 | 800 |
| | Riegal Textile Corp | Ware Shoals | 2416 | 9/30/2001 | 3,000 |
| Total | | | | | 4,800 |
| TN(1) | Tapoco Inc | Little Tennessee | 2169 | 2/28/2005 | 326,500 |
| Total | | | | | 326,500 |
| VT(1) | Georgia Pacific Corp | Gilman | 2392 | 12/31/1990 | 3,390 |
| Total | | | | | 3,390 |
| VA(4) | Dan River Inc | Schoolfield | 2411 | 12/31/1993 | 4,550 |
| | Owens-Illinois Inc | Big Island | 2902 | 1/01/2001 | 960 |
| | do | Holcomb Rock | 2901 | 1/31/2001 | 1,875 |
| | Riegal Textile Co | Fries | 2883 | 6/01/2020 | 7,017 |
| Total | | | | | 14,402 |
| WA(2) | Cominco American Co | Waneta | 2103 | 7/31/2002 | 0 |
| | Two Rivers, Inc | Trinity | 719 | 10/31/2002 | 240 |
| Total | | | | | 240 |
| WV(1) | Elkem Metals Company | Hawks Nest & Glen Ferris | 2512 | 12/31/1987 | 107,450 |
| Total | | | | | 107,450 |
| WI(17) | Flambeau Paper Corp | Crowley Rapids | 2473 | 12/31/1993 | 1,500 |
| | do | Lower Hydro Electric | 2421 | 12/31/1993 | 1,200 |
| | do | Pixley | 2395 | 12/31/1993 | 960 |
| | do | Upper Hydro | 2640 | 12/31/1993 | 900 |
| | Kimberly-Clark Corp | Whiting & Plover | 1967 | 6/30/1990 | 600 |
| | Nekoosa Papers Inc | Centralia | 2255 | 7/31/1993 | 3,200 |
| | do | Nekoosa | 2292 | 7/31/1993 | 3,800 |
| | do | Port Edwards | 2291 | 12/7/1993 | 3,593 |
| | Mosinee Papermills Co | Mosinee | 2207 | 12/31/2004 | 3,050 |
| | Niagara of Wisc. Paper | Little Quinnesec Fls.[5] | 2536 | 6/30/1993 | |
| | Owens-Illinois Inc | Grandmother | 2180 | 6/30/2003 | 3,000 |
| | Rhinelander Paper Co | Rhinelander | 2161 | 6/30/2000 | 2,000 |
| | Scott Paper Company | Oconto Falls | 2689 | 12/31/1993 | 1,860 |

NONPUBLIC HYDROELECTRIC PROJECTS LICENSED BY FEDERAL ENERGY REGULATORY COMMISSION, JANUARY 1985—Continued

[Excludes electric utilities]

| State [1] | Company | Project name | License No. | License expiration date | Installed capacity (nameplate, kilowatts) |
|---|---|---|---|---|---|
| | Tomahawk Power & Pulp Co | Kings Dam | 2239 | 7/31/1993 | 290 |
| | Weyerhaeuser Co | Rothschild | 2212 | 7/31/1993 | 3,640 |
| | Whiting, George A. Paper Co | Manasha | 2352 | 10/31/1988 | 250 |
| | Wis. Valley Improvement Co | Wisconsin Valley | 2113 | 7/31/1993 | 0 |
| Total | | | | | 29,843 |

[1] State designations represent the state in which the project is located. Numbers within the parentheses represent the total number of projects located within the state.
[2] Project is also located in Wisconsin. Installed capacity is for Michigan and Wisconsin.
[3] Existing capacity being taken out of service.
[4] Jointly-owned with Portland General Electric and Publishers Paper.
[5] Project is also located in Michigan. See Michigan for installed capacity.

Note.—Total Installed Capacity (Nameplate, Kilowatts): 1,048,579; Total Number of States; 25; Total Number of Projects (Projects located in more than one state are counted once): 117; Total Number of Projects Subject to Relicensing Through 1993 (Projects located in more than one state are counted once): 60.

Source: Federal Energy Regulatory Commission, as of March 31, 1984.

RURAL ELECTRIC COOPERATIVE HYDROELECTRIC PROJECTS

| State [1] | Rural Electric Cooperative [2] | Project Name [3] | License No. [4] | License Expiration Date [5] | Installed Capacity (Nameplate Kilowatts) [6] | 1983 Generation (Megawatt-hours) [7] |
|---|---|---|---|---|---|---|
| AL (1) | Alabama ECI | Gantt | 2586 | 4/30/2005 | 7,640 | 34,574 |
| Total | | | | | 7,640 | 344,574 |
| AK (2) | Chugach ECI | Cooper Lake | 2170 | 4/30/2007 | 15,000 | 12,029 |
| | Copper Valley Electric Assoc., Inc | Solomon Gulch | 2742 | 5/31/2028 | 12,000 | 36,151 |
| Total | | | | | 27,000 | 48,180 |
| CO (2) | Colorado-Ute Electric Assoc., Inc | Ames & Tacoma | 400 | 6/30/2010 | 12,600 | 48,073 |
| | | Duray | 733 | 4/12/2010 | 500 | 1,126 |
| Total | | | | | 13,100 | 49,199 |
| ID (1) | Fall River Rural Electric Coop | Felt | 5089 | 8/31/2023 | 1,405 | 8,318 |
| Total | | | | | 1,405 | 8,318 |
| MO (1) | Sho-Me Power Corp | Niangua | 2561 | 12/31/1993 | 3,000 | 9,661 |
| Total | | | | | 3,000 | 9,661 |
| UT (3) | Garkane Power Association, Inc | Boulder Creek | 2219 | 4/30/2007 | 4,200 | 30,735 |
| | Moon Lake Electric Association, Inc | Unita | 190 | 6/30/1980 | 1,200 | 1,690 |
| | | Yellowstone | 1773 | 3/31/1993 | 900 | 6,521 |
| Total | | | | | 6,300 | 38,946 |
| WI (2) | Dairyland Power Coop | Flambeau | 1960 | 2/28/2001 | 15,000 | 81,351 |
| | Oconto Electric Coop | Stiles | 1981 | 2/28/2000 | 1,000 | 6,687 |
| Total | | | | | 16,000 | 88,038 |
| WY (2) | Lower Valley Power & Light Co | Strawberry Creek | 2032 | 9/30/1999 | 1,500 | 11,125 |
| | | Swift Creek | 1651 | 11/30/1992 | 800 | 0 |
| Total | | | | | 2,300 | 11,125 |

[1] State designations represent the state in which the project is located. Numbers within the parentheses represent the number of projects located within the state.
[2] Rural electric cooperative with hydroelectric projects licensed by the Federal Energy Regulatory Commission as of March 31, 1984.
[3] Federal Energy Regulatory Commission as of March 31, 1984.
[4] Federal Energy Regulatory Commission as of March 31, 1984.
[5] Federal Energy Regulatory Commission as of March 31, 1984.
[6] Energy Information Administration, Form 759 (1983).
[7] Energy Information Administration, Form 759 (1983).
[8] Relicense application filed June 30, 1967.

Note.—Total Installed Capacity (Nameplate, Kilowatts), 76,745; Total Generation (Megawatt-hours), 288,041; Total Number of States, 8; Total Number of Cooperatives, 11; Total Number of Projects, 14; Total Number of Projects Subject to Relicensing through 1993, 4.●

● Mr. CHAFEE. Mr. President, I am pleased to join my distinguished colleague, Senator WALLOP, in sponsoring the Electric Consumers Protection Act of 1985. This legislation provides the much-needed reforms to the Federal Power Act of 1920.

Under the Federal Power Act of 1920, the Federal Power Commission, now the Federal Energy Regulatory Commission, is empowered to issue licenses for the construction and operation of hydroelectric projects on the Nation's navigable rivers. By 1993, 177 existing hydroelectric projects will require relicensing. The act does not clearly state whether public utilities have preferential rights to the power in relicensing.

The Electric Consumers Protection Act of 1985 eliminates this confusion by making it clear that the preference clause of section 7 of the Federal Power Act does not apply in the case of relicensing. This bill insures that the customers of hydroelectric projects would continue to receive benefits of low-cost electricity, providing the existing licensee can meet the standards embraced in section 10(a) of the act. Without this amendment, a hydroelectric project could be transferred from millions of customers served by a regulated, investor-owned utility to the relatively few customers of a municipality.

This bill also eliminates the potential injustice of the compensation clause. Under the current law, the existing licensee is entitled net investment plus severance damages from a successful relicensing contestant. Given the age of most facilities, the net investment value represents quite a bargain in comparison to a fair market value. This bill ensures the existing licensee receives "just compensation" if the project is licensed to a different licensee.

In the interest of equity, it is important to amend the Federal Power Act as proposed. These amendments will eliminate confusion surrounding the preference issue and serve to protect millions of consumers across the Nation who are being served by regulated investor-owned utilities.

I hope the Senate can act on this important measure in the very near future, and I urge my colleagues to join in this effort.●

● Mr. WILSON. Mr. President, I am pleased to join my colleague from Wyoming in sponsoring the Electric Consumers Protection Act of 1985. I applaud the initiative which Senator WALLOP has taken in drafting this legislation. I am convinced that the provisions of this bill will, as its title indicates, best protect the interest of the majority of electric consumers both in California and throughout the Nation.

In supporting this legislation, I am joined by literally hundreds of organizations from across the Nation which recognize the need to clarify ambiguities in the Federal Power Act of 1920. These ambiguities jeopardize the interests of the vast majority of consumers who receive their power from investor owned utilities.

The need for this legislation has been demonstrated by recent decisions of the Federal Energy Regulatory Commission, and by continuing litigation which surrounds this issue. Because some 177 existing hydroelectric projects will face relicensing hearings in the next 10 years, it is clear that Congress must act and must act now to clarify its intent on this matter.

Mr. President, the provisions of this bill are simple. First and foremost it provides that the Federal Energy Regulatory Commission shall issue a new license to the existing licensee upon application unless the Commission determines that the project will not meet the standards prescribed in the 1920 act, or the Federal Government wishes to take over the project pursuant to provisions in section 14 of the act.

I need not explain to members of the Energy Committee, and certainly not to my colleague, the chairman of the Subcommittee on Public Lands and Reserved Water, the importance of preserving capital investments made by electric utilities. The difficulty of forecasting future energy needs and facility requirements has been made even more difficult in the last decade by rapidly changing energy prices, new environmental requirements, and changing consumption and production habits.

This legislation attempts to insure that those utilities which have in the past assumed the risk of developing hydroelectric facilities should continue to benefit, on behalf of their customers and stockholders, from these projects. I can think of no principle more fundamental to our free market system than this.

Mr. Chairman, I do not speak alone in support of this legislation. I am joined by members of California Public Utilities Commission, the U.S. Chamber of Commerce, the Business Roundtable, the American Farm Bureau and the American Association of Retired Persons among others. The diversity of interests which have united behind this legislation is, I believe clear evidence of the need for its adoption.

There are, I fully understand, entities and individuals who oppose this legislation. I can understand their position and have read their proposals to change the 1920 act in ways which they sincerely believe would strengthen our relicensing process.

While I am familiar with their position, I cannot say that I am in support of their proposal. I note that they do attempt to address compensation issues, which I might add are woefully in need of attention. It leaves in place, however, the preference which I believe is really the fundamental question before us today.

In weighing the options which have been presented, it is imperative that the interests of all consumers be made primary in our considerations. As the Oakland Tribune concluded many months ago in an editorial on this subject, "if public interest is the best, it should be clear that keeping electricity rates low for all northern Californians better meets the public interest test."

Mr. Chairman, the issue at hand is how best to distribute a resource whose value has only recently become fully known to us: inexpensive power. Because rivers, a public resource are involved in producing this power, it is of particular importance that the greatest number of citizens possible enjoy the benefits of this resource. The Electric Consumers Protection Act achieves this objective, insuring that the 75 percent of Californians who are served by investor-owned utilities can continue to have access to the important hydro resources of our State.

Mr. Chairman, it is my hope that this legislation will receive the timely consideration of the Energy Committee. I sincerely hope that we can soon report to utility users across the Nation that this important matter has been resolved in favor of preserving service to the greatest number of utility consumers.●

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By Mr. SYMMS:

S. 428. A bill to amend the United States Housing Act of 1937 to provide additional homeownership and resident management opportunities for families residing in public housing projects; to the Committee on Banking, Housing and Urban Affairs.

HOMESTEAD ACT OF 1985

● Mr. SYMMS. Mr. President, on September 27, 1984, we held the fourth in a series of hearings on privatization before the Joint Economic Committee's Subcommittee on Monetary and Fiscal Policy.

Privatization is the transfer of the ownership of assets and, consequently, the responsibility for supplying goods and services from the public to the private sector of the economy.

At that time we addressed the privatization of public housing. I was particularly pleased that Congressman KEMP was our first witness because privatization of public housing is not only a privatization issue, but it is also a supply-side issue, one that is of importance to the future health of our Nation's cities.

Government intervention has driven a wedge between the demand for and supply of housing in this country. As a result, these Government policies have actually worked on the supply side of the housing market to either destroy our Nation's housing stock or retard its growth. Prof. Peter Salins has documented how these negative supply-side effects have worked in New York City. For evidence, allow me to suggest that you refer to Salins' book, "The Ecology of Housing Destruction."

By privatizing public housing, I believe we can begin to remove some of the supply-side impediments to the provision of housing for the needy.

We began those hearings with Congressman KEMP's analysis of the privatization option for the United States, and then heard from Dr. Stuart Butler, who reviewed how Britain's privatization program for public housing has worked.

I encourage my colleagues and their staff to look at this testimony, and I ask unanimous consent that it be printed in the RECORD, along with the Heritage Foundation material entitled "Public Housing: From Tenants to Homeowners."

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

THE URBAN HOMESTEAD ACT OF 1984: A PLAN FOR TURNING TENANTS INTO HOMEOWNERS

(Testimony before the Joint Economic Committee by Congressman Jack Kemp, September 27, 1984)

I welcome the opportunity to testify today on the Urban Homestead Act, a new bill which I have just introduced along with some of my colleagues, which extends homeownership opportunities to thousands of public housing tenants who yearn to own their own home. I would like to recognize the important contributions and efforts in this regard of Heritage Foundation's Stuart Butler, American Enterprise Institute's Cicero Wilson, Bob Woodson of the Center for Neighborhood Enterprise, Dr. June Q. Koch, Assistant Secretary for Policy Development and Research at HUD, and the many others who have provided important assistance and advice on my bill.

In all our efforts, we have striven to achieve one major goal: to make the dream of homeownership a reality for thousands of public housing tenants—often poor, black, and on welfare—who don't have a strong voice in Washington, who feel left out of our economic system, and who have often become alienated from our political system.

We want to let these people know that their aspirations, their hopes, and their dreams are our own. That the American dream of homeownership is not just for the well-to-do, or even the middle class, but also for poor people who live in the most blighted areas of our inner cities. They too yearn for homeownership—a home they can afford, a home in which to raise a family in security and independence, a home in which to take pride while building and improving for the future and for their children.

Yet today most of the urban poor find it nearly impossible to own their own home. Not just because their income is low, interest rates high, and their credit worthiness doubtful, but also because tenants in government housing projects are not permitted to purchase their dwellings. We don't want to eliminate public housing or cripple its effectiveness. While there certainly are some bad housing projects, our goal is to enhance and improve this tremendous national asset by allowing public housing tenants the opportunity to buy their own home.

All of this is not to say that the public housing is trouble free. Far from it. Public housing discourages work and saving, raises numerous barriers to the upward mobility of tenants, and sometimes has degenerated into dilapidated and depressing slums.

If a public housing tenant on welfare takes a job, for example, he faces effective marginal tax rates over 100%, due not just to federal, state, and local taxes on his earnings, but also the loss of government support payments as well. As the tenant's income increases, his rent would be raised accordingly. And he could be expelled from the project if his income rises too much. If a tenant marries, the additional income of a spouse may make them ineligible for public housing.

Tenants have little incentive to conserve utilities or properly maintain projects, and public housing authorities have just as little incentive to upgrade projects or fill vacant units, since they get paid whether the unit is vacant or filled. What a tragedy that over 60,000 public housing units lay vacant, while thousands of the poor are on waiting lists for an apartment.

I believe that homeownership can lift the aspirations, hopes, and self-respect of those in our inner city slums. When people become homeowners something dramatic occurs in their attitudes, character, and outlook. Families acquire new dignity, they begin to take pride in what they own, and they become more steadfast and concerned citizens in the community.

The mere act of homeownership transforms tenants, giving them a new sense of belonging and self-reliance. Homeownership encourages stable and intact families, creates a longer outlook on life and the future, and gives the poor new reasons to work and save. Homeownership can help give new life to the inner city poor by promoting human dignity, personal achievement, and social stability.

And in doing so, America itself gains in strength. Since the beginning of our country, tenantry has been viewed as unfavorable to freedom. The policy of free republics was always to multiply homeownership to increase the love of country, the spirit of independence, and self-reliance. Abraham Lincoln over a century ago endorsed a Homestead Act which opened up the Western frontier to the new immigrants and freed blacks seeking to own their own home. We name our bill in honor of Lincoln's Homestead Act since we share his objective of homeownership for all regardless of income, creed, or race.

Can it be done? Can poor people become the owners of their own homes? Many say no, that the economics of the poor preclude homeownership for all but the middle class.

I believe that many tenants would choose homeownership, if they were given a choice. Our inner city poor are our country's most important untapped resource. We can turn many of the poor into homeowners, if only we have the determination and imagination to make this goal a reality.

We already have tested and demonstrated examples of successful tenant-management of public housing like Ms. Kimi Gray of Kenilworth/Parkside Gardens who modernized a dilapidated project, improved maintenance, and reduced costs to a point where the project is now self-sustaining. But what she really did was to lift the spirits and sights of her tenants. And the results were dramatic reductions in many social problems like crime, drug abuse, and vandalism. She and her tenants deserve to be homeowners.

This story is repeated in the charismatic leadership of other tenant managers, like Ms. Bertha Gilkey of Cochran Gardens in St. Louis, or Ms. Bonnie Downs of Iroquois Homes in Louisville, Kentucky, or Ms. Viney Reynolds of B.W. Cooper Homes in Louisiana—all of whom have helped turn some of the worst housing projects into showcase success stories. These tenants and others have demonstrated that they can handle the full responsibilities and privileges of homeownership.

I am proposing a determined national effort to build on the efforts and aspirations of the Kimi Grays and Viney Reynoldes to make private ownership the next reasonable and viable step for tenant-managed projects. We don't make homeownership an entitlement program. Giving away housing without requiring any stake by the tenant himself would defeat our purpose of promoting independence and pride among tenants. It would also be an affront to low and middle income Americans who must work hard to afford their own homes.

Our bill puts homeownership in striking distance for deserving tenants who have demonstrated that they can handle the responsibilities and costs of homeownership.

The premises and details of our plan, which is only a beginning step, would proceed along the following line: First, tenants would form a tenant association; second, they would be trained and educated to efficiently manage their projects; third, they could buy the project at a discount from market value after demonstrating that they could bear the costs and responsibilities of ownership and project management.

Our first premise is that tenants themselves would show their interest and support for homeownership by forming a homeowners association with intention to buy. The homeowners association, not HUD or the local public housing authority, would initiate and plot the course for eventual conversion of the projects to homeownership. Our approach does not bypass the housing bureaucracy but neither does it allow public housing authorities to arbitrarily block homeownership.

Our responsibility, however, doesn't end with putting a "for sale" sign on government housing projects. We must go much farther. My bill envisions a partnership involving labor, business, local housing authorities, civic organizations, foundations, and especially poor people themselves, to make the dream of homeownership a reality. Aspiring homeowners must be trained, educated, and counseled not just on managing the responsibilities of home ownership, but also on job skills, financial management, and home care maintenance. Is this asking too much? The experience of tenant-managed projects gives a resounding no.

Public housing projects can also become the focal point for many self-help efforts like the Administration's Job Training Partnership Act and its Enterprise Zone legislation which promote job skills, enterprise, and new business to greenline distressed inner cities which too often have been blacklined against private enterprise and growth. Local civic groups like Rev. Leon Sullivan's Opportunities Industrialization Center, which has done outstanding work in training rehabilitation experts from the ranks of the unskilled, should also be tapped.

We have already received encouraging support from real estate associations, life insurance firms, foundations, and businesses ready to contribute training, management and technical expertise, and even seed capital. Local governments could provide tax abatement. In short, our homeownership initiative is more than just signing papers, it is an entire urban revitilization strategy around the inner city family's most cherished possession: its home.

Our second premise is that public housing must be sold at large discounts, since obviously most tenants are quite poor. To help facilitate what is beyond the means of most poor, a homeowners association could purchase their dwelling at no more than 25 percent of market value and no down payment. The public housing authority would "take back" a mortgage at reasonable rates (no more than 70 percent of market interest rates). To bring homeownership into the reach of even more poor people, tenants themselves could build equity in their homes by contributing their own talents and labor as part of their investment.

Third, to protect all public housing tenants, our bill provides a number of important safeguards both for tenants and the homeowners. Tenants who don't choose to buy either would continue to rent as now from the public housing authority or would receive a housing voucher from the government equal to or better than their current housing assistance. No tenants could ever lose their home as a consequence of our bill.

To prevent premature or hasty transfer of ownership, title would be transferred to tenants only after HUD certifies that they and the homeowners association can afford the cost and responsibilities of homeownership. Under our bill, the Department of Housing and Urban Development must bring the housing up to decent standards before being sold and would provide continuing assistance as needed even after conversion to private ownership.

Taxpayers also gain from the Urban Homestead Act. Aside from construction costs, taxpayers now pay over $3 billion yearly in operating and modernizing subsidies for public housing, about $2,100 per unit a year. Many public housing projects

can achieve economic self-sufficiency and can operate on a break even basis without government subsidies. The payoff is not only reduced government subsidies, but significantly higher property values for businesses and taxpayers in neighborhoods near public housing projects.

Now, this is a sketchy outline of our plan. Clearly, this involves a great many issues and raises a number of problems. But nothing in this plan has not been done before on a smaller scale and has not been already tested and tried with success. What is really new is our strong determination to make homeownership available to low-income families in America's cities. Considering the greater security and peace of mind, the tremendous boost in morale and dignity, and the opportunity to rebuild our inner cities, shouldn't we be looking at ways to turn tenants into homeowners? There is no more rewarding investment than helping some of America's urban poor realize an important and lasting stake in the American dream.

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TESTIMONY BEFORE THE MONETARY AND FISCAL POLICY SUBCOMMITTEE OF THE JOINT ECONOMIC COMMITTEE, SEPTEMBER 27, 1984

(By Stuart M. Butler, Director of Domestic Policy Studies, The Heritage Foundation)

My name is Stuart Butler. I am Director of Domestic Policy Studies at The Heritage Foundation. The views I put forward are my own, and should not be taken as representing any official position of the Foundation.

I have taken a keen interest in the idea of privatization for some time, and a number of articles by myself and other authors on the issue have been published by Heritage during the last three years. These have dealt with a wide variety of issues from the privatization standpoint, including Social Security, municipal services, bank deposit insurance, and, most recently, public housing. My interest in the idea of privatizing public housing stemmed from the work of the National Center for Neighborhood Enterprise, and from the experience of a privatization model in Britain.

The National Center has examined the role of neighborhood-based organizations in service delivery and economic development within low income communities. The Center found that when groups are given control of functions, they can be remarkably successful in bringing down costs and developing innovative and highly effective methods of dealing with local problems.

Housing is a case in point. In conjunction with the Project on Neighborhood Revitalization of the American Enterprise Institute, the National Center has examined the performance of community-based management organizations as operators of public housing—Kimi Gray, the Resident Manager of such a corporation in Washington, will be testifying before the subcommittee tomorrow. The data concerning these corporations will be discussed during Ms. Gray's testimony, but the general conclusion is that dramatic cost reductions can be achieved once tenants obtain control of their own destiny. Ownership is the logical next step after tenant management. Ownership provides a clear stake in the community—one that is permanent. The evidence from both the United States and Britain is that once low income people acquire ownership rights over their homes, they take a very different view towards maintenance, economic improvement, and even social problems within their community.

It is this change in attitudes and commitment that lies at the heart of the privatization strategy. Privatization has nothing to do with "selling off" valuable federal assets to private interests: it has everything to do with using a change of ownership to alter behavior patterns, thereby stimulating efficiency, innovation, and a determination to preserve and improve the asset. The proposal to encourage homeownership among public housing tenants is an excellent example of this strategy. By providing residents with an ownership stake in their communities, the program would enable low income people to attain the American dream of home ownership, reduce the burden on the federal government of excessive operating costs, and stimulate community efforts to tackle the social problems that now lead to falling property values, vandalism and boarded-up dwellings.

Following is an analysis of the British "Right to Buy" program, which has turned 500,000 tenants into homeowners, together with the framework of a plan for a similar program in the United States. While there may be disagreement on the details of such a homeownership plan, there can be little doubt that the ownership idea works in low income neighborhoods. The demonstration program being developed by HUD is a major step forward in turning ownership into a reality in such neighborhoods. I hope that Congress will study that program carefully, while preparing the legislation necessary to turn the experiment into a full program.

[From the Heritage Foundation Backgrounder, June 12, 1984]

PUBLIC HOUSING: FROM TENANTS TO HOMEOWNERS

(By Stuart M. Butler, Director of Domestic Policy Studies)

INTRODUCTION

Public housing projects in the United States have come to epitomize urban blight. While this view is exaggerated, it is nevertheless true that public housing represents one of the great ironies of federal intervention. When the program began in the 1930s, the assumption was that the projects would help ameliorate social problems in the cities by stabilizing communities and the housing stock. The reverse has been true.

Yet there is evidence, in this country and abroad, that certain inner city housing experiments can have positive results. They all have one thing in common—ownership. Whether the program is homesteading, where abandoned properties can be brought for a dollar, or the discounted sale of public housing to tenants (in Britain), the effect is the same. When residents acquire an equity stake in the future of their building, and hence their neighborhood, they gain incentives to change their behavior from destructive to constructive and to urge their neighbors to do likewise. And instead of economic improvement bringing with it the threat of increased land values and displacement, equity allows a resident to rise with the tide—not drown in it.

But, some would argue, the low income of public housing tenants precludes their becoming homeowners. The solution to this apparent barrier is to recognize that support for homeownership is entrenched in the tax codes. Thanks to the mortgage interest deduction, middle- and upper-income Americans have powerful tax incentives to become homeowners. This is no accident. The explicit purpose of the deduction is to help Americans purchase homes. Yet the low-income tenant, who pays little or no income tax, has no such incentive—so he must pay a far higher after-tax price than higher-income citizens buying exactly the same property.

Congress and the Administration should recognize this inequity and establish a "Right to Buy" homeownership program in the inner cities, based on the sale of public housing buildings, at a substantial discount, to associations of occupying tenants. The Reagan Administration should establish an experimental program immediately using existing law. It should also seek legislation to permit tenant associations to apply directly to the Secretary of Housing and Urban Development (HUD) for permission to purchase buildings from their local Public Housing Authority (PHA). The legislation should also allow the Secretary to require the PHA to provide the tenant group with a mortgage.

Proponents of such a program would be blind if they overlooked its political advantages. A similar plan in Britain enabled Conservative Margaret Thatcher to make considerable inroads among traditionally Labor-voting public housing tenants in her landslide 1983 reelection. The New York Times noted after the election that:

As political experts and party strategists sift through the results of Labor's crushing defeat . . . more and more are identifying the "homeowner mentality" of voters . . . as a crucial development.[1]

An inner city homeownership plan would extend the idea of owning a home to low-income Americans. It would help stabilize the value of public rental stock near tenant-owned units, and would plant the seeds of improvement in the nations's most desolate neighborhoods. It would be a logical companion to the enterprise zone approach to inner city development. Like the zone proposal, which seeks to unlock the entrepreneurial spirit, the Right to Buy program would draw on the strengths of residents to tackle the problems of their own community.

THE BRITISH RIGHT TO BUY PROGRAM

During the last five years, over 500,000 dwellings (out of a total public housing stock of approximately 7 million units) have been sold to public housing tenants in Britain under the "Right to Buy" scheme. Widening homeownership in this way is seen by the Thatcher government as central to its objective of reviving neighborhoods and encouraging self-improvement.

Stated simply, Britain's Right to Buy program allows public housing tenants to purchase their units at a discount on the market value of up to 60 percent, based on the length of tenancy.

*Eligibility*

A tenant obtains the right to buy it if he or she has been a public housing tenant for at least two years[2] and the unit is the principal home. The tenant can purchase the unit jointly with up to three other family members, provided they have been living in the same unit for at least three months.

*Discount*

If the tenant has lived in public housing for three years, the unit can be bought at the market value less 33 percent. The discount increases by 1 percent for each additional year as a tenant, up to a maximum 60 percent discount after 30 years as a tenant.[3]

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[1] "In Housing Policy, It Seems the Tories Had a Winner," The New York Times, June 22, 1983.

[2] Decreased from three years in legislation passed in 1983.

[3] Prior to the 1983 legislation, the maximum discount was 50 percent after 20 years.

The period counting toward the discount need not have been spent in the same unit, or even within the jurisdiction of the same housing authority. The valuation, upon which the discounted price is based, is calculated by the housing authority. If the tenant disagrees with that valuation, he can appeal to the District Valuer, an independent official whose decision is legally binding on both parties.

*Finance*

The purchaser has three options in raising the money to pay for the house.

(a) The tenant can obtain a mortgage from a savings and loan association. Approximately half of all public housing sales are financed in this way.

(b) The tenant has the legal right to a mortgage from the local housing authority. Basically the loan amount is limited to 2½ times the annual income of the purchaser, plus 1 times the annual income of any other family members assisting in the purchase. For purchasers over 60 years of age, the multiple is lower.

(c) The tenant may buy the unit in stages. After buying at least 50 percent of the unit, with the usual discount according to length of tenancy, he can obtain full ownership by purchasing increments of 12½ percent. The tenant continues to pay rent on the portion still owned by the housing authority.

Like the purchaser of privately built housing, the public housing tenant-buyer can deduct mortgage interest payments from taxable income. The trouble has been that, if the low-income purchaser pays little or no income tax, the mortgage deduction is practically worthless. Since April 1983, however, a low-income buyer in Britain has been able to utilize the Mortgage Interest Relief at Source Program. Under this, he can obtain a cash subsidy equal to the tax relief to which he is entitled (at the 30 percent lowest bracket), less the amount he can actually deduct from his tax bill—in effect a refundable mortgage deduction.

*Value recapture*

A tenant-buyer cannot buy his unit one day with a 60 percent discount, sell it the next at the full market rate, and walk away with the difference. If the unit is sold within one year of the initial purchase, 100 percent of the discount must be repaid. This repayment requirement falls by 20 percent each year until, after five years, the unit can be resold without the repayment of any portion of the discount.

ANALYSIS OF THE BRITISH EXPERIENCE

The British program of public housing sales has been highly popular and had profound effects on many neighborhoods. As the program's proponents expected, signs of home improvement activity, close attention to maintenance, and resident involvement in neighborhood issues have become evident in communities where tenants are buying. The reason for this is simple, says Conservative Councilwoman Hazel Weiberg, "ownership gives them a greater stake in the community." [4]

*Distribution of housing and sales*

Approximately one-third of all housing in Britain is publicly owned rental accommodation. This is above the average for Western Europe, and far above the 1.5 percent in the U.S. In addition, the mean income of families in British public housing is not far below that of owner-occupying families, and it is a shade higher than families in private rental units. One reason for this is that local housing authorities cannot evict tenants whose incomes rise above the initial threshold for their unit. Moreover, the right of tenancy in a public housing unit in Britain can be passed on to an heir who has lived with the tenant. British public housing structures also differ from those found in American cities. While there are many examples of blighted high-rise properties, more typical is the well-built duplex or four-unit walk-up in a reasonably stable neighborhood.

The sales of British public housing reflect these characteristics. Data for 1982, for instance, indicate that the average income of tenant purchasers was only 16 percent lower than that of all first-time house buyers in Britain, and 96 percent of public units sold were town houses, duplexes, or detached houses (only 4 percent were apartments). Nevertheless, sales were more common among lower-income public housing tenants than is usual for first time buyers. Forty-seven percent of public housing purchasers earned less than $10,000 a year (34 percent for all first-time buyers), and 14 percent earned less than $7,000 (9 percent generally).[5] Not surprisingly, in view of the discount based on length of tenancy, the average age of the tenant-buyer (43 years) was significantly above the average for first-time buyers (31).

*Multi-unit buildings*

The data indicate that the bulk of public housing sales in Britain have constituted purchases of fairly desirable types of housing to tenants who would not be classified as very poor. So American policymakers should not assume that the typical Right to Buy sale involves a welfare mother buying her high-rise apartment.

Indeed, it is the high-rise apartment that has been the most difficult for local authorities to sell to tenants. British officials are quick to point out, however, that a high proportion of Britain's multifamily urban public housing was built after the Second World War with poor material and designs. Inadequate durability and structural problems make these units very unattractive for purchase, even at low prices. Would-be buyers in such buildings are inclined to remain on the waiting list for a more desirable property (using the waiting time toward a larger discount).

A second key factor is the unfamiliarity of the British with mechanism such as tenant management or cooperative ownership. Tenant management is almost unknown in Britain, and cooperative ownership is rare. Consequently, say British officials, tenants have a strong resistance to the only forms of purchase and organization that are practical for low-income people in multifamily buildings. Even when a tenant buys his home in a 4-unit walk-up, the local authority usually retains the responsibility for the common areas and general maintenance (with a service fee), rather than have the owners accept this responsibility.

*Lessons of the British model*

Despite such differences between the U.K. and U.S. situations, the British program contains important lessons for a workable approach on this side of the Atlantic.

The first is that a discount based on length of tenancy is a powerful stimulus and a means of favoring the most stable tenants. Initial fears that the discounts would provoke anger among working class buyers of private homes (who enjoy no such discount) proved groundless. The discount strategy has enabled many long established tenants to become even firmer anchors in the community.

A second lesson is that the resale value recapture mechanism is an important ingredient of the British program. It discourages rapid resale—which would undermine the otherwise stabilizing features of the program. On the other hand, the prospect of capital gain is important to a purchaser. In neighborhoods where market prices are not rising, or even falling, the sliding scale recapture provision in Britain allows for a potential capital gain within a reasonably short time.

The third lesson is that an American version of the British plan would have to overcome the problem of selling apartments to low-income tenants. Given the familiarity of Americans with cooperative ownership, this should present fewer problems than it has in Britain. Nevertheless, the high concentration of low-income people in American public housing would require more creative financing arrangements than are typical in Britain.

A PROGRAM FOR THE UNITED STATES

Since 1949, Congress has targeted the public housing program increasingly toward lower-income and welfare families, rather than those with modest incomes. Unlike Britain, therefore, the family income of a typical American public housing tenant is well below the national median—posing problems for any sales policy. Legislation does give a Public Housing Authority (PHA) in the United States the power to sell a "low income project to its lower income tenants." The sale price is usually based on the portion of the original development cost still outstanding—not the current market value. So discounted sales are permissible in the U.S.

This and other legislation have led to a number of home ownership programs for low-income tenants. The Turnkey III program, begun in 1968 and terminated in 1973, used the PHA framework to develop housing projects for sale, on a lease-purchase basis, to groups of public housing tenants with sufficient incomes to permit a sale without continued operating subsidies. The price was based on the total original development costs, and if the buyer were to resell the unit within five years of receiving full title, the PHA was entitled to recapture the capital gain according to a sliding scale. A requirement for success was the ability of the buyer to undertake basic maintenance and to accept the financial and other obligations of ownership.

Similar problems arose with the Section 235 Homeownership Program, another major federal initiative to encourage low-income homeownership through the sale of new or extensively rehabilitated units. The income problem was compounded in the case of Section 235 by the low (3 percent) down payment requirement—which could be in the form of "sweat equity" (that is, provided in the form of on-site work rather than cash). This meant that the loan-to-value ratio could easily come to exceed 100 percent in an unstable neighborhood—encouraging others to abandon their properties at the first need for substantial maintenance outlays.

The most extensive and perhaps most interesting low-income ownership program,

[4] "New Law Transforms Britain Into a Nation of Homeowners," Wall Street Journal, September 14, 1983.

[5] Assuming one pound = $1.40.

however, has been the Indian Mutual Help Ownership Opportunity Program, which constitutes 61 percent of HUD assistance in Indian areas. Families or tribes must make a down payment contribution of at least $1,500 toward each unit, in the form of cash, land, or work. The resident can acquire title to the unit, generally after 25 years, through a lease-purchase plan that allows equity to be built up gradually. The program has been very popular and effective, covering over 30,000 units.

Mutual housing associations (MHAs), as a homeownership vehicle for public housing tenants, have attracted considerable attention in recent years. Proposals are now being formulated in Paterson, New Jersey, for example, which would use the model to transfer 242 public housing units into tenant ownership. The title of the building first would be transferred to a mutual housing association made up of residents. This MHA would be affiliated to a citywide MHA with a board of directors drawn from city officials and local organizations. This citywide MHA could enlist support and provide technical assistance for would-be buyers, thereby improving the chances of successful ownership by individuals, who would be able to purchase title from the MHA.

THE PRINCIPLES OF A NEW OWNERSHIP INITIATIVE

Drawing on British and American experience in encouraging ownership among low-income tenants, principles for a successful homeownership program for public housing tenants emerge. Among them:

*Discounts and equity*

It is clear from the problems associated with section 235, and in contrast, the success of the British approach, that buyers must feel they have sufficient stake in their homes to justify expenditures on maintenance. Discounting the price (giving the prospect of a substantial capital gain) would provide that stake indirectly but effectively: a token down payment does not.

Current law permits HUD to sell to a resident tenant at a discount with the federal government paying off part or all of the existing capital debt. Similarly, units can be modernized without the tenant-buyer being required to pay the cost of modernization.

*A subsidy to buyers*

Some critics of discounted sales to low-income buyers charge that this constitutes an unfair valuable subsidy to the buyer. These critics overlook the mortgage deduction available to middle- and upper-income buyers—which is of little value to low income buyers. If the purpose of Treasury assistance is to help home-buyers, then a price discount on public housing would be a rational and equitable device to help low-income buyers. Depending on the discount chosen and the tax savings (if any) usable by purchase, a case could also be made—again on equity grounds—for some interest relief for low-income buyers. It would be reasonable for the interest payable on PHA-provided mortgages to be reduced by an amount at least equal to the lowest marginal federal tax rate.

*Netting for other subsidies*

Subsidy calculations should also be adjusted for the subsidies to other groups already included in the cost of public housing. American Enterprise Institute scholar John Weicher notes that studies suggest that new public housing units cost about 25 percent more than comparable private housing. The major reasons for this are the high tax revenue costs associated with tax-exempt financing often used in such projects (a subsidy to higher-income investors) and high construction costs due to the application of the Davis-Bacon Act (a subsidy to construction workers).[6] There seems little justice in forcing low-income homebuyers to cover the capital cost of a subsidy to Americans earning well above their income. The cash basis for any calculation of purchase price, therefore, should net out such subsidies.

*Developing homeowner attitudes*

A major problem associated with low-income buyers, even if financing can be arranged, is that they often lack the maintenance and accounting skills needed for homeownership. On the other hand, some remarkable successes have been achieved with tenant management associations as vehicles to encourage sound maintenance techniques—especially when cash incentives were utilized. As head of Newark's public housing in the 1970s, for instance, Tom Massaro sought to cut costs by inviting tenants to take over many responsibilities. For every dollar this saved the city, the tenants were allowed a portion to finance community activities. The result: vandalism and utility costs plummeted and tenants acquired useful maintenance skills.

Another tenant management association in Kenilworth Courts, Washington, D.C., has achieved dramatic cost reductions by training its own tenants in management and maintenance skills. A preliminary study by the American Enterprise Institute's Neighborhood Revitalization Project found that within one year of the 1982 turnover to tenant management, administrative costs were cut by 63 percent, and maintenance (the major outlay) by 26 percent. In addition, rental income was increased significantly, thanks to improved collection and reduced vacancy rates, such that the project began to run a healthy operating surplus.

Success as a tenant management association could be a sensible prerequisite to apply to a group of public housing tenants wishing to purchase as a cooperative. An alternative requirement would be the creation of a private Mutual Housing Association, as that suggested in Patterson, New Jersey, to provide management assistance and training to achieve operating cost reductions. The tenants would be members of this association, which could foster cooperative or any other suitable form of tenant ownership. Another equity-building approach would be for the tenants to enter into a lease-purchase agreement. The operating subsidy would then be capped, and savings achieved by the tenants would be accumulated as equity shares until the full purchase could be accomplished, whereupon title would be transferred.

The savings achievable through tenant management is critical both to the success of any ownership plan and to the number of tenants that could hope to utilize it. Most studies of the potential for ownership among public housing tenants suggest that it is very small. But these calculations ignore the substantial reductions in cost that can be achieved—if tenants have an incentive—and thus grossly underestimate the possibilities of ownership.

A PUBLIC HOUSING HOMEOWNERSHIP PROGRAM

The Administration, utilizing existing law and with the agreement and cooperation of communities and PHAs, should experiment with a homeowner program for public housing tenants. The President should make it clear that the objective is not to raise income but to promote ownership in poor communities. Special buildings for the elderly or the handicapped should be excluded from the program, so that the number of such units available for rent would not be reduced.

In addition, Congress should enact a "Public Tenants Right to Buy Program." The measure should give groups of tenants the right to be included in the homeownership program, even if the local PHA opposes ownership. Such a group of tenants would apply directly to the Secretary of HUD. If eligible, according to the criteria below, HUD would set in motion the ownership process, and the PHA would be required to provide the resident association with a mortgage according to HUD rules. Legislation should also be enacted to expand the housing voucher program so that tenants unable to buy a share of a co-op, or other ownership vehicle, such as lease-purchase, could continue as renters.

*Eligibility*

The program would center generally on purchases by successful tenant management associations. As the tenant management associations or mutual housing associations improved tenant skills and reduced operating costs, savings to the PHA would be placed into an escrow account toward the purchase price, or as the equity element of a lease-purchase agreement. The purchase process would begin when this transitional arrangement reduced running costs sufficiently for the tenants to have a reasonable chance of meeting the costs of ownership.

To be eligible for membership in the purchasing organizations, tenant-buyers should have been good tenants in the specific building for at least one year and good public housing tenants for at least three years. This would help assure stable buyers of good character. Tenants unable to meet this criterion would not be permitted to purchase.

*Discount and resale*

An eligible association, comprised of eligible tenants, would be allowed to purchase the building at 30 percent of the assessed market value. No down payment would be required. If a co-op member were to sell his share within the one year, his portion of the entire 70 percent discount would be repayable to the PHA. This repayable portion would fall by 10 percent annual segments (of the initial market price) until, after seven years, the member would be free to keep all resale proceeds. The prospect of gain should be sufficient to establish the notion of equity, and so offset the lack of a down payment.

*Financing*

Eligible tenant management associations accepted into the program would have the right to a mortgage from the PHA under the legislation proposed. Since the PHA would be the owner of the building in the first place, this would involve no transfer of cash, only the replacement of rent payments to the PHA with mortgage payments. The interest rate on the mortgage would be adjusted to reflect the marginal tax benefits available to typical first-time homebuyers.

Tenant associations could purchase outright or purchase according to a shared-equity plan. With either method of purchase, the housing authority would continue to operate the units occupied by tenants refusing or ineligible to join the ownership

[6] John C. Weicher, Housing (Washington, D.C.: American Enterprise Institute, 1980), p. 59.

associations. Existing tenants, in other words, would not be evicted. Eligible tenants could, however, buy into the purchase plan at any time. If some of the tenants continued to remain renters, supported by the government, that portion of the building would be considered a set of units owned by the PHA—thus the PHA would not be a shareholder in the cooperative. However, maintenance services to these units could be provided by the tenant ownership association under contract. An alternative might be for the federal government to guarantee to the association owning the building that vouchers would be provided to meet the costs of units still occupied by tenants.

Under a shared-equity arrangement, the tenant association could, in effect, buy a portion of the unit (minimum 50 percent) and continue to pay rent to the PHA on the remainder. The association could add to its ownership in increments, as finances permitted. Payment could be made in-kind (such as maintenance work) to obtain additional ownership shares. An alternative approach would be a lease-purchase arrangement, where tenants could build up equity credits, but would not take title until they could finance the entire sale price of the building.

*Resale*

The part-owner could sell his unit in the normal way, subject to the provisions regarding discount repayment, but he would have to return the original cost of the rented portion of his unit to the PHA. Alternatively, he could sell his share to an eligible buyer willing to take on his shared equity responsibilities. The tenant would have the right to a mortgage from the PHA, with a limit based on income and a below-market interest rate, offsetting the reduced tax relief available to low-income tenants.

CONCLUSION

The program suggested is not a proposal to sell off public housing to developers or suburban homesteaders. It is a device to provide ownership opportunities for existing tenants of public housing projects. If successful, it could transform some of the most troublesome communities in the nation's urban areas. It draws on the known successes of tenant management associations and that powerful ingredient of commitment to neighborhood—ownership. Turning public housing tenants into homeowners in this way would utilize the strengths and ownership dreams of residents themselves to help overcome the debilitating problem of America's inner cities.

Mr. SYMMS. 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. 428

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be referred to as the "Homestead Act of 1985".

SEC. 2. The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended by adding at the end thereof the following new section:

"PUBLIC HOUSING HOMEOWNERSHIP AND MANAGEMENT OPPORTUNITIES

"SEC. 20. (a) HOMEOWNERSHIP OPPORTUNITIES.—The families residing in each public housing project shall be provided with the opportunity to purchase the dwelling units in such project as follows:

"(1) A homeownership association shall be formed in the public housing project that—

"(A) has as its members each family residing in a dwelling unit in such project that—

"(i) is interested in purchasing such dwelling unit;

"(ii) has resided in public housing projects for not less than 24 consecutive months;

"(iii) has resided in such dwelling unit for not less than 12 consecutive months; and

"(iv) is determined by the Secretary to be capable of assuming the responsibilities of homeownership;

"(B) follows domocratic procedures in making decisions; and

"(C) complies with such additional requirements as the Secretary may establish in regulations issued under subsection (e).

"(2)(A) The Secretary shall provide comprehensive improvement assistance under section 14 to public housing projects in which homeownership activities under this section are conducted in order to ensure that the physical condition, management, and operation of such projects are sufficient to permit and encourage homeownership by the families residing in such projects.

"(B) The Secretary, and the public housing agency owning and operating each public housing project, shall provide such training, technical assistance, and educational assistance as may be necessary to prepare the families residing in such project, and any homeownership association established under paragraph (1), for homeownership.

"(C) An amount equal to any reduction in the operating expenses of a public housing project realized as a result of the assistance provided under subparagraph (B) shall be paid by the Secretary to the public housing agency involved on behalf of the families residing in such project, and any homeownership association established under paragraph (1). Such public housing agency shall reduce the purchase price established in paragraph (5) for dwelling units in such project by an aggregate amount equal to such amount paid by the Secretary.

"(3)(A) A homeownership association may purchase all or part of a public housing project following a determination by the Secretary that—

"(i) such association is prepared to undertake the ownership, management, and maintenance of such project with continued assistance from the Secretary; and

"(ii) the operating costs of such project have been reduced sufficiently to provide the families purchasing dwelling units in such project with a reasonable prospect of affording the costs of homeownership.

"(B) Any family meeting the requirements of paragraph (1)(A) may purchase its dwelling unit directly from the public housing agency, if the Secretary determines that such purchase will not interfere with the rights of other families residing in the public housing project or harm the efficient operation of such project.

"(4) Notwithstanding the purchase of all or part of a public housing project under this section, the Secretary shall continue to pay annual contributions with respect to such project. Such contributions may not exceed the maximum contributions authorized in section 5(a).

"(5) The price for any purchase under paragraph (3) shall not be more than 25 percent of the fair market value of the property involved, as determined by the Secretary.

"(6)(A) Purchases under this section may be made under any of the following arrangements:

"(i) lease-purchase;

"(ii) shared appreciation;

"(iii) cooperative ownership;

"(iv) condominium ownership;

"(v) purchase with amounts borrowed on the security of the property involved; and

"(vi) any other arrangement determined by the Secretary to be appropriate.

"(B) For purposes of assisting any purchase by a family or homeownership association under this section, the public housing agency involved shall made a loan on the security of the property involved to such family or association at a rate of interest determined by the Secretary to be appropriate. Such rate of interest may not exceed 70 percent of the market interest rate on the date on which such loan is made.

"(7) If any purchaser of property under this section sells such property before the expiration of the 5-year period following the date of such purchase, such purchaser shall pay the following percentage of the sale price to the public housing agency involved:

"(A) 75 percent, if such sale occurs during the first 1-year period following such date;

"(B) 60 percent, if such sale occurs during the second 1-year period following such date;

"(C) 45 percent, if such sale occurs during the third 1-year period following such date;

"(D) 30 percent, if such sale occurs during the fourth 1-year period following such date; and

"(E) 15 percent, if such sale occurs during the fifth 1-year period following such date.

"(b) RESIDENT MANAGEMENT OPPORTUNITIES.—The families residing in each public housing project shall be provided with the opportunity to undertake the management maintenance, educational, and cultural functions of such projects as follows:

"(1) A resident management association shall be formed in the public housing project that—

"(A) has as its members each family residing in such project;

"(B) follows democratic procedures in making decisions; and

"(C) complies with such additional requirements as the Secretary may establish in regulations issued under subsection (e).

"(2) The Secretary, and the public housing agency owning and operating the public housing project, shall provide such training, technical assistance, and educational assistance as may be necessary to prepare the resident management association established under paragraph (1) to undertake the management, maintenance, educational, and cultural functions of such project.

"(3) A resident management association may undertake all or part of the management, maintenance, educational, and cultural functions of a public housing project following a determination by the Secretary that such association is capable of undertaking such functions.

"(c) PROTECTION OF NONPURCHASING FAMILIES.—(1) No family residing in a dwelling unit in a public housing project may be evicted by reason of the sale of such project to a homeownership association under this section.

"(2) If any family resides in a dwelling unit in a public housing project in which other dwelling units are purchased under this section, and such family decides not to purchase such dwelling unit, the Secretary may offer—

"(A) to assist such family in relocating to a dwelling unit in another public housing project; or

"(B) to provide to such family a housing voucher determined by the Secretary to be appropriate to permit such family to obtain comparable alternative housing.

"(d) FINANCIAL ASSISTANCE.—(1) The Secretary shall provide to public housing agencies such financial assistance as the Secretary determines is necessary to permit such agencies to carry out the provisions of this section.

"(2) The Secretary may provide financial assistance to any homeownership association or family that has purchased property under this section for purposes of reducing the operating and maintenance expenses of such association or family with respect to such property. Such financial assistance may be made in such form (including housing vouchers) and in such amounts as the Secretary determines to be appropriate.

"(e) REGULATIONS.—The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section. Such regulations may establish any additional terms and conditions for homeownership or resident management under this section that are determined by the Secretary to be appropriate.

"(f) ADDITIONAL HOMEOWNERSHIP AND MANAGEMENT OPPORTUNITIES.—No provision of this section may be construed to preclude the Secretary or any public housing agency from providing additional homeownership or resident management opportunities under section 5(h), section 6(c)(4)(D), and any other provision of this Act.".●

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By Mr. HEINZ:

S. 429. A bill to extend the statute of limitations for fraud under the customs laws and to clarify the extent of Government access to grand jury proceedings; to the Committee on Finance.

STEEL IMPORT FRAUD

● Mr. HEINZ. Mr. President, for some time now I have been engaged in an effort to increase the enforcement capabilities of the U.S. Customs Service against steel import fraud. This activity has become pervasive as a means for importers to circumvent U.S. trade laws and international steel agreements. Increases in both the frequency of incidence and variations in the types of fraud committed have been registered by import specialists of the Customs Service. The widespread nature of the problem is evident in the fact that the Customs Service has had 30 class 1, high priority cases open involving the importation of steel by fraudulent methods.

Last year, in part as a result of my efforts, the Customs Service has undertaken a major initiative to combat violations in this problem area which will go a long way toward deterring steel import fraud.

However, problems still remain which inhibit Customs' ability to prosecute violators under civil statutes after they are caught, and it is under civil statutes that penalties large enough to deter violators or potential violators can be imposed.

First, because Customs attorneys wait until the U.S. attorneys finish with criminal proceedings before beginning a civil suit, they often run out of time before they can properly pursue a civil case. Presently, the statute of limitations governing Customs' activities which is contained in 19 U.S.C. 1621, requires that cases in which there is only enough evidence to show negligence or gross negligence be finished within 5 years from the date of violation. Cases where there is enough evidence to charge fraud on the other hand are allowed 5 years from date of discovery. Since it is often some time between when a violation is committed and when it is discovered—even several years—the statute of limitations for negligence and gross negligence places a severe constraint on Customs attorneys. In some cases even though the prosecution has developed enough evidence to demonstrate fraud in the criminal case using a grand jury, civil division attorneys run out of time under the statute before they can petition for access to that evidence. The bill I am introducing today makes the statute of limitations governing such cases a uniform 5 years from date of discovery, thereby giving Customs attorneys more time to gain access to grand jury materials in those cases where initial investigation only yields enough evidence to show negligence—or gross negligence.

The second problem facing Customs attorneys is the consequence of two recent Supreme Court decisions—United States versus Sells Engineering and United States versus Baggot—which have made it difficult for them to gain access to evidence developed by criminal prosecutors through a grand jury. Without such access, Customs attorneys often must begin a civil case from scratch. This is an unacceptable waste of Government resources which allows violators to escape the burden of full penalties.

The particular problem faced by Customs attorneys arises from a criterion imposed in the Baggot case. Specifically, in order to gain access, Customs attorneys must demonstrate that they are "preliminary to a judicial proceedings." But, the Court declined to describe what point in the Customs administrative procedure constituted "preliminary to." Mr. President, my legislation clears up the ambiguity left in the wake of the Court's decision by amending 19 U.S.C. 1592, the statute which governs Customs activities in this regard to designate a prepenalty notice issued in the course of Customs Service civil procedure as preliminary to a judicial procedure.

There are, of course, more general problems which have been caused by the Court's decision to limit the Government's access to grand jury evidence for use in civil procedures. I am, therefore, considering legislation which will address this question on a broader basis. For the purposes of increasing the enforcement capabilities of the Customs Service, however, the bill which I am introducing today will simply clarify what they must demonstrate in a petition for such access.

Mr. President, the changes which I have proposed in civil statutes will allow the Customs Service to impose the maximum penalty on companies found to be in violation of U.S. trade law. They will result in a higher level of deterrence against steel import fraud and enhance the effectiveness of the Customs initiative which is currently underway.

This bill is identical to legislation I introduced last year as S. 2531. Now that there has been some time for Customs and the business community to review the matter, I hope we will be able to move promptly on it this year.

Mr. President, I ask that the text of the bill along with a copy of my testimony on this problem before the Commerce and Energy Subcommittee on Oversight and Investigations on September 21, 1983 and a recent article from 33 Metal Producing be printed at this point in the RECORD.

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

S. 429

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) is amended by—

(1) striking out the first proviso; and

(2) striking out "*Provided further*" and inserting in lieu thereof "*Provided*".

SEC. 2. Section 592 of the Tariff Act of 1930 (19 U.S.C 1592) is amended by adding at the end thereof the following new subsection:

"(f) GRAND JURY MATTERS.—For purposes of Rule 6(e)(3)(C)(i) of Federal Rules of Criminal Procedure, disclosure otherwise prohibited by such rule of matters occurring before the grand jury may be made to the government upon a showing by the government that—

"(1) a prepayment penalty notice has been issued under subsection (b)(1) of this section; and

"(2) the evidence sought may be relevant to the enforcement of this section.".

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TESTIMONY BEFORE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION ON STEEL IMPORT FRAUD—FRAUD WITHOUT FEAR

I would first like to commend Chairman Dingell for his extensive investigation of import fraud in a number of sectors, including steel. It is a matter of serious concern not only to our ailing steel and support industries in the U.S. but also to our entire nation. My purpose today is to express support for your investigation, knowing that it will be thorough, constructive and fair, and to offer my help in developing a legislative response to the problems you uncover.

In developing that response. I'd like to share with you some of what I have learned in my own research and investigation. The word "steel" has become synonymous with tragedy. The industry has been dangerously

weakened. Steel communities are deeply depressed. And steel workers are nearly without hope. A few years ago our steel industry was the strongest in the world. Today its sad statistics include 100,000 unemployed, $3.5 billion in losses last year, and a 56% operating rate despite the general economic recovery. It is a cruel injustice that many a job has been lost to fraudulently imported foreign steel.

A strong government effort at deterring fraud will certainly not alleviate all the problems of the industry but it will be of significant help. It is also worth noting that such an action is not a protectionist measure. It is simply matter of justice, of enforcing our present laws.

Or course it is also a matter of revenue, since the Customs Officials generally take in $19 for every dollar spent.

Both the Customs Service and the Justice Department bear a serious responsibility for deficiencies in deterring steel import fraud. And the increase in fraudulently imported steel can be traced to a combination of insufficient resources, a low priority given to this problem, and unwillingness of both Customs and the Justice Department to emphasize prompt civil actions against such imports. I understand that there are currently over 40 active cases under investigation involving steel import fraud. Some of these cases date back to 5 to 7 years.

With respect to resources, Customs has compounded the problem by proposing a program to drastically reduce the manpower levels of import specialists at the same time it has proclaimed import fraud as an area of renewed emphasis. Import specialists are essential to fraud detection and they need additional support, not lip service. And they certainly do not need cut backs.

In addition, the physical equipment resources at U.S. ports to aid in fraud detection are almost nonexistent. Currently, no ports except New Orleans possess on-site chemical analysis equipment or a Customs weighing system. This type of equipment—which is basic to effective enforcement—should be provided to all major steel ports.

Enforcement seems half-hearted. Looking at investigations and prosecutions already completed, I am disappointed in the size of the penalties levied. Substantial penalties are a key factor in deterrence. A mere slap on the wrist invites the greedy to try again and again * * * which they have successfully. Maximum penalties should be levied on offenders; especially those involving large foreign firms or trading companies. Instead of civil suits which are easier to win and allow bigger fines, the government has preferred criminal investigations and prosecutions in large cases of steel fraud. Unfortunately, Justice Department policy effectively limits the maximum criminal fine $200,000 which is but a fraction of the profit a large company or trading company will make on the transaction. Of course, jail sentences are an alternative, but the Justice Department has not generally sought them.

Civil cases, on the other hand, can result in penalties as high as the value of the goods involved. This could result, in some cases, in multimillion dollar fines. The threat of such penalties would certainly be a greater deterrent, especially on foreign nationals with U.S. subsidiaries importing the steel. Further, the burden of proof for civil fraud is considerably less than that necessary for a successful criminal prosecution.

Unfortunately the government has consistently opted for the more difficult, less punitive (criminal) route. In sum, investigations proceed at a snail pace, fines are inconsequential, convictions rare, resources shrinking and the deterrent nil. Our government has unwittingly issued an invitation to "Fraud without fear."

Finally, we should all recognize that the likelihood of steel import fraud is greater today than it has ever been. The worldwide recession coupled with persistent steel oversupply and overcapacity has led to fierce competition to push steel through the path of least resistance, i.e., the open U.S. market. Moreover, the October 1982, Steel Agreement and the recent specialty steel import restraints offer ingenious exporters many opportunities for fraudulent circumvention such as misdesignating the country of origin, grade misidentification, etc. I understand that Secretary of Commerce Baldrige has stated that aggressive enforcement of our trade laws could limit steel imports to 15 percent of the U.S. market. I look forward to that aggressive effort. Meanwhile we must continue our efforts to tighten up fraud detection in the face of these increased import pressures.

With respect to solutions, the Senate Finance Committee has already approved my amendment to increase the budget of Customs' steel fraud program. That proposal should also be included in the Treasury Customs Service Appropriation. I am also preparing a resolution to address both the resource problem and the need for stiffer penalties which I will shortly submit to the Senate.

These hearings today and tomorrow should awaken the Congress and the public to the problem of steel import fraud and will be a significant aid in obtaining legislative remedies. I am committed to work with you, Mr. Chairman, in developing and enacting such remedies.

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STEEL IMPORT FRAUD: CLOAKS, DAGGERS AND A CACHE OF SMOKING GUNS

(By Joseph J. Innace)

All Points Bulletin: Fraudulent steel imports can turn up at any major U.S. port of entry.

Case 1: (resolved) Special agents for the U.S. Customs Service uncover that Thyssen Metal Service, Detroit, Mich., has been falsifying entry documents for cold-rolled steel. In a ploy to avoid the U.S. trade barriers for certain steel products, Thyssen passed the material along as a higher quality metal but then sold it in the States at a lower price.

Thyssen is charged with two criminal counts of import fraud and is indicted March 1984. Result: Thyssen agrees to a $3.25-million civil suit out-of-court settlement.

Case 2: (resolved) June 25, 1984. Louis Waterman, Philadelphia, pleads guilty to 19 counts of import fraud relating to the movement of foreign steel flanges. Waterman is fined $30,000 and sentenced to 500 hrs of community service and a two-year probation.

Case 3: (resolved) Contractors Steel, Livonia, Mich, pleads guilty to three counts of import fraud after being indicted for removing country-or-origin markings on steel products. Result: A $12,000 fine in federal district court.

Case 4: (still open) Daewoo International America Corp., New York, which deals in Korean steel, is charged with making false statements to the U.S. government in an alleged attempt to import foreign steel restricted by U.S. trade agreements. Nine employees are indicted in March 1984 on 32 counts of fraud.

Case 5: (shipment seized) October 31, 1984. Customs' Special Agent, Eugene J. Weinschenk, in charge of Connecticut, reports the seizure of almost 2,000 t of cold-rolled sheet steel valued at close to $800,000. Invoiced as black plate at a 5.6% tariff, the cold-rolled steel is correctly classified in the U.S. tariff schedule at 6.6%.

"More importantly," says Weinschenk, "by agreement between the United States and the European Economic Council, cold-rolled steel can only be imported if accompanied by an 'EEC Export Certificate.'" Since the cold-rolled steel was misdescribed, to avoid the certificate requirement, the shipment—from a steel company in Greece and imported by a Connecticut corporation—was confiscated as a restricted importation under federal law.

While cloak-and-dagger escapades of this ilk would bring a twinkle to the eye of a Sergeant Joe Friday or an Eliot Ness, not all cases of customs fraud are as dramatic. In many instances, in fact, what appears to be illegal maneuvering of material to skirt trade laws or tariff schedules is actually poor paperwork on the part of importers or their customs brokers, who mistakenly classify entering goods.

Premeditated or not, misclassification can severely disrupt the domestic marketplace. And the U.S. Customs Service makes no distinctions. The country's border enforcers are, in fact, busy stalking all steel-related infractions—and at a pace more intense, perhaps, than ever before.

FRAUDBUSTERS

Right now, the US Customs Service reports, some 40 major cases involving suspected steel import fraud are under investigation, many uncovered, thanks to "Operation Tripwire." Announced last April by Customs Service Commissioner William Von Raab and Sen. John Heinz (R-Pa), Operation Tripwire is a specially targeted Customs program aimed at stopping steel-importing violations directly at ports of entry.

"At the moment, there are 118 people in the steel program," says Jim Mahan of the US Customs Service, Washington, DC. "We have 94 import specialists, 24 special agents, and task forces situated in three major cities—all assigned to steel."

The question, of course, is whether a 118-person staff is sufficient to adequately track the huge volumes of steel imports to these shores. Opinions vary.

"The incidence of misclassification alone, and not necessarily outright fraud, is a very big and serious problem," says a spokesman for the American Iron and Steel Institute (AISI), Washington, DC. 'The Customs Service suspects that at least 30% of the documents pertaining to imported steel are wrong in some fashion. Maybe a countervailing duty was omitted," he cites an example. "Or the incorrect tariff schedule was referenced. Any number of things can go wrong when you're dealing with such a complex system of tariff schedules."

One reason for the errors, the AISI official suggests, is that much of the documentation is handled by customs brokers rushing to push through the paperwork.

Doris Beckmann, of Beckmann & Beckmann International, New York, a customs broker that does not deal in steel, disagrees. "Too much of a generalization," she counters, maintaining that those in her profession actually represent the U.S. Treasury Dept. and, as such, fully understand customs laws.

"That's our primary function," Beckmann emphasizes. "And every piece we handle is subject to subsequent analysis.

"The fact that we might be handling goods covered by quotas or trade restraints doesn't present any unusual difficulties," Beckmann claims. "We have one code of regulations to adhere to. You're sure of those regulations, regardless of the products being handled. There's really nothing to it," she says. "Speed is not a major consideration."

Special agents interviewed at one port agree. For the most part, they say, customs brokers are both conscientious and honest.

"The problems usually stem from the importers, or actual buyers of goods on these shores," says one. The customs brokers, he explains, typically work only with the information supplied them by the importer.

"Of course," he adds, "if the instructions a broker is issued look suspicious, and the shipment is put through regardless, that broker would be negligent."

On the other hand, it's not unusual for brokers to go out of their way to hold up a transaction carrying documentation that doesn't look quite right. "After forty years in this business," Beckmann comments, "you know what to watch out for. European export documents, for example, are always done well. But South American paperwork," Beckmann claims, "comes in carelessly prepared. A good broker is sensitive to such detail."

Any wrongful invoicing at the port of entry will, of course, have a ripple effect as the product winds its way through the marketplace. In extremes, improper invoicing—intentional or otherwise—can make actual U.S. selling prices next to meaningless.

A potentially greater danger is the impact such error can have on statistics collected by the Customs Service—the same statistics the steel industry relies on to conduct market analyses and facilities planning.

Consider this "worst case" scenario: An offshore tubular product shipment arrives in Houston, where a customs broker pays a 0.5% duty when the actual figure should be 6%. That difference affects the product's selling price in the U.S. market.

Since a lighter duty was paid, the product can be sold for less to compete with domestic material. If this occurs fairly frequently, of course, the statistics the Customs Service collects on tubular goods would not truly reflect home market demand patterns.

In any case, the AISI relies on Customs' import statistics and shares the figures with member companies. And it's not improbable that one of those companies would analyze the data, see offshore tubular shipments coming in at a relatively regular rate, and hinge an investment decision based on what it perceives as a market trend.

It might decide, say, to spend $50 million to upgrade a tubular finishing facility for a market that isn't nearly as strong as the supposedly reliable data indicates.

Far-fetched? There may be more of a connection than you think.

"The tubular section of the tariffs schedule is perhaps the most complex of all," says the AISI official. "It would be difficult to prove," he concedes, "but there's some connection between the possibly misleading statistics for this product category and the overbuilding of OCTG capacity by domestic producers."

A HIGH-TECH CRACKDOWN

In an atmosphere where steel imports—regardless of restraint mechanisms—are a constant source of controversy and very much a part of the domestic industrial scene, neither U.S. steelmakers nor Customs are satisfied that the offshore factors of the supply/demand equation are being monitored accurately and consistently.

"We're getting there and have made tremendous strides," says one Customs Service source, "but there's still a lot of work to be done. For instance," he notes, "until February 1983, when the Fraud Center was established, we never kept statistics on fraud cases."

Helping Customs crack down on would-be violators is the AISI, which has been involved in programs geared to train government personnel to identify steel. In its obvious best interest, the Institute has also given the department two portable metal analyzers to help check steel material claims at the docks. And the move has paid off.

The Customs Service already has one Applied Research Laboratories (ARL) 3600 Mobile Metal Analyzer, dubbed "Sparky," at its disposal. And another may be added this year.

Three years ago, the Customs Service field office in New Orleans was assigned the task of developing special expertise in the area of steel analysis. The upshot? A decision by the officials there that a mobile lab be created.

By mid-1983, the lab purchased the ARL 3600, which immediately analyzes 16 elements via emission spectrography by using a "pistol" applied against the steel sample. Through September of last year, the office had analyzed 692 samples, 496 by "Sparky" and 196 by conventional lab methods.

Fast as its work, the ARL unit performs a complete analysis in 10 minutes. The conventional method, of course, requires a sample to be cut and sent to the lab.

With "Sparky," sample cutting, a time-consuming procedure, is done on a very selective basis. If the analyzer uncovers a discrepancy between the material and its invoice description, the importer is told to have a sample cut for lab analysis. And "Sparky" has been right on target. To date, 90% of field results have been confirmed after followup lab analysis.

Case in point: A typical shipment of steel pipe conforming to API specs and entered under tariff schedule 610.39 might be valued at $500,000. Enter Customs and "Sparky," which spots chromium at 0.21% levels and reclassifies the material under 610.40.

The duty charged changes from 0.5% to 3.8%, amounting to an additional $16,500. And that's just the beginning.

The additional chromium will also result in a duty increase, and countervailing duties and penalties for violating antidumping trade laws are likely to be imposed.

"Sparky," the Fraud Center, indictments, task forces and special agents are all playing a vital role in what one Customs official characterizes as an evolution. "Customs has always been seen in an entirely domestic light," he says. "Recently, however, we're becoming more and more an instrument of foreign policy." And that instrument, he says, is getting sharper and more sophisticated every day.●

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By Mr. HEINZ (for himself, Mr. CHAFEE, Mr. GARN, and Mr. D'AMATO):

S. 430. A bill to amend and clarify the Foreign Corrupt Practices Act of 1977; to the Committee on Banking, Housing, and Urban Affairs.

BUSINESS ACCOUNTING AND FOREIGN TRADE SIMPLIFICATION ACT

● Mr. HEINZ. Mr. President, along with Senator CHAFEE, Senator GARN, and Senator D'AMATO, I am today introducing the Foreign Corrupt Practices Act amendments in the same form in which they passed the Senate in the 97th Congress.

That effort, which culminated in Senate passage of S. 708 on November 23, 1981, was significant for its extensive hearings and bipartisan approach to the problem. That bipartisan spirit was attributable directly to the efforts of the Senator from Wisconsin (Mr. PROXMIRE) who, despite his misgivings about the bill cooperated with the committee in developing a fair and thoroughly researched compromise.

The committee held 5 days of hearings spanning 3 months and including 29 witnesses. Most significant, every witness requested by the minority was invited to appear. Some declined, but I do not think anyone can argue the hearings did not fully represent all sides of this issue or that the requests of opponents of the bill were not honored.

Additionally, at the request of the minority, we postponed markup on the bill for 6 weeks to permit all Members to better study the complex issues raised by the bill. During that time, the staff, in consultation with Senator D'AMATO and myself, developed a committee print which made a number of changes in S. 708 to accommodate concerns raised by the minority and correct drafting errors. Ultimately the committee print was adopted—by a bipartisan vote—and the bill reported with an additional clarifying amendment. On November 23, 1981, the Senate passed sequence of events was partially repeated in 1983 when the Banking Committee reported the same bill the Senate had previously passed. Unfortunately, other committee priorities, particularly the Export Administration Act, prevented full Senate consideration of the bill.

Our motivation in pursuing this bill is related to the serious deficiencies in present law. In the accounting section, present law potentially makes a corporation liable for the smallest accounting error—whether material or not, whether intentional or not, whether related to a corrupt payment or not. In fact, as the legislative history of this section makes clear, it is not an anticorruption section at all, but rather broad authority for the SEC to prosecute books and records errors.

In the words of former SEC Chairman Harold Williams in a policy statement discussing the accounting provisions:

> The anxieties created by the Foreign Corrupt Practices Act—among men and women of utmost good faith—have been, in my experience, without equal.

The other major difficulty of present law relates to its language concerning the relationship between a corporation and a third party, usually an agent, when it is the latter that actually makes the prohibited payment. This is a central issue because in many countries, foreign companies are either required by law or encouraged by custom and other means to deal with the Government through a national of that country.

In other countries where the bureaucracy is complex or corrupt, or where the language or social customs are difficult for westerners, it is clearly in a U.S. company's interest to employ an agent. Smaller businesses tend to be particularly dependent upon agents in their overseas activities, since they do not have the resources to establish their own offices.

Present law defines the company-agent relationship by making the company liable if it knows or has reason to know that the agent has made a corrupt payment. The reason-to-know language has been the source of the greatest uncertainty, complicated by the absence of useful guidance from the SEC or the Justice Department as to what the term might mean. This has led to assertions of breadth of coverage which themselves are breathtaking and which would totally cripple U.S. corporate activities in certain countries, were the law aggressively enforced in that way.

It is of small comfort to an executive when his lawyer tells him he may be liable under the law—personally and corporately—but not to worry because the Government may not prosecute, or if it does, he might not be convicted. The executive's obligation to himself and his company is to avoid uncertainty, avoid publicity, and avoid the time and expense of a lengthy investigation or court case.

Let me say, Mr. President, it would have been far easier to resolve some of these issues with calculated ambiguities but, frankly, if there is one criticism of Congress that probably is valid, it is that too often, Congress, in trying to compose differences, has left areas of ambiguity that have been counterproductive for all sides. This bill, Mr. President, instead confronts the issues directly and provides the greatest guidance possible to businesses which have to live with this statute on a day-to-day basis. I think the result will be a clearer law and, because of that, a better law. I believe that to be the case from the viewpoint of people on all sides of this issue. It is my hope that my colleagues will share my view of the bill's merits, but I have no expectation that this bill will be approved unanimously. I do, however, want to make clear our intent. Very simply, what we are trying to do is not weaken this law but clarify it. We are not reopening the door to corrupt payments. We are eliminating doubt as to what constitutes a corrupt payment and when a corporation is liable.

As Senators know, this bill, despite our hard work, was not passed by the House, nor even reported by the committees of jurisdiction. Throughout the latter part of 1982, however, a substantial effort was made to reach compromise with Congressman WIRTH, the chairman of one of the subcommittees to which the bill was referred. That effort, unfortunately was unsuccessful, despite considerable work in proposing various formulations by the Senator from Rhode Island [Mr. CHAFEE]. In the end we were unable to convince Congressman WIRTH of the urgency and importance of this matter and of the need to enact amendments free of ambiguous words and concepts. We did, however, have a constructive dialog and were able to narrow our differences. With the help of Senator CHAFEE and Senator D'AMATO I look forward to a continuation of that dialog. I expect a number of the changes we negotiated ultimately to find their way into this bill, and I anticipate further changes will be made as well as we attempt to develop the clearest and most precise legislation so as to best guide American businessmen operating abroad.

Our introduction of this bill at this time, Mr. President, signals our commitment to begin this process again. These amendments remain an administration priority, and they remain a business priority. Action on the bill is essential, and we will find a way to act as soon as possible. I expect the committee shortly to schedule a hearing on the bill and to proceed to markup soon afterward. I expect the bill soon to be on the Senate floor.

Mr. President, I ask 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. 430

*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 "Business Accounting and Foreign Trade Simplification Act".

FINDINGS AND CONCLUSIONS

SEC. 2. (a) The Congress finds that—

(1) the enactment of the Foreign Corrupt Practices Act of 1977 was a positive and significant step toward the important objective of prohibiting bribery of foreign government officials by United States companies in order to obtain, retain, or direct business;

(2) the Foreign Corrupt Practices Act of 1977 has caused unnecessary concern among existing and potential exporters as to the scope of legitimate overseas business activities;

(3) the accounting standards requirements of the Foreign Corrupt Practices Act of 1977, which apply to all issuers of securities irrespective of whether they have foreign operations, are unclear and excessive and have caused costly and unnecessary paperwork burdens;

(4) United States agencies responsible for enforcement of the Foreign Corrupt Practices Act of 1977 have not sufficiently coordinated interpretation and enforcement practices with other agencies responsible for international trade policy, export promotion, foreign policy, international monetary policy, and other related civil and criminal statutes; and

(5) it is in the best interests of all countries to maintain responsible standards of corporate conduct in foreign markets to preserve free and equitable trading practices.

(b) The Congress concludes that—

(1) the principle objectives of the Foreign Corrupt Practices Act of 1977 are desirable, beneficial, and important to our Nation as well as to our relationships with our trading partners, and these objectives should remain the central intent of the Act;

(2) exporters should not be subject to unclear, conflicting, and potentially damaging demands by diverse United States agencies responsible for enforcement of the Foreign Corrupt Practices Act of 1977;

(3) general compliance and enforcement practices associated with the Foreign Corrupt Practices Act of 1977 should be developed in accordance with considerations underlying foreign relations, international trade, export promotion, international monetary policy, and other related civil and criminal statutes; and

(4) a solution to the problem of corrupt payments by firms to obtain or retain business demands and international approach; accordingly, appropriate international agreements should be initiated and sought by the United States agencies responsible for trade agreements and by the President.

AMENDMENT OF SHORT TITLE

SEC. 3. Section 101 of the Foreign Corrupt Practices Act of 1977 is amended to read as follows:

"SHORT TITLE

"SEC. 101. This title may be cited as the 'Business Practices and Records Act'.".

ACCOUNTING STANDARDS

SEC. 4. (a) Section 13(b)(2) of the Securities Exchange Act of 1934 is amended to read as follows:

"(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

"(A) transactions are executed in accordance with management's general or specific authorization;

"(B) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting prinicples or any other criteria applicable to such statements, and (ii) to maintain accountability for assets;

"(C) access to assets is permitted only in accordance with management's general or specific authorization;

"(D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

"(E) for the purposes of subparagraphs (A) through (D) of this paragraph, the issuer makes and keeps books, accounting records, and accounts which, in reasonable detail, accurately and fairly reflect the

transactions and dispositions of the assets of the issuer.".

(b) Section 13(b) of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following:

"(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection.

"(5) No civil injunctive relief shall be imposed with respect to—

"(A) any issuer for failing to comply with the requirements of paragraph (2) of this subsection if such issuer shall show that it acted in good faith in attempting to comply with such requirements; or

"(B) any person other than an issuer, in connection with an issuer's failure to comply with paragraph (2), unless such person knowingly caused the issuer to fail to devise or maintain a system of internal accounting controls that complies with paragraph (2).

"(6) No person shall knowingly circumvent a system of internal accounting controls established pursuant to paragraph (2) for a purpose inconsistent with paragraph (2).

"(7) Where an issuer which has a class of securities registered pursuant to section 12 of this title or an issuer which is required to file reports pursuant to section 15(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, including the relative degree of its ownership over the domestic or foreign firm and under the laws and practices governing the business operations of the country in which such firm is located, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such an issuer shall be conclusively presumed to have complied with the provisions of paragraph (2) by demonstrating good faith efforts to use such influence.".

REPEALER; NEW BRIBERY PROVISION

SEC. 5. (a)(1) Section 30A of the Securities Exchange Act of 1934 is repealed.

(2) Section 32 of such Act is amended—

(A) by striking out "(other than section 30A)" in subsection (a); and

(B) by striking out subsection (c).

(b) Section 104 of the Business Practices and Records Act is amended to read as follows:

"FOREIGN PAYMENTS

"SEC. 104. (a) It shall be unlawful for any domestic concern, or any officer, director, employee, or shareholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of a payment, gift, offer, or promise, directly or indirectly, of anything of value to any foreign official for the purpose of—

"(1) influencing any act or decision of such foreign official in his official capacity, or inducing such foreign official to do or omit to do any act in violation of his legal duty as a foreign official; or

"(2) inducing such foreign official to use his influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality;

in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

"(b) It shall be unlawful for any domestic concern, or any officer, director or employee, or shareholder thereof acting on behalf of such domestic concern to make use of the mails or any means or instrumentality of interstate commerce corruptly to direct or authorize, expressly or by a course of conduct, a third party in furtherance of a payment, gift, offer, or promise of anything of value to a foreign official for any of the purposes set forth in subsection (a).

"(c) Subsections (a) and (b) shall not apply to—

"(1) any facilitating or expediting payment to a foreign official the purpose of which is to expedite or to secure the performance of a routine governmental action by a foreign official;

"(2) any payment, gift, offer, or promise of anything of value to a foreign official which is lawful under the law and regulations of the foreign official's country;

"(3) any payment, gift, offer, or promise of anything of value which constitutes a courtesy, a token of regard or esteem, or in return for hospitality;

"(4) any expenditures, including travel and lodging expenses, associated with the selling or purchasing of goods or services or with the demonstration or explanation of products; or

"(5) any ordinary expenditures, including travel and lodging expenses, associated with the performance of a contract with a foreign government or agency thereof.

"(d)(1)(A) Except as provided in subparagraph (B), any domestic concern which violates subsection (a) or (b) shall, upon conviction, be fined not more than $1,000,000.

"(B) Any individual who is a domestic concern and who willfully violates subsection (a) or (b) shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

"(2) Any officer or director of a domestic concern, or stockholder acting on behalf of such domestic concern, who willfully violates subsection (a) or (b) shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years or both.

"(3) Whenever a domestic concern is found to have violated subsection (a) or (b) of this section, any employee of such domestic concern who is a United States citizen, national, or resident or is otherwise subject to the jurisdiction of the United States (other than an officer, director, or stockholder acting on behalf of such domestic concern), and who willfully carried out the act or practice constituting such violation shall, upon conviction, be fined not more than $10,000, or imprisoned not more than five years, or both.

"(4) Whenever a fine is imposed under paragraph (2) or (3) of this subsection upon any officer, director, employee, or stockholder of a domestic concern, such fine shall not be paid, directly or indirectly, by such domestic concern.

"(e)(1) When it appears to the Attorney General that any domestic concern, or officer, director, employee, or stockholder thereof, is engaged, or is about to engage, in any act or practice constituting a violation of subsection (a) or (b) of this section, the Attorney General may, in his discretion, bring a civil action in an appropriate district court of the United States to enjoin such act or practice, and upon a proper showing, a permanent or temporary injunction or a temporary restraining order shall be granted without bond.

"(2) For the purpose of all civil investigations which, in the opinion of the Attorney General, are necessary and proper for the enforcement of this Act, the Attorney General or any attorney or attorneys of the Department of Justice designated by him are empowered to administer oaths and affirmations, subpena witnesses, take evidence, and require the production of any books, papers, or other documents which the Attorney General deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States, or any territory, possession, or commonwealth of the United States, at any designated place of hearing.

"(3) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Attorney General or attorney designated by the Attorney General, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. The Attorney General shall have the power to make such rules relating to civil investigations as may be necessary or appropriate to implement the provisions of this subsection.

"(f) As used in this section—

"(1) The term 'domestic concern' means (A) any individual who is a citizen, national, or resident of the United States; or (B) any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship which has its principal place of business in the United States, which is organized under the laws of a State of the United States or a territory, possession, or commonwealth of the United States, which has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or which is required to file reports under section 15(d) of the Securities Exchange Act of 1934.

"(2) The term 'foreign official' means (A) any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality; or (B) any foreign political party or official thereof or any candidate for foreign political office.".

DEFINITIONS

SEC. 6. Section 13(b) of the Securities Exchange Act of 1934 is amended by adding at the end thereof the following:

"(6) For the purpose of this section, the terms 'reasonable assurances' and 'reasonable detail' mean such level of detail and degree of assurance as would satisfy prudent individuals in the conduct of their own affairs, having in mind a comparison between benefits to be obtained and costs to be incurred in obtaining such benefits.".

EXCLUSIVITY PROVISION FOR OVERSEAS BRIBERY

SEC. 7. No criminal action pursuant to section 1341 or 1343 of title 18, United States

Code, may be brought against a domestic concern, its officers, directors, employees, or any shareholders thereof acting on behalf of such domestic concern for a payment, gift, offer, or promise to a foreign official based upon the theory that the foreign official or the domestic concern violated a duty to or defrauded the foreign government or the citizens of a foreign country.

AUTHORITY TO ISSUE GUIDELINES

SEC. 8. Title I of the Business Practices and Records Act is amended by adding at the end thereof the following:

"GUIDELINES AND GENERAL PROCEDURES FOR COMPLIANCE

"SEC. 105. (a) Not later than six months after the date of enactment of this section, the Attorney General, after consultation with the United States Trade Representative, the Secretary of State, the Secretary of Commerce, and the Secretary of the Treasury, and after consultation with representatives of the business community and the interested public through public notice and comment and in public hearings, shall determine to what extent the business community would be assisted by further clarification of section 104 of this Act and shall, based on such determination and to the extent necessary and appropriate, have the authority to issue—

"(1) guidelines describing specific types of conduct associated with common types of export sales arrangements and business contracts which the Attorney General determines constitute compliance with the provisions of section 104 of this Act; and

"(2) general precautionary procedures which issuers or domestic concerns may use on a voluntary basis to ensure compliance with this Act, and to create a rebuttable presumption of compliance with this Act.

The guidelines and procedures referred to in the preceding sentence shall be issued in accordance with sections 551 through 557 of title 5, United States Code.

"(b) The Attorney General, after consultation with other Federal agencies and representatives from the business community, shall establish a Business Practices and Records Act Review Procedure for the purposes of providing responses to specific inquiries concerning enforcement intentions under this Act. The Attorney General shall issue opinions, within thirty days, in response to requests from domestic concerns, regarding compliance with the requirements of the provisions of section 104 of this Act. An opinion that certain prospective conduct does not involve a violation shall be final and binding on all parties, subject to the discovery of new evidence. When appropriate, and at reasonable intervals, the responses derived from the review procedure will be reviewed by the Attorney General to determine whether such compilation of responses should be included in a new guideline pursuant to subsection (a).

"(c) Any document or other material provided to, received by, or prepared in the Department of Justice, or any other department or agency of the United States Government, in connection with a request by a domestic concern for a statement of present enforcement intentions under the Business Practices and Records Act Review Procedure pursuant to subsection (b) of this section, or in connection with any investigations conducted to enforce this Act, shall be exempt from disclosure under section 552 of title 5, United States Code, regardless of whether the Department responds to such a request or the applicant withdraws such request prior to receiving a response. The Attorney General shall protect the privacy of each applicant, and shall adopt rules assuring that materials, documents, and information submitted in connection with a review procedure request will be kept confidential and will not be used for any purpose that would unnecessarily discourage use of the review procedure. The review procedure shall be developed and instituted in accordance with section 551 through 557 and 701 through 706 of title 5, United States Code.

"(d) The Attorney General shall make a special effort to provide timely compliance guidance to potential exporters, and smaller businesses, who as a practical matter are unable to obtain specialized counsel on issues pertaining to this Act. Such assistance shall be limited to requests for enforcement intention disclosures provided for under this Act, and general explanations of compliance responsibilities and of potential liabilities under the Act.

"(e)(1) On September 1 of each year the Attorney General shall transmit to the Congress and make public a detailed report on all actions which the Department of Justice has taken pursuant to this Act, along with its views on problems associated with implementation, its plan for the next fiscal year to further implement the Act, and recommendations for amendments.

"(2) On September 1 of each year the Chairman of the Securities and Exchange Commission shall file with the Congress a detailed report on all actions which the Commission has taken pursuant to section 13(b) of the Securities Exchange Act, its views on problems associated with implementation, its plans for the next fiscal year to further implement such section, and its recommendations for amendment.".

INTERNATIONAL AGREEMENTS

SEC. 9. (a) It is the sense of the Congress that the President should pursue the negotiation of an international agreement among the largest possible number of nations on illicit payments, including a process by which problems and conflicts associated with such practices could be resolved.

(b) Within one year after the date of enactment of this Act, the President shall report to Congress on—

(1) the progress of the negotiations referred to in subsection (a);

(2) those steps which the administration and Congress should consider taking in the event that these negotiations do not successfully eliminate the competitive disadvantage of United States business; and

(3) possible actions that could be taken to promote cooperation by other nations in international efforts to prevent bribery of foreign officials, candidates, or parties in third countries.

This report shall also include recommendations for any new legislation required to give the President authority to take appropriate action to achieve such objectives. The report shall contain an anlaysis of the potential effect on the interests of the United States including United States national security of the corruption of foreign officials and political leaders in connection with international business transactions involving persons and business enterprises of other nations. In addition, the report shall assess the current and future rule in curtailing such corruption of private initiatives such as the Recommendations to Government and Rules of Conduct to Combat Extortion and Bribery developed by the International Chamber of Commerce.●

● Mr. CHAFEE. Mr. President, I am pleased to join my colleagues, Senators HEINZ, GARN, and D'AMATO in introducing the Business Accounting and Foreign Trade Simplification Act.

This bill is identical to the Senate-passed version of S. 708, a bill which I authored and introduced in the 97th Congress.

Mr. President, I have been committed to achieving these vital changes in the Foreign Corrupt Practices Act for 4 years now. The changes this bill makes in the Foreign Corrupt Practices Act are critical to maintaining our position in the world export market. Ambassador Brock, U.S. Trade Representative, has referred to the need for these changes as being at least as great as the need for addressing foreign subsidies, local content laws, hidden taxes, or nontariff barriers.

Mr. President, this bill is intended to preserve the purposes of the Foreign Corrupt Practices Act—that is, putting an end to large-scale bribery of foreign officials by American corporations. What we propose is to reduce some of the confusion that the act has generated. The bill had had strong support from the business community, the agencies responsible for its enforcement, the administration, and other Members of Congress from both political parties.

Specifically, the bill would do as follows:

First, change the name of the act: The Foreign Corrupt Practices Act would become the Business Practices and Records Act. This reflects the fact that the accounting standards are not limited to international companies or transactions. It also would not make a presumption that corruption exists.

Second, enforcement: With regard to the bribery provisions, the Department of Justice, which has sole jurisdiction under the FCPA for criminal enforcement of both privately and publicly held companies and civil enforcement of privately held companies, would be given sole jurisdiction of civil enforcement for publicly held companies as well. Thus, any company with questions about the bribery provisions could get them answered in one place. The Securities and Exchange Commission would retain responsibility for civil enforcement of the accounting standards provisions.

Third, bribery provision: Congress made clear its intent to exclude so-called facilitating payments from the reach of the Foreign Corrupt Practices Act. However, the statute is not clear as to what constitutes such payments. They are defined as payments to secure or expedite the performance of a routine governmental action as distinguished from action involving the exercise of discretion. The reference to the exercise of judgment is also delet-

ed. Payments which are lawful in the country where they are made, and which are intended to secure prompt performance of a foreign official's duties, would not be actionable under this bill. There is also a clarifying exclusion for token courtesy gifts and incidental benefits received by foreign officials in the course of marketing activities or product presentations.

The bill also makes it clear that there is no violation in making payment if they are legal under the laws and regulations of the foreign country involved.

Under the Foreign Corrupt Practices Act, companies are liable if they have a reason to know that a bribe may be paid by a third party or intermediary. This provision was identified in the 1980 executive branch study of export disincentives as the area of greatest concern to business. The bill replaces this provision with language that makes U.S. companies liable if they corruptly pay a bribe directly or if they directed or authorized the bribe expressly or by a course of conduct.

Fourth, accounting standards: The books and records provision is deleted. The bill also defines the terms "reasonable assurances" and "reasonable detail," which exist in the current law. Thus, it is made explicit that the use of cost/benefit evaluation is to be applied to internal accounting controls. This makes it clear that companies are not expected to design control systems whose costs exceed the benefit to the companies and to their stockholders. Currently, the Securities and Exchange Commission says the cost/benefit evaluation is to be applied. But the law does not say so. The bill would put it into the law.

Fifth, international agreement: This bill contains extensive provisions on the desirability of international agreements to establish standards for international business practices. The President would be required to submit a report to Congress within 1 year of enactment of this legislation explaining steps that the United States could take to promote cooperation by other countries to prevent bribery.

Let us not waste another Congress, another year, or another month. We are losing overseas business and jobs each day we delay. U.S. Trade Representative Brock has testified before the Senate that this law alone has cost U.S. industry billions of dollars in sales and thousands of jobs. Our mounting trade deficit makes further delay unjustifiable.

In countries such as Indonesia, and the Philippines, U.S. companies are hamstrung by the fact that Japanese and South Korean firms frequently make large payments or provide special deals to local officials or businessmen in return for import licenses or approval of investments. Such payments are subject to stiff penalties under the U.S. law.

I am certainly not advocating bribery but as presently worded, the law is vague and cumbersome and has become a severe impediment to American trade.

I do hope that the House Subcommittee on Telecommunications, Consumer Protection, and Finance will produce a bill this spring so as to make full congressional approval a reality before the end of this year. Action of this matter is long overdue.

I remain committed to the enactment of this bill and will do all I can to achieve that goal this year.●

● Mr. D'AMATO. Mr. President, today, the Business Accounting and Foreign Trade Simplification Act, a bill which would amend and clarify the Foreign Corrupt Practices Act of 1977, is being reintroduced and I am pleased to be an original cosponsor.

The Foreign Corrupt Practices Act was enacted to prevent U.S. corporations from committing acts of bribery outside the boundaries of the United States. Certainly no one will disagree with the spirit of the Foreign Corrupt Practices Act; however, some of the provisions of the act tended to have a chilling effect on legitimate international business operations of some of our domestic companies. At times, the Foreign Corrupt Practices Act has caused confusion when corporations have attempted to comply with its overbroad prohibitions and unclear accounting standards. The Business Accounting and Foreign Trade Simplification Act will remedy this by narrowing some of the prohibitions and by providing a clearer standard regarding the state of mind of the person committing the violative act.

During the 97th Congress, Senator HEINZ held hearings on the Business Accounting and Foreign Trade Simplification Act in the International Finance and Monetary Policy Subcommittee of which he is the chairman, while I conducted hearings in the Securities Subcommittee regarding the enforcement standards for the accounting sections of the FCPA which are administered by the SEC. These hearings made a compelling case for passage of this legislation; and the Senate wisely passed S. 708 in the 97th Congress. Joint hearings were held between Senator HEINZ and myself; however, we were unable to enact S. 414 in the 98th Congress. I am hopeful that we can expedite consideration and send the bill to the House of Representatives so that the Foreign Corrupt Practices Act no longer puts a damper on American corporations doing business abroad.

In today's economy, we need to encourage international trade rather than hamper it with ambiguous laws.●

By Mr. KENNEDY (for himself, Mr. WEICKER, Mr. CRANSTON, Mr. MATHIAS, Mr. LEAHY, Mr. PACKWOOD, Mr. METZENBAUM, Mr. STAFFORD, Mr. PELL, Mr. CHAFEE, Mr. SIMON, Mr. DURENBERGER, Mr. BIDEN, Mr. ANDREWS, Mr. MOYNIHAN, Mr. BAUCUS, Mr. BENTSEN, Mr. BINGAMAN, Mr. BRADLEY, Mr. BURDICK, Mr. CHILES, Mr. COHEN, Mr. DIXON, Mr. DODD, Mr. EAGLETON, Mr. EVANS, Mr. EXON, Mr. GLENN, Mr. GORE, Mr. HARKIN, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. KERRY, Mr. LAUTENBERG, Mr. LEVIN, Mr. MATSUNAGA, Mr. MELCHER, Mr. PROXMIRE, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SPECTER, Mr. MITCHELL, Mr. DECONCINI, and Mr. JOHNSTON):

S. 431. A bill to restore the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; to the Committee on Labor and Human Resources.

CIVIL RIGHTS RESTORATION ACT

Mr. KENNEDY. Mr. President, today Senator WEICKER and I, together with 42 of our Senate colleagues, are introducing legislation that will complete the most important unfinished business of the past Congress and restore the full force and effectiveness of our Nation's civil rights laws.

Last October, a small minority used a filibuster to prevent the Senate from enacting legislation designed to reaffirm that Federal financial assistance may not be used to support discrimination against any person on the basis of race, color, national origin, sex, disability, or age. That legislation was designed to undo the unfortunate consequences of the Supreme Court's decision last year in *Grove City College* v. *Bell*, 104 S. Ct. 1211 (1984), which left a serious loophole in the four basic laws that protect millions of women, the elderly, minorities, and the handicapped from discrimination.

This year we are introducing the Civil Rights Restoration Act of 1985, which will reverse that decision—and all of its effects—and restore title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 to the broad scope of coverage which characterized their application under the four prior administrations.

WHY THIS LEGISLATION IS NECESSARY

In Grove City the Supreme Court dramatically narrowed title IX's prohibition against sex discrimination in

education. While the Court held unanimously that Grove City is a recipient of Federal financial assistance because of basic educational opportunity grants [BEOG] provided to its students, a 6-to-3 majority construed title IX's "program or activity" language to reach only the school's student financial aid office. As a result, many schools throughout the country are now free to discriminate in many, if not all, of their course offerings, extracurricular activities, or student programs and effective enforcement has become virtually impossible. During the last year, the Department of Education alone halted work on over 60 cases involving educational institutions and is in the process of reviewing many more.

But title IX is only one of four major civil rights laws that prohibit discrimination by those receiving Federal funds. Congress expressly modeled title IX after title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race or national origin. Similarly, section 504 of the 1973 Rehabilitation Act and the Age Discrimination Act of 1975 contain the same "program or activity" language. Each of these statutes is therefore susceptible to the same limitation applied to education in Grove City. In fact, the Supreme Court clearly indicated its intention to apply the Grove City reasoning to the other statutes in deciding a section 504 case on the same day Grove City was handed down, *Consolidated Rail Corp.* v. *Darrone,* 104 S. Ct. 1248 (1984). And the administration has proceeded to apply Grove City to these other laws. The Department of Education has not only dropped title IX cases, but also cases under title VI, section 504, and the Age Discrimination Act.

Similarly, while title IX is limited to discrimination in education and while the Grove City case dealt with a college, it is clear that the Court's restrictive interpretation of "program and activity" is applicable to noneducation institutions as well. Thus, restoration of a broad interpretation "program or activity" must reach beyond education to forestall Federal funding of discrimination in such areas as health, transportation, social service, and economic development. The Darrone case, for example, applied Grove City to a section 504 case dealing with employment by a railroad. And Assistant Attorney General for Civil Rights William Bradford Reynolds has stated that from the outset that he intends to apply to the Grove City holding to other civil rights laws in all of the areas they cover.

In short, unless we amend all four laws, we cannot eliminate all of the effects of the Grove City case and will not restore these laws to the broad scope of coverage and protection which Congress originally intended and which characterized their administration for over 20 years.

WHAT THE BILL DOES

Coverage. The Civil Rights Restoration Act of 1985 amends each of the affected statutes by adding a section defining the phrase "program or activity" to make clear that discrimination is prohibited throughout entire agencies or institutions if any part receives Federal financial assistance. Thus, the language of the statutes will conform to the enforcement practices of previous Republican and Democratic administrations.

The definition of "program or activity" contains four applications of the principle of institution-wide coverage:

First, the operations of a department or agency of a State or local government are covered when Federal funds are extended to any part of the department or agency. For example, if Federal health assistance is extended to a part of the State health department, the entire health department would be covered in all of its operations. In the case of assistance to a State or local government, as distinguished from aid to a designated department or agency, the particular entity that distributes the Federal assistance is covered as well as any departments or agencies to which the assistance goes. For example, if the office of a mayor receives Federal financial assistance and distributes it to local departments or agencies, all of the operations of the mayor's office are covered along with the departments or agencies which actually get the aid.

Second, both individual universities and systems of higher education are covered in their entirety if any part receives Federal financial assistance. Under the bill, if a part of a university receives Federal aid, the entire university is covered. When a campus which is part of a "system of higher education" is receiving Federal financial assistance, then the entire system of which the campus is a part is covered.

Under the bill, local education agencies and other school systems are covered entirely when any part receives Federal funds. "Local education agency" is defined in the manner set forth in section 198(a)(10) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854(a)(10)) and includes any agency, such as a board of education, with administrative control and direction over a public elementary or secondary school or group of schools, and the schools themselves.

Third, corporations, partnerships, and other private organizations which receive Federal financial assistance also are fully covered by the nondiscrimination requirements. For example, if a private hospital corporation gets Federal assistance for its emergency room, all of the operations of the hospital, including, for example, the operating rooms, pediatrics department, admissions and discharge offices are covered.

Fourth, appropriate applications of the institution-wide principle must be made to determine coverage of entities not specifically listed. Thus, for example, a college which receives any Federal assistance would be covered in its entirety. A local water district which receives aid would be covered in its entirety just as a water department of a State or local government would be. And an individual who gets a Federal research grant would be required not to discriminate just as a group of individuals in a private organization would be.

Enforcement. The enforcement section of each statute is also amended to include the same proposal on fund termination that was in last year's bill.

The reason for this change lies in the sponsors' determination to maintain a distinction that was the essence of these four laws prior to Grove City—a distinction between broad institutionwide coverage on the one hand and effective, but narrowly targeted fund termination, on the other.

Though Grove City did not deal expressly with the fund termination issue we have changed the language because dictum in *North Haven Board of Education* v. *Bell,* 546 U.S. 512 (1982), might permit opponents of this legislation to argue that leaving the language unamended could well result in a broadening of fund termination.

The new fund termination language assures that the prior practice will be maintained. Fund termination will continue to be applied as a last resort after efforts to achieve voluntary compliance have failed. Other enforcement provisions remain unchanged. Funding agencies will continue to have the option of securing enforcement through referral to the Department of Justice for suit. The right of individuals to sue privately also is undisturbed.

WHAT THE NEW LEGISLATION DOES NOT DO

The Civil Rights Restoration Act of 1985 will not create any new obligations for those who receive Federal assistance.

The regulatory definition of who or what is a "recipient" of Federal financial assistance under these laws remains unchanged and the bill does not require any changes in it. For example, entities or persons, such as farmers, which were determined not to be recipients under prior law because they were the ultimate beneficiaries of Federal assistance would not have their status changed.

The constitutionally and statutorily protected rights of private individuals and organizations are not affected by the bill. All existing exemptions, including the title IX "religious tenet" exemption would be preserved.

HOW THE BILL DIFFERS FROM LAST YEAR'S BILL

The bill we are introducing today achieves the institutionwide coverage which was the purpose of the measure that passed the House of Representatives last year and was almost adopted by the Senate. Like its predecessor, this bill amends all four statutes in exactly the same way. However, in order to answer the criticism that last year's bill was too complex and, therefore, unclear, this year we have taken a different approach.

Last Year, S. 2568 would have deleted the term "program or activity" from the four civil rights statutes and replaced it with the term "recipient" defined along the lines of the definitions of that term in the implementing regulations. Opponents of retaining the laws' vitality used the lengthy recipient definition to raise many questions and charges of ambiguity. By retaining the term "program or activity" and explicitly defining its meaning in the major contexts where the law is applied, no valid charges of ambiguity can now be raised.

Mr. President, no Congress that adheres to the principle of equal justice under law can permit the Grove City College decision to stand. I welcome Senator DOLE's initiative in introducing his own legislation because it indicates that the Grove City issue will be a high priority in the 99th Congress. But, his bill is not an adequate response to the problems created by Grove City. Proposals that would restore the law only for certain beneficiaries of Federal aid, and leave millions of others subject to discrimination are simply unacceptable. We will also strongly resist attempts by the administration and opponents in Congress to misuse this important legislative initiative as an excuse to cut back on the protections of prior law.

Twenty years ago it was common practice for Federal aid to be used to support racially segregated schools and medical facilities. Women were systematically excluded from professional schools. And scant attention was paid to the special needs of the disabled and senior citizens. Today, because of these statutes and Federal efforts to enforce them, substantial progress has been made. Further progress will not be possible unless we act to restore the full force and effect of the laws prohibiting bias because of race, sex, age, or handicap. That is our goal and intention.

I ask unanimous consent that the full 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. 431

*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 "Civil Rights Restoration Act of 1985".

FINDINGS OF CONGRESS

SEC. 2. The Congress finds that—

(1) certain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964; and

(2) legislative action is necessary to restore the prior consistent and longstanding executive branch interpretation and broad, institutionwide application of those laws as previously administered.

EDUCATION AMENDMENTS AMENDMENT

SEC. 3. (a) Title IX of the Education Amendments of 1972 is amended by adding at the end the following new section:

"INTERPRETATION OF 'PROGRAM OR ACTIVITY'

"SEC. 909. For the purposes of this title, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

(b) The third sentence of section 902 of the Education Amendments of 1972 is amended—

(1) by striking out "program, or part thereof, in which" and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" and inserting in lieu thereof "so found".

REHABILITATION ACT AMENDMENT

SEC. 4. Section 504 of the Rehabilitation Act of 1973 is amended—

(1) by inserting "(a)" after "Sec. 504."; and

(2) by adding at the end the following new subsection:

"(b) For the purposes of this section, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

AGE DISCRIMINATION ACT AMENDMENT

SEC. 5. (a) Section 309 of the Age Discrimination Act of 1975 is amended—

(1) by striking out "and" at the end of paragraph (2);

(2) by striking out the period at the end of paragraph (3) and inserting "; and" in lieu thereof; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) the term 'program or activity' means all of the operations of—

"(A)(i) a department or agency of a State or of a local government; or

"(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(B)(i) a university or a system of higher education; or

"(ii) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(C) a corporation, partnership, or other private organization; or

"(D) any other entity determined in a manner consistent with the coverage provided with respect to entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.".

(b) The second sentence of section 305(b) of the Age Discrimination Act of 1975 is amended by striking out "particular program or activity, or part of such program or activity, with respect to which such finding has been made" and inserting in lieu thereof "assistance which supports the noncompliance so found".

CIVIL RIGHTS ACT AMENDMENT

SEC. 6. (a) Title VI of the Civil Rights Act of 1964 is amended by adding at the end the following new section:

"SEC. 606. For the purposes of this title, the term 'program or activity' means all of the operations of—

"(1)(A) a department or agency of a State or of a local government; or

"(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other entity) to which the assistance is extended, in the case of assistance to a State or local government;

"(2)(A) a university or a system of higher education; or

"(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965) or other school system;

"(3) a corporation, partnership, or other private organization; or

"(4) any other entity determined in a manner consistent with the coverage provided with respect to entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.".

(b) The third sentence of section 602 of the Civil Rights Act of 1964 is amended—

(1) by striking out "program, or part thereof, in which" in paragraph (1) and inserting in lieu thereof "assistance which supports"; and

(2) by striking out "has been so found" in paragraph (1) and inserting in lieu thereof "so found".

Mr. WEICKER. Mr. President, today I rise proudly with the Senator from Massachusetts and a bipartisan coalition of my colleagues to introduce the Civil Rights Restoration Act of 1985.

I believe that passage of the legislation we introduce today will be an important event in the historic struggle of the American people to bring all of our citizens—black and white, old and young, women and men, the handicapped and the able bodied—into full enjoyment of their God-given, inalienable rights. Previous generations of Americans have fought wars for that ideal. And we have fought and are still fighting against racism, sexism, and the attitudes that stereotype elderly and handicapped and relegate them to second-class citizenship. The American agenda includes more than budgets and tax cuts and national defense: it includes defense of the ideals which have made us great.

In order to give substance to those ideals, the Congress passed the four historic civil rights statutes: The Civil Rights Act of 1964; title IX, dealing with sex discrimination in education; section 504 of the Rehabilitation Act; and the Age Discrimination Act of 1975. As the pillars of our civil rights policy, they pledge that "no person shall * * * be excluded from participation in, be denied the benefits of, or be subjected to discrimination" in federally assisted programs on the basis of race, sex, handicap, or age. Those prohibitions, and the enforcement language which follows in the statutes, represent the most powerful tools available to us for ending discrimination and establishing civil rights. We act today to reaffirm our ideals by restoring those tools.

The Supreme Court, in Grove City versus Bell and other decisions, has wrongly interpreted what Congress clearly intended to do in those statutes. By narrowing the meaning of the term program or activity which occurs in nearly identical form in the four statutes, the Court has contracted the scope of coverage of these laws. Legislative history and subsequent administrative practice make clear that the Congress intended that entire institutions receiving Federal assistance are subject to scrutiny under the four statutes. Congress wanted to send a message: that there will be no Federal subsidy for discrimination. If some want to go ahead and discriminate, they must do it with their own resources, not with the taxpayers money.

It is therefore necessary at this point for the Congress to reassert what our intent was and is with respect to these four statutes, all of which use nearly identical program or activity language. In an attempt to address concerns raised about last year's version of this legislation, S. 2568, a simpler, cleaner approach has been adopted. This legislation provides a definition for the language narrowed by the Court to restore its original breadth and effect.

The definition of the term recipient, which was the core of S. 2568 and was used in lieu of the term "program or activity" is not included in this year's bill. Instead the term program or activity is explicitly defined. The legislation we introduce today sets out three important standards for determining coverage under the four statutes:

First, when a State or local government agency or department receives Federal funds, the entire agency or department is covered.

Second, when a university, higher education system, local education agency, or other elementary and secondary school system receives Federal funds, the entire entity is covered.

Third, when a corporation, partnership, or other private organization receives Federal funds, the entire entity is covered.

The same institutionwide principles used to determine coverage for the State and local government, educational institution and corporate categories are also used to determine coverage for any entity which does not fit one of these three categories.

The bill also makes clear that when a State or local government receives Federal financial assistance for distribution to agencies, only that unit—for example, the Governor's office—to which the funds were extended, and those agencies that actually receive funds, would be covered.

These standards are the sponsors' conception of what Congress originally intended and what was prior practice before Grove City.

The bill also includes last year's amendment to the enforcement sections of the four statutes which is designed to ensure that the pinpointed fund termination remedy is retained.

I am encouraged, Mr. President, by the fact that our majority leader has indicated that a civil rights bill of this kind is one of his top priorities for this session, his first as leader. He is part of a great tradition in the Republican party, stretching from Lincoln to the present day. Indeed, the passage of these historical civil rights statutes was due in no small part to our former colleagues Jacob Javits and Edward Brooke; three of these four statutes were signed into law by Republican Presidents. I welcome the cosponsorship of nine fellow Republicans in this effort. It is my hope, Mr. President, that we can move forward in a bipartisan spirit to address this urgent domestic priority.

Mr. President, the historic American march toward a society of freedom for all and equal opportunity stopped, in effect, when the Grove City decision was handed down. Congress must act to remedy that situation. The America that could be and to which we all aspire, suffers by our inaction. With the passage of this bill, the march resumes where it left off.

Mr. CRANSTON. Mr. President, I am proud to join the Senators from Massachusetts [Mr. KENNEDY], Connecticut [Mr. WEICKER], and Maryland [Mr. MATHIAS] as one of the principal sponsors of the proposed "Civil Rights Restoration Act of 1985." We are joined as principal sponsors by the Senators from Ohio [Mr. METZENBAUM], Oregon [Mr. PACKWOOD], and Vermont [Mr. LEAHY and Mr. STAFFORD]. Thirty-seven other Members of the Senate, representing both sides of the aisle, are cosponsoring this bill, the companion to H.R. 700, which on January 24 was introduced in the House of Representatives by my good friends and colleagues from California, Representative GUS HAWKINS and Representative DON EDWARDS, along with Representatives JAMES JEFFORDS and HAMILTON FISH, who are joined by a bipartisan group of 58 cosponsors.

INTRODUCTION

Mr. President, this legislation represents a truly nonpartisan effort to reiterate and reinforce our shared commitment to securing broad opportunities for all persons to participate in our society without being subjected to unjust discrimination. It is intended to restore the strength and vitality of four basic civil rights statutes—title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975—which were designed to guarantee that Federal funds would not be provided to entities which discriminate on the basis of race, color, national origin, sex, disability, or age. I was privileged to be involved in the development of the latter three of these statutes as a member of the Labor Committee in the seventies.

The Civil Rights Restoration Act of 1985 is about one issue, and one issue only—discrimination.

The question is whether funds of the Government of the United States should be used to support discrimination against various classes of individuals in our society. My answer is no.

Many of us thought we had answered that question once and for all with enactment of these civil rights laws.

It is very unfortunate that Congress must revisit these issues. But the Supreme Court's erroneous decision on February 28, 1984, in the case of Grove City College versus Bell, which I will describe in detail in a few moments, allows the rebuilding of walls of discrimination where Congress had torn them down years ago. Congress

had made it the law of the land that Federal financial assistance carries with it the legal duty not to discriminate on grounds of race, color, national origin, sex, handicap, or age. But, the decision in the Grove City case permits a college to receive Federal subsidies, in the form of student grants, that can be used in any or all of the college's departments and offices while leaving the college free to discriminate in all of its operations except its student aid office.

That was a novel, surprisingly narrow interpretation and an ominous precedent that threatens to restrict severely the coverage of the four major civil rights laws. The Supreme Court's holding and rationale in the Grove City case regarding the scope of title IX have already been applied by the Court in a handicap discrimination case, Consolidated Rail Corp. versus Darrone, known as the Conrail case, decided under section 504 on the same day as Grove City.

Our bill is designed to lift from the civil rights laws of our land the dark shadow cast by the Court's decisions and opinions in these two cases and the 1982 North Haven case and by the actions of the present administration in reliance on them. Our aim is to restore the enforcement of these statutes to the scope and force that existed under the previous administrations of Presidents Johnson, Nixon, Ford, and Carter, two Republicans and two Democrats.

Mr. President, the decisions issued on February 28 do not spell out all the possible implications of the Grove City decision's exceedingly narrow construction of student aid as Federal financial assistance for purposes of civil rights law coverage purposes. What those decisions clearly have done, however, is create confusion, provide an excuse for this administration to continue its efforts to emasculate civil rights enforcement activities, and pave the way for a great deal more, protracted litigation.

Although the February 28 decisions touch directly only on title IX and section 504, they cast a dark and ominous shadow over the scope of the other two major civil rights statutes—title VI and the Age Discrimination Act. Both these statutes contain language almost identical to that utilized in title IX and section 504. In the past, they have been applied and enforced in a similar manner. The individual responsible for the current administration's policies with respect to enforcement of civil rights laws—William Bradford Reynolds, Assistant Attorney General for Civil Rights—has indicated his view that the same policies applicable to title IX should be applied to enforcement of other nondiscrimination laws.

Spurred on by its anti-civil-rights victory in Grove City, the administration moved swiftly to implement its interpretation of the Supreme Court's decisions. For example, the Department of Education, which initially took steps to dismiss numerous pending sex and other discrimination complaints against education institutions on the grounds that the Department no longer had authority to proceed in them, is now holding in limbo approximately 40 cases under title IX, 13 under section 504, 2 under the Age Discrimination Act, and 4 under title VI.

It takes little imagination to foresee what other actions this administration will be taking to bring its civil rights enforcement activities—already so wanting—to a grinding halt.

In this context, Mr. President, the Grove City decision constitutes a tremendous setback for our efforts to ensure that all persons receive equal opportunities, irrespective of race, color, national origin, sex, disability, or age.

EFFORTS IN THE 98TH CONGRESS

Mr. President, immediately following the February 28, 1984, decision of the U.S. Supreme Court in the Grove City case, legislation, S. 2363, which I cosponsored, was introduced by the distinguished Senator from Oregon [Mr. PACKWOOD]. That bill was designed to reverse, with respect to title IX only, the holding in that case narrowing the scope of title IX. As I have noted, on the same day that the Court handed down the decision in the Grove City case regarding title IX, it indicated in the Conrail case that the rationale in the Grove City case with respect to the scope of title IX is equally applicable to handicap discrimination outlawed by section 504, of which I had been a principal Senate author. Thus, on March 8, joined by Senators STAFFORD, RIEGLE, and DODD, I introduced a bill, S. 2399, to reverse the aspect of the Conrail case making the restrictive Grove City reasoning applicable to section 504.

Concurrently, a number of us in both the House and Senate began work on a single measure to cover all four major civil rights statutes, not just the two statutes explicitly involved in the February 28 decisions.

That more comprehensive measure, of which I was pleased to be a principal sponsor, was introduced in the House and Senate on April 12, 1984, as H.R. 5490 and S. 2568, respectively. It was sponsored by 63 Members of the Senate with strong support from both sides of the aisle. In the House, support for the bill culminated in its passage on June 26 with an overwhelming bipartisan vote of 375 to 32. In the Senate, consideration was blocked by a handful of ardent opponents. In the closing days of the 98th Congress, after it had proved impossible to move the bill through the committee process, an effort was made to attach a modified version of S. 2568—amendment No. 5508—as a floor amendment to the must-pass fiscal year 1985 continuing resolution, House Joint Resolution 648. Despite initial victories in procedural test votes, the opponents, with the assistance of the former majority leader, were able to block the Senate from considering the legislation on its merits. At various points, efforts were made to break apart the coalition of civil rights organizations supporting the legislation by so-called compromise measures which—to note only two of their many flaws—would have affected only title IX or would have been limited to educational institutions alone, thereby not ensuring that other entities receiving Federal funds would be precluded from discriminating in various aspects of their operations.

Mr. President, these so-called compromises were unacceptable to the supporters of the 1984 legislation, both those inside and outside the Senate. We saw them for what they were—half-measures that, given the stated views of the administration now charged with civil rights enforcement and the unfortunate predilection of the Supreme Court toward narrow, twisted reading of these laws, would likely have left millions of Americans subject to unjust discrimination where the Congress had originally intended them to be protected.

RENEWED EFFORTS IN THE 99TH CONGRESS

Over the past several months, intensive deliberations have taken place to draft a new legislative proposal that would successfully withstand the spurious attacks that were launched against the 1984 civil rights bill in a concentrated effort to undercut the broad base of support which exists in this body and in the House and throughout this great Nation for our basic civil rights laws.

Mr. President, that broad base of support does exist. It is more than 20 years since the passage of title VI of the Civil Rights Act and a decade since enactment of the most recent of the four statutes, the Age Discrimination Act. These laws have worked. All Americans have benefited from a society where segregation and discrimination are not acceptable, and where the moral and legal force of our institutions, from the Federal Government down, is aligned against those who would drag us backward to the dark pages of our history where bigotry and prejudice were tolerated, by law and by custom.

Last year, we saw the forces that have persistently opposed this progress attempt to stir up every conceivable, groundless charge, ignite every possible fear, and drag every preposterous spectre across the path of the 1984 civil rights bill. Tragically, those tactics succeeded in delaying

Senate consideration of this important legislation until it became possible for the opponents to block its consideration on the merits in the closing hours of the 98th Congress. But what they won was only a delay. It was not a victory. They stopped the Senate last year from voting on that measure, but they failed to undermine the principle or our commitment to it.

I do not believe that those tactics will prevail again. This Senate will have the opportunity to stand up and record its vote on this issue. And it will, I am convinced, reaffirm the scope and strength of our Nation's commitment to civil rights.

Mr. President, we have struggled too long and we have traveled too far to allow a handful of individuals and organizations to turn back the clock on civil rights. Our Nation was founded on a dream of opportunity. It is a dream that must live for all Americans, not just for some.

SUPREME COURT DECISIONS AND OPINIONS

Mr. President, as section 2(1) of the bill would express as a congressional finding, "[C]ertain aspects of recent decisions and opinions of the Supreme Court have unduly narrowed or cast doubt upon the broad application of" the four major civil rights laws affected by this legislation. The three cases involved are *North Haven Board of Education* v. *Bell*, 456 U.S. 512 (1982), *Grove City College* v. *Bell*, 104 S. Ct. 1211 (1984), and *Consolidated Rail Corp.* v. *Darrone*, 104 S. Ct. 1248 (1984). Strangely, there is much that is good about the holdings and some parts of the opinions in these cases; there is also, in my opinion, some inexplicable lines of reasoning, analysis, and dictum. I will at a later date explain in detail where I believe the decisions and opinions are well founded and where I take exception to them.

PROGRESS UNDER THE FEDERAL CIVIL RIGHTS LAWS: TITLE VI

Mr. President, since the passage of title VI of the Civil Rights Act of 1964, we have seen enormous strides in eliminating unjust discrimination from our society. Just 20 years ago, many federally assisted programs still allowed segregated services and facilities. Many Federal agencies had played little or no part in the struggle against race discrimination. Prior to that time, Federal dollars went into the construction and operation of totally segregated schools. Federal funds were distributed to a host of programs which openly practiced discrimination against black Americans. Title VI has served as a strong and effective toll in bringing an end to these invidious practices.

TITLE IX

Title VI provided the model for passage of title IX of the Education Act of 1972 which forbids discrimination in education on the basis of sex. Like title VI, title IX has led to a tremendous change in the way educational institutions have dealt with students.

It is fair to say that before title IX was enacted, discrimination against women was widespread at virtually every level in education. Women were excluded from admission to publicly supported institutions, barred from certain courses of study, and denied equal access to financial aid and the full range of educational opportunities. Negative stereotypes prevailed to limit the potential career choices of many female students. Educational counselors routinely steered female students away from male-dominated fields, regardless of the aptitudes, abilities, or desires of those students.

In the past decade, steady progress has been made in the struggle to overcome the barriers and prejudices that have served to deny women equal access to educational opportunities. Women have made gains in virtually every area, and our society has been greatly enriched by the contributions they have made as they have entered new fields in increasing numbers.

As a member of the Subcommittee on Education of the Labor and Public Welfare Committee in 1972 and a Senate conferee on the Education Amendments of 1972 in which title IX was enacted, I have had a longstanding and firm commitment to this law which has led to such significant changes in educational opportunities for women. I am proud to have helped bring about its enactment, and I am determined not to stand by and see its strength eroded away by an administration with no commitment to its goals.

SECTION 504

Similarly, section 504 of the Rehabilitation Act of 1973 has opened the doors previously used to shut out disabled Americans. Section 504 was enacted to ensure that recipients of Federal assistance deal fairly and reasonably with disabled individuals who are seeking to participate more fully in our society and in the activities of our commercial, professional, recreational, social, and governmental institutions.

In 1972, as a member of the Labor and Public Welfare Committee and its Subcommittee on the Handicapped, I was honored when Senator Jennings Randolph, the chairman of the subcommittee, asked me, then a very junior Senator, to serve as chairman of the subcommittee for purposes of reviewing and revising the Vocational Rehabilitation Act. In the course of that year, I chaired 5 days of hearings, filling 2,611 pages of hearing records, covering an enormous range of problems facing disabled persons and their opportunities for rehabilitation, work, and participation in society. The legislative product, the Rehabilitation Act of 1972, was pocket vetoed by President Nixon on October 27, 1972, It had contained the forerunner of section 504, crafted with me by my great friend from Vermont (Mr. STAFFORD), our indefatigable colleague from New York [Mr. Javits], and, of course, the Senator from West Virginia [Mr. Randolph].

In early 1973, after additional hearings in January and February of that year, we introduced, and passed rapidly through both Houses, very similar legislation, which President Nixon again vetoed—on March 27, 1973.

The legislation ultimately agreed upon—the Rehabilitation Act of 1973, Public Law 93-112—was enacted on September 26, 1973, with section 504 intact along with numerous other civil rights provisions in title V of that act—affecting employment of handicapped individuals by Federal contractors and subcontractors and by the Federal Government itself, as well as architectural and transportation barriers.

It soon became clear that section 504 needed more than the 46 words it originally contained, and Senator Randolph asked me to complete the work I had begun in 1972. I chaired the subcommittee through an additional hearing and markup, and we produced the Rehabilitation Act Amendments of 1974—Public Law 93-516—which, among other provisions, enacted in section 7 of the act the definition of "handicapped individual" which has provided the foundation for application and enforcement of section 504.

Also, as I noted earlier, in 1978 the Congress enacted in Public Law 95-602 further changes I proposed with the Senator from Vermont [Mr. STAFFORD] to enhance the ability of handicapped individuals to obtain compliance with section 504 and the other civil rights provisions in title V of the Rehabilitation Act. These amendments authorized the award of attorneys' fees to handicapped persons who prevail in suits to enforce the provisions of title V and made the Civil Rights Act title VI remedies, procedures, and rights available with respect to section 504 violations.

In enacting title V of the Rehabilitation Act, and the 1974 and 1978 strengthening amendments, Congress recognized that much of the discrimination facing disabled individuals is not the inevitable result of their handicapping conditions, but rather, arises out of the false perceptions and prejudices that others hold about individuals who have those conditions. Congress also saw that a wide-scale prohibition against discrimination was needed in moving toward the ultimate goal—the integration of handicapped persons into all aspects of America. Title V not only addresses the need to eliminate tangible barriers but also prohibits the continuation of discriminatory policies and practices that are based on stereotypical and prejudicial

perceptions about the abilities, potential, and needs of handicapped adults and children.

As a result of the enactment of section 504 and the 1974 and 1978 amendments, the attitudinal and physical barriers which have served so unfairly to deprive disabled persons of the rights and opportunities that should be each American's due have begun to come down. Again, over the past decade since passage of this fundamental civil rights law, substantial progress has been made, and in the process we have begun to see more clearly that disabled Americans have great energy, talents, aspirations, and sensitivities.

AGE DISCRIMINATION ACT

Finally, as a member of the Aging Subcommittee and the conference committee on the legislation, I was privileged to play a major role in the drafting of the most recent of these statutes, the Age Discrimination Act of 1975. This statute reflects the growing awareness in our Nation of another form of bias—age discrimination. The negative stereotypes and biases which have served to deny older Americans the opportunity to participate and contribute to the continuing growth of our society must, like other forms of discrimination, also be put behind us if we are ever to achieve the freedom and opportunity for every individual that our country symbolizes. The Age Discrimination Act represents our national commitment to put an end to unreasonable age discrimination as well.

DESCRIPTION OF THE BILL

Mr. President, the adverse aspects of the Court's holding in the *Grove City* case turned principally upon the Court's narrow application of the term "program or activity" in title IX. Section 901 of title IX prohibits sex-based discrimination "under any education program or activity receiving Federal financial assistance." The Court in *Grove City* construed those words in a very limited sense—and, in my view, a way totally at variance both with common sense and congressional intent.

Therefore, our bill seeks, as did S. 2568 last year, to reverse the effects of that aspect of that decision and to restore the prior broad scope of coverage and administrative application that the Court erroneously invalidated.

COVERAGE

However, this year's bill does so in a more easily understood, straightforward manner. Last year, S. 2568 would have deleted the term "program or activity" from the four civil rights statutes and replaced it with the term "recipient" defined along the lines of the definitions of that term in the implementing regulations. But that change in the wording of the statutes and the complicated wording of the definition raised unnecessary complexities that allowed the opponents of restoring the law's vitality to raise many questions based on the proposed new terminology.

This year's bill leaves the term "program or activity" in place in the four statutory prohibitions against discrimination and adds to each of the statutes a broad institution-wide definition of that term that would overturn the Court's narrow interpretation.

The proposed definition is simple and clear. It sets out three important standards for determining coverage under these laws that are consistent with the coverage of the statutes as applied by previous administrations.

First, when an agency or department of a State or local government receives Federal funds, the entire agency or department would be covered.

Second, when a university, higher education system, local education agency, or other elementary and secondary school system receives Federal funds, the entire entity would be covered, including any administrative body, such as a board of education.

Third, when a corporation, partnership, or other private organization receives Federal funds, the entire entity would be covered.

The same institution-wide principles used to determine coverage for the State and local government, educational institution, and corporate categories would also be used to determine coverage for any entity which does not fit one of these three categories.

The bill would also make clear that, in a case in which assistance is extended to a State government or to a local government, rather than directly to an agency or department thereof, the unit—for example, the Governor's office—to which the funds are extended as well as the agencies and other entities that actually receive funds would all be covered.

FUND TERMINATION

Finally, the bill contains the same amendments as were proposed in last year's bill to the "pinpointing" language in the fund-termination provisions of title IX, the Age Discrimination Act, and title VI—which, under section 505(a)(2) of the Rehabilitation Act, applies to section 504 violations. Thus, in the case of each statute, the reference to a "particular program, or part thereof"—which in the Age Discrimination Act alone also includes "or activity"—is deleted and, in its stead, language would be inserted to limit fund terminations to the Federal financial assistance that is determined to "support the noncompliance" that is found to be occurring. The statutory scheme would thus retain the basic concept of "pinpointing," that is, limiting the termination of funds to those funds which have a specific nexus to the discrimination that is found.

PROCEDURAL SAFEGUARDS RETAINED

Mr. President, I want to emphasize that, in the case of both of the categories of changes that our bill would make in the four laws, our intention has been to restore the law to the general shape it was originally intended to have and until recently did have under the practices of each of the four prior administrations charged with their implementation. I would also note that all of the existing procedural safeguards that the four laws provide before Federal funds may be terminated—the Government's initial duty to attempt resolution of the violation through conciliation, notice to the recipient of any adverse finding, opportunity for hearing, 30 days' advance notice to the congressional committees with responsibility for the laws under which the funds were provided, and the right to judicial review of any decision to terminate funding—are retained without change.

CONCLUSION

Mr. President, these four basic civil rights statutes are integral parts of our national commitment to the concept and achievement of equal justice and opportunity. We must act to ensure that this national antidiscrimination policy and our progress in implementing it is not undercut and diminished by the Supreme Court's erroneous opinions and decisions in the three cases and the Reagan administration's sweeping applications of them.

It is vital that Congress act to reaffirm longstanding policy that recipients of Federal funding refrain from engaging in invidious and unjust discrimination. We have come too far along the long, arduous path toward a fair and just society to allow progress in the area of civil rights to be undermined.

The work that was left undone in the Senate in the closing days of the 98th Congress must be swiftly completed. I urge all of my colleagues to give this bill their careful consideration and, ultimately, their support.

Mr. MATHIAS. Mr. President, today I join with the Senators from Connecticut [Mr. WEICKER] and Massachusetts [Mr. KENNEDY], and with many other Senators, to introduce one of the most important bills yet presented to the 99th Congress—the Civil Rights Restoration Act of 1985.

Recent decisions of the U.S. Supreme Court—most notably last year's ruling in the case of *Grove City College* versus *Bell*—have set back the enforcement of our national policy of eliminating unfair discrimination. The legislation we introduce today is designed to overcome the crippling effects of those decisions, and to renew and reinvigorate our pledge to members of racial minorities, to women, to the handicapped, and to the elderly,

that the Federal taxes that they pay will never be used to support invidious discrimination against them.

The Civil Rights Restoration Act of 1985 will correct the narrow interpretation that the recent court decisions have imposed on title IX of the 1972 Education Amendments. It also forestalls similarly restrictive readings of the statute on which title IX is based—title VI of the 1964 Civil Rights Act—and of the laws prohibiting Federal support for discrimination based on age or handicap, both of which are also derived from title VI. Enactment of this measure will restore the longstanding administrative practice under all these statutes, which provides that the entire institution that receives assistance from Federal tax dollars, and not simply the specific component that directly receives the funds, has a duty to refrain from illegal discrimination.

As a rule it is not particularly difficult to draft legislation intended to clarify the interpretation of a single phrase—program or activity—appearing in a handful of Federal laws. The history of this legislation demonstrates that this rule, like any other, has its exceptions. The Senate never had an opportunity to vote on the Civil Rights Act of 1984, which was introduced shortly after the *Grove City* decision. An amendment embodying its text was offered to the continuing resolution in the last days of the 98th Congress, but was caught in the legislative logjam that clogged our calendar last October.

This legislation is not fundamentally different from last year's civil rights bill. But to the extent it is different, this year's bill is a better bill. It is clearer. It is simpler. And it is more sharply focused on the task at hand. That task is to restore the original congressional intent to forbid the use of tax dollars to subsidize discrimination against women, against racial minorities, or against the handicapped, or the elderly. As part of that task, we must correct the course taken by the Supreme Court in some of its recent decisions—most notably in the *Grove City* case—and put the Federal Government back on the track of vigorous enforcement of the civil rights laws.

The new majority leader has targeted deficit reduction as his primary goal for the 99th Congress. I agree with his evaluation of the challenge before us. But I would add that a focus on deficit reduction is fully consistent with active support for the restoration of broad civil rights coverage. In fact, if we are going to tighten up on Federal spending, it is doubly important to insure that every American has an equal chance to participate in federally assisted programs, and that no American is excluded because of race, gender, age, or handicap. The Federal Government can no longer afford to tolerate discrimination in any program or activity that is assisted by tax dollars. We need the Civil Rights Restoration Act because we must make sure that the equality of sacrifice that deficit reduction will demand does not become a sacrifice of equality.

I believe that the Senate leadership shares this view, and that there is general agreement in the Senate that a legislative response to the *Grove City* decision is needed. The Civil Rights Restoration Act of 1985 offers the most comprehensive and effective response, and I call on my fellow Senators to join in support of it.

Mr. PACKWOOD. Mr. President, I rise today to join Senator KENNEDY and Senator WEICKER as a principal sponsor of the Civil Rights Restoration Act of 1985. I am pleased to report that this bill accomplishes the same objectives we sought in 1984: Elimination of the Federal subsidy of discrimination.

Passage of the Civil Rights Restoration Act of 1985 will ensure that discrimination is prohibited by the recipients of Federal financial assistance. That has always been the goal of the proponents of legislation to restore and revitalize the civil rights statutes that were weakened by recent Supreme Court decisions, most notably the *Grove City College* versus *Bell decision on February 28, 1984.*

Congress will pass the Civil Rights Restoration Act of 1985 this year. The Congress must recommit itself to its original intent in passing antidiscrimination laws during the past 20 years: That receipt of Federal financial assistance will trigger institutionwide coverage of civil rights statutes.

On one day in 1984, two decades of civil rights progress was severely restricted by the U.S. Supreme Court decision in *Grove City College* versus *Bell.* Our job in 1985 is to clarify and reaffirm the law so that no one can say, ever again, that one individual or one group has an unfair advantage over another.

Today, I am sponsoring legislation to restore four major civil rights statutes: Title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the 1973 Rehabilitation Act, as amended in 1978, and the Age Discrimination Act [ADA] of 1975. These statutes together ensure that discrimination is prohibited by the recipients of Federal financial assistance.

The Civil Rights Act of 1964 is the basic guarantor of civil rights in this country. Its purpose is to effectively prohibit discrimination in employment, public accommodations, education, and federally assisted programs. All subsequent civil rights statutes were built on these guarantees, correcting any omissions to this grand decision.

The cornerstone of the 1964 act is title VI, prohibiting discrimination on the grounds of race, color, or national origin in "any program or activity receiving Federal financial assistance." Calling for its enactment, President Kennedy was eloquent: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination * * *" Enforcement efforts have resulted in ending discrimination in education, State and local governments, and a variety of institutions that receive Federal funding.

Title VI has become the model both in language and remedial approach for the civil rights statutes that followed. In 1972, rectifying a major omission in title VI, Congress enacted title IX of the 1972 Education Amendments. Because title VI's coverage excludes sex as a forbidden classification, title IX is essential to outlaw discrimination on the grounds of sex "under any education program or activity receiving Federal financial assistance." Title IX has been credited with securing educational rights for women that had not heretofore existed. It was certainly Congress' intent that title IX be accorded the same broad interpretation that had been given title VI—thus, the tracking of the very language used to secure those critical protections.

So, too, section 504 of the Rehabilitation Act of 1973 followed the same model. In that legislation, Congress included the disabled under the antidiscrimination rubric. Referring to title VI, our ultimate exemplar, we again used the program or activity language.

Finally, in 1975, we went to the well another time, patterning the Age Discrimination Act on the grounds of age by "any program or activity receiving Federal financial assistance." In every case, our intent has been expansion of the protections of the original Civil Rights Act.

Unfortunately, on February 28, 1984, the Supreme Court in Grove City College versus Bell opted for a severely limited interpretation of title IX of the 1972 Education Amendments. The Court held that only the "program or activity receiving Federal financial assistance," rather than an entire institution, is subject to title IX strictures. In this case, only the financial aid program of Grove City College—and no other part of the institution—is prohibited from discrimination on the basis of sex. In an instant, the broad scope we intended was abrogated.

The decision is particularly troubling on its terms since discrimination in education is subtle but pernicious, affecting its victims for the entirety of their lives. The absurdity of the result is apparent. It is of little use to bar discrimination in the financial aid pro-

gram of an institution if a woman cannot gain admittance to, or participate in, the institution because of its other discriminatory policies and practices. It is equally of little use to bar discrimination in employment if a woman cannot attain the necessary education to obtain that employment. Our purpose in enacting title IX was to ensure that Federal resources could not be used to support discriminatory practices against women and that those practices would cease to exit—a precise parallel to President Kennedy's purpose in urging the passage of title VI.

But even more horrifying than Grove City's title IX interpretation is the decision's staggering legacy. Not only has the Supreme Court substantially undercut the efficacy of title IX, but the decision's precedential value with respect to title VI, section 504, and the Age Discrimination Act cannot be overstated. If title IX is program-specific in effect, the other statutes, worded identically, are likely to suffer a similar analysis. Indeed, in the past year since the Court handed down its decision, the Department of Justice has moved forward on that basis in its so-called enforcement endeavors.

Now in 1985—21 years after the passage of the Civil Rights Act of 1964, it is time to recommit ourselves to its purposes. Fortunately, the Supreme Court's opinion is easily corrected. The Civil Rights Restoration Act of 1985 will clarify our original intentions regarding all four statutes: That receipt of Federal financial assistance will trigger institutionwide coverage. Lest any critic question our remedial approach, however, the bill will also clarify that only the particular assistance supporting noncompliance will be subject to termination.

Exciting testimony to the last 21 years of civil rights enforcement activities is the unified coalition that supports this legislation. Advocacy organizations representing minorities, women, the disabled, and the elderly have joined forces behind the Civil Rights Restoration Act of 1985. This must be evidence that the efforts of the past 21 years are reaping rewards. The broad-based support justifies the broad interpretation we intended for these laws. I thank this coalition for their effort and call on all Members of Congress, and the administration, too, to unite behind this bipartisan bill, enact it speedily, and make 1985 the year we restore antidiscrimination laws forever.

Mr. METZENBAUM. Mr. President, I join my colleagues, Senator KENNEDY and Senator WEICKER, in cosponsoring the Civil Rights Restoration Act of 1985. This legislation is one of the most important bills we will have the opportunity to consider during this Congress. If enacted, this bill will reverse the erroneous decisions of the Supreme Court in the Grove City decision, and certain other Court opinions, which undercut basic civil rights protections.

In the *Grove City* decision, the Supreme Court misinterpreted the intent of Congress in enacting title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964. Each of those statutes is based on a simple but powerful principle—Federal funds should not be used to support discriminatory activity.

By interpreting title IX of the Education Amendments of 1972 to mean that a college could continue to discriminate in all its programs other than the financial aids program, even though the college benefited from Federal grants to students, the Supreme Court took an exceedingly narrow view of the coverage of that statute. Congress did not intend to hamstring enforcement of the civil rights laws in such a drastic way.

This legislation reverses that decision and makes clear that financial assistance to a university or a system of higher education means that entire university or system is subject to the Federal ban on discrimination.

Because the Supreme Court also indicated that other statutues with a similar purpose and enforcement mechanism would also be interpreted in the same narrow way, the bill makes clear that the same principle should apply when funds are provided to other types of institutions and when the prohibitions in these other statutes are interpreted by the courts.

The bill makes clear that Federal financial assistance to a State or local department or agency means the entire agency or department is subject to the ban on discrimination in all four of the statutes I mentioned earlier. Similarly, when financial assistance is provided to a corporation, partnership or private organization, the entire corporation, partnership, or private organization is subject to the prohibition on discrimination. Similar principles will apply to local educational agencies and other types of entities.

These principles are not only sound policy, but they reflect the understanding of officials who had responsibility for interpreting and implementing these statutes. It is true that in some cases it is difficult to identify precisely how particular situations would have been interpreted prior to the *Grove City* decision. In an effort to make congressional intent clear to the courts, the bill states basic principles as clearly as possible. In all cases, however, the bill restates closely prior enforcement practice. In short, the bill provides clarity for the courts and enforcement agencies while faithfully restating the understanding and implementation of these statutes prior to the Grove City decision.

During the last Congress the opponents of the Civil Rights Act of 1984 used the strategy of conjuring up complex hypothetical situations and demanding that the proponents of the bill show conclusively prior enforcement practice with respect to each situation. I am frank to say that, in some situations, that cannot be done. On the other hand, I am frank to say that such a tactic diverts our attention from the fundamental issue—restoring the strength and effectiveness of the civil rights laws. That is the task before us. We will only find an excuse not to act if we insist on resolving every conceivable question that may arise under these statutes.

The public is entitled to demand that we act responsibly and quickly on this legislation, in particular, the groups in the public that look to Congress for protection from discrimination—the aged, minorities, the handicapped and women. They demand action, not excuses.

I am confident that when this bill is fully debated in this body, the overwhelming majority of the Senate will decide to support this legislation and restore the civil rights protections that have made our Nation a fairer and more just society.

Mr. PELL. Mr. President, I have cosponsored and strongly support the Civil Rights Restoration Act introduced today. Through the years a great deal of progress has been achieved for women and minorities as a result of the civil rights laws enacted by Congress. As a nation we must continue to discourage discrimination and continue to open opportunities for all our citizens. The Supreme Court's decision in Grove City threatens the progress we have achieved, especially for women, and we must put an end to that threat. The bill that has been introduced today, the Civil Rights Restoration Act will overturn the Supreme Court's decision and will prohibit discrimination against women and minorities by institutions receiving Federal funds.

Unless we act now, colleges and universities voluntarily accepting financial assistance provided by the Federal Government will be free to discriminate, as some have done in the past against women. Absent the passage of this bill, the expanding opportunities only recently made available to women in athletics, vocational and professional training and in other areas would be endangered.

During the last session of Congress, the opponents of the Civil Rights Act of 1985 in the Senate raised numerous objections and effectively eliminated any chance that the bill would pass the Senate. Many of that bill's proponents, including myself, have worked

hard to redraft this important piece of legislation to address the concerns of the bill's opponents and to ensure that the Supreme Court's incorrect decision be overturned.

For nearly 20 years, every administration has interpreted the civil rights laws prohibiting discrimination on the basis of race, sex, national origin, handicapping condition and age as having broad coverage and application. With the passage of the Civil Rights Restoration Act we can insure that the civil rights laws of this Nation will have their intended broad impact, and we can continue the essential progress toward assuring full opportunities for women and minorities.

Mr. CHAFEE. I am pleased to join Senators WEICKER, MATHIAS, and KENNEDY in introducing the Civil Rights Restoration Act of 1985. Legislation to strengthen our Nation's civil rights laws remains the major unfinished business of the 98th Congress.

It is fitting that the drive for civil rights should occupy a prominent place on Congress' agenda. Indeed, few other endeavors have consumed so much of our national energies during the past 100 years. The civil rights debate has accentuated both the strengths and weaknesses of our national character. Each civil rights victory has been hard fought, and the quest for equality has enriched our society.

Civil rights means equal opportunity—for blacks as well as whites, for the old as well as the young, for women as well as men. Those who fought so hard for the landmark civil rights bills of the past generation wrote these laws to be inclusive, not exclusive. They painted with a broad brush, for their purpose was to reach out to all.

Last year, we learned once again that vigilance is the watchword if we are to protect the gains which have been made. The Supreme Court, in its *Grove City* decision adopted a narrow interpretation of title IX of the Education Amendments of 1972. In enacting title IX, Congress clearly intended to guarantee equal access by both sexes to the programs and activities of federally supported institutions.

The Court's decision limited the Government's ability to enforce civil rights laws in federally supported institutions by applying sanctions only to the specific program affected—college athletics, for instance—rather than to the entire institution. This narrow interpretation compelled action to make clear that institutionwide coverage is triggered by the receipt of Federal financial assistance in any form—not only under title IX but under three other important civil rights laws. And so we set out to clarify this broad scope of coverage to provide institutionwide protection against discrimination based not only upon sex, but upon race, national origin, disability, or age.

Complete equality of opportunity is not yet a reality for all our citizens. No government should establish legalistic barriers that prevent men and women from achieving their full potential. Our business should be to enhance opportunity for all, not to narrow it for the privileged few.

It was extremely unfortunate that our efforts to pass legislation last year became bogged down in a parliamentary muddle. In addition to the procedural difficulties, however, there were some substantive objections to our earlier proposal. It was argued that our amendments to the civil rights statutes did more than clarify their scope of coverage—that our amendments reached beyond original congressional intent and amounted to an effort to change previous regulatory practices.

Last year, we attempted to clarify the scope of civil rights protection in these laws by replacing the term "program or activity" with "recipient." The use of the term "recipient" may have a far broader reach than the existing language. But our objective is to assure that civil rights protections remain as strong as Congress has always intended—not to authorize burdensome new regulations where they don't apply.

The legislation we now propose does not include the term "recipient." Instead it retains the term "program or activity"—the phrase narrowly interpreted by the Court in Grove City—and adds a definition of that term to each of the civil rights statutes. The definition is clear and leaves no doubt that institutionwide coverage is the intent of Congress. This definition is consistent with prior coverage.

First, when a State or local government agency or department receives Federal funds, the entire agency or department is covered.

Second, when a university, higher education system, local education agency, or other elementary and secondary school system receives Federal funds, the entity is covered.

Third, when a corporation, partnership, or other private organization receives Federal funds, the entire entity is covered.

An institution which receives even a single dollar of Federal financial assistance should not be permitted to practice any form of discrimination. In order for our Nation to make continued progress in assuring the equal rights for all citizens, we must act promptly to clarify the broad scope of coverage intended for these statutes.

The Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title IX have opened doors to groups in our society whose aspirations and opportunities had previously been limited.

But these four statutes have helped our Nation make significant strides in eliminating discrimination in a variety of important areas. Now is not the time to turn back.

Mr. SIMON. Mr. President, as a Member of the House of Representatives, I was one of the principal sponsors of the Civil Rights Act of 1984. Although last year, the House overwhelming passed H.R. 5490, by a vote of 375-32, the Senate was unable to complete work on that bill or its own version before the end of the 98th Congress.

This year's bill seeks the same result we sought to achieve in 1984—the restoration of four major civil rights statutes—title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discriminaton Act of 1975—to the broad scope of coverage which the Supreme Court in Grove City College versus Bell erroneously invalidated.

To achieve this goal, each of the four laws is amended—and they are amended in exactly the same way. However, in order to answer the criticism that S. 2568 was too complex, and therefore unclear, we have taken a different approach this year.

This year's bill defines the term "program or activity." It leaves intact existing definitions of recipient. The definition of "program or activity," which sets forth the scope of coverage is simple and clear. One must only look to the face of the statute to determine its parameters. It incorporates the same broad scope of coverage of these laws which existed prior to the Supreme Court's decision. Thus, when any part of a college, university, system of higher education, or local school district is extended Federal financial assistance then all of the operations of that college, university, system of higher education or local school district are required to comply with the nondiscrimination provisions of these laws. This principle also applies to a corporation, partnership, or other organization receiving Federal assistance, that is, any part of a corporation, partnership, or other organization extended assistance results in coverage of the entire corporation, partnership, or organization.

For example, if this legislation were the law of the land and the Supreme Court had before it the exact same set of facts presented in Grove City College versus Bell, it would determine that Grove City College was the recipient and the "program or activity" receiving the basic educational opportunity grants [Pell grants] was the college.

If Grove City College received no Federal student assistance, but the college's department of physical sciences applied for and received a grant

from the National Science Foundation, then under this bill, all of the operations of the college would be covered because part of its operations was extended Federal financial assistance. Thus, discrimination anywhere in the college could be investigated and compliance could be effected throughout the college because the coverage is program-wide, as defined in this bill. Furthermore, Federal financial assistance could be terminated if it was determined that the funds supported the discrimination found.

If Grove City College's Peter Q. Prof, an adjunct professor of humanities, applied for and received a grant from the Department of Education's Fund for the Improvement of Postsecondary Education [FIPSE], and he simply used Grove City College's post office for receipt of his mailings (including grant checks from FIPSE), are all of the operations of Dr. Prof or Grove City College the program or activity which must comply with the antidiscrimination provisions? Under these facts, Dr. Prof would be the recipient of Federal financial assistance. Although he would be covered, the college would not because Dr. Prof's grant activities are unrelated to the college, and thus, not part of the operations of the college.

Would the program or activity be the college or the professor, if in performing the FIPSE grant, Dr. Prof used Grove City College facilities, research assistants, materials and supplies and the college had fiscal control of the grant funds and it received a portion of the grant funds for overhead? Under such facts, Dr. Prof would be considered part of the operations of the college which was extended Federal financial assistance and the College would be the covered program or activity.

What would be the extent of coverage under this bill if Grove City college were a public institution and part of a statewide system of 4-year colleges or universities administered by a single board of trustees and Grove City was the only campus with students receiving Federal student aid [Pell Grants or Guaranteed Student Loans], that is, would the college or system be the program or activity? Under this bill, since Grove City is part of a "system of higher education" and it has been extended Federal financial assistance then the entire system is covered. Thus, jurisdiction to bring a discrimination complaint at another campus would lie because of the Federal financial assistance extended to the Grove City campus. The Federal financial assistance extended to Grove City could not be terminated unless the assistance supported the discrimination found at the other campus.

As a practical matter, in higher education there are no postsecondary institutions which do not receive some form of Federal financial assistance. Almost all receive direct grants or conduct work under contract with Federal departments artured rationale of stopping title IV dollars at the student aid office door is reversed.

This bill clarifies the scope of coverage when Federal financial assistance is extended to a State or local government. Assistance extended to any part of an agency or department of government means the entire agency or department is required to operate in a nondiscriminatory manner; if the assistance is extended to some other governmental entity [other than a department or agency] which in turn distributes the assistance to some other government entity [including some part of a department or agency] then the distributing entity is covered in its entirety and the receiving entity is covered in its entirety if the receiving entity is part of a department or agency, then the department or agency is covered in its entirety].

The remedial concept of "pinpointing," which requires that the cutoff of Federal funds be pinpointed to the particular assistance supporting the discrimination, is retained. This conforming amendment made to the remedies section of these laws is done to assure continuation of this enforcement practice.

Enactment of this legislation will continue to ensure that Federal funds are never used to subsidize discrimination against any person based on race, national origin, sex, disability or age.

Mr. DURENBERGER. Mr. President, I rise in support of the Civil Rights Restoration Act of 1985. I believe it is the best approach to assure that the rights of all individuals are protected under the law. This legislation does not expand Government authority. Types of organization currently exempt from the statutes in question would remain exempt. The effect of the legislation would be, simply, to make explicit in major civil rights statutes the protections intended by the Congresses that established them.

Some have labeled supporters of this bill as proponents of unwarranted Government intrusion. I believe this opinion is misguided. In fact, the legislation before us was carefully crafted to address that concern. For example, an establishment that is not a direct beneficiary of Government assistance, but which acts as a conduit to the major benefactor, would continue to be exempt from the coverage of the statutes.

So, for instance, the "Ma & Pa" grocery store that accepts food stamps need not worry that providing this service will bring a whole new range of Federal regulation. The store is acting as a conduit of food stamp aid from the Government to the customers, and will not be subject to Government scrutiny as if an actual aid recipient. Our civil rights statutes are not intended to broaden the Federal Government's jurisdiction to such a degree, and neither is the legislation before us today.

Rather than increasing Federal authority, this bill restores—and let me stress the word "restores"—the authority that was curbed severely by the U.S. Supreme Court ruling in Grove City College against Bell. This is power rightfully given the Federal Government in four major civil rights statutes, namely the power to prohibit use of Federal funds to support discrimination on the basis of sex, race, age or physical handicap.

Accepting Federal dollars, taxpayer dollars, is a voluntary decision, and one that carries responsibility. That responsibility is a condition of the transaction. It is not unreasonable to expect that establishments accepting these funds will respect the basic civil rights of Americans. And it is not unreasonable to expect the Federal Government to make sure they do.

Mr. President, last year Congress used its power to protect the innocent from the threat of drunk drivers. In doing so, we moved with the knowledge that some would say Government had gone too far. Because we perceived an overriding need for action on the national level, we did not let that criticism stop us from reducing the fatal risks to millions of people.

Today we are dealing with another grave threat, and one just as damaging. Discrimination cripples. It confines Americans to restrictive stereotypes; it holds them back from economic, intellectual, and social opportunity. It keeps them out of reach of their potential. The harm to individual lives, and to our society as a whole, is immeasurable.

Discrimination is a Federal concern. The National Government has the duty to secure for all Americans the basic rights and liberties guaranteed them by the Constitution. It is a function that must be performed at the national level. Congresses past realized this when they wrote our major civil rights laws, and it is incumbent upon us to protect their initiatives from erosion.

The intent of the Civil Rights Restoration Act of 1985 is clear and concise. It holds a State or local government agency or department, educational system, or business who are the major benefactors of Federal financial assistance and in some cases receive millions of American Federal dollars accountable for adhering to existing civil rights laws which have been on the books for 20 years.

The four major civil rights statutes:

Title IX of the Civil Rights Act of 1972 which prohibits racial discrimination and states that the law is enforce-

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able by the termination or refusal to grant Federal dollars to any recipient who has been found guilty of racial discrimination.

Section 504 of the Rehabilitation Act of 1973 ensures handicapped individuals an opportunity to participate in our society without exclusion from that participation, by denial of benefits to, or discrimination against them on the basis of their handicap. Again, those found guilty of discrimination are subject to certain sanctions proscribed in the law.

Age Discrimination Act of 1975 bars discrimination because of age in federally assisted programs. The act was designed to cover any type of enterprise and any age group provided that enterprise or activity is a recipient of Federal funds.

Title IV of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, religion, sex, or national origin from exclusion from participation, or discriminatory denial of benefits, in any "program or activity" that receives Federal financial assistance.

Clearly, if we are to protect the gains we have made toward eradicating discrimination, Congress must act promptly to clarify any restrictive interpretation of not only title IX, but also title VI, section 504, and the Age Discrimination Act of 1975—all of which utilize protections similar or identical to those of title IX.

The Civil Rights Restoration Act of 1985 fulfills the historic commitment of the Federal Government in protecting Civil Rights and outlawing discrimination.

In the words of Hubert Humphrey:

> . . . It was once said that the moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.—Hubert Humphrey, November 1, 1977.

The Civil Rights Restoration Act of 1985 confers the terms that are necessary in order to achieve the original intent of Congress. It addresses the court decision limiting the impact or prohibition against discrimination in any institution or business, on any basis, where Federal moneys support the operation of that entity.

The application of this policy is self-evident. Suppose a black child—whose family has the ability to pay for services—is barred because of race from the privately-funded children's wing of a hospital. And suppose that hospital receives substantial Federal funding in all other departments and, in fact, is a hospital whose construction and major capital expenditures were only made possible through the use of Federal dollars. Most would agree that this action would be cruel and inhumane. Yet, under the court's limited interpretation of the law, the Federal Government would simply turn its head and keep writing the checks.

There is no justification for dismantling the safeguards of civil rights laws. We should be proud of the strides we have made in eliminating discrimination, but we must remember that they were due, in part, to the level of vigilance and accountability our courts applied to civil rights enforcement. It is imperative to maintain those high standards we set for application of these laws.

In this time of economic deliberation, we must consider the effect our decisions will have on our future. That future lies squarely on our ability to motivate collective efforts to solve our Nation's problems. Discrimination restricts collective participation and robs our society of integrity and human potential. This is a debt we cannot afford and should not accept.

This Congress must make it clear to the courts and to those who choose to accept Federal dollars, that we will not accept civil rights violations in any degree. In America, equal opportunity is not negotiable. It is the law. I urge my colleagues to tackle the temptation of complacency and work to restore effective civil rights legislation.

Mr. HART. Mr. President, I strongly support the Civil Rights Restoration Act of 1985. This legislation is important, necessary, and timely. As was the case with last session's Omnibus Civil Rights Act, I am proud to serve once again as a principal cosponsor of this measure.

Without a doubt Mr. President, the Civil Rights Restoration Act represents the single most important civil rights legislation we will consider during the 99th Congress. By passing this bill, this distinguished body can reaffirm our Government's longstanding commitment to the principle of expanding opportunities—not only for minority Americans—but for women, the disabled, and our senior citizens as well.

Two overriding concerns dictate that we act swiftly in passing this bill. First, Mr. President, there is the decision of the Supreme Court in the infamous Grove City case. This holding effectively reversed over 20 years of judicial and legislative interpretation with respect to the nature and extent of the enforcement mechanisms available to the Federal Government in connection with its prohibitions against unlawful discrimination.

Second, we must consider the implications of the reelection of President Reagan. We must ask ourselves what Mr. Reagan's administration is likely to do in the wake of Grove City. This administration has, after all, seized upon every opportunity to retreat from well-established Federal commitments to civil rights and equality of opportunity. Furthermore, the Justice Department has clearly indicated its intention to interpret and apply the Grove City holding in the broadest context possible. Mr. President, such an interpretation threatens more than the title IX prohibition against gender-based discrimination which was before the Court in Grove City; it would also leave us powerless to prevent discrimination based upon age, race, or physical disability.

Rarely do issues of public policy provide us such clear-cut choices. Quite simply, passage of the Civil Rights Restoration Act of 1985 gives us a means to support the aspirations of all Americans for a more just society; a society in which all of us enjoy the full protection of the law and are allowed to make meaningful contributions, limited only by our imagination, talents, and abilities.

Most important of all Mr. President, passage of this legislation will reaffirm Congress' commitment to the principle that no public funds shall be used in any manner that results in subsidizing unlawful discrimination against other Americans—period.

Again, I am honored to serve as a cosponsor of the Civil Rights Restoration Act of 1985. I urge all of my colleagues to join with us in this important work.

Finally Mr. President, I am confident that in this session of Congress, we will successfully rearticulate this Nation's highest and best commitment to the cherished ideal of equal opportunity and equality of treatment under the law, without regard for age, race, sex, or physical disability.

Mr. KERRY. Mr. President, our Government cannot fight discrimination unless it has the tools to do so. For 20 years, our civil rights laws have helped us to combat discrimination based on race, religion, sex, handicap, and age. Last year, the Supreme Court's decision in the Grove City case eroded our ability to fight discrimination. This year, passage of the Civil Rights Restoration Act of 1985 will allow us again to prohibit discrimination by any entity that receives Federal money.

We must not allow our Government to remain in the position of supporting schools and other institutions that discriminate. In recent years, we have made major inroads against racial segregation in our Nation's schools, hospitals, and other public institutions. We cannot let the barriers of the past rise again.

Instead, we must rededicate this Nation to the idea that discrimination based on sex, race, handicap, or age is absolutely unacceptable anywhere in the United States. We must use the resources of our Government to fight discrimination and we must have both the means and the resources to enforce our civil rights laws.

For these reasons, I am proud to give my support to the Civil Rights Restoration Act of 1985. The rights of millions of Americans cannot be protected unless we give force to the original intent of our civil rights laws by passing this legislation. We cannot allow Federal money to support discrimination. We must reverse Grove City early in this session.

Mr. RIEGLE. Mr. President, today I proudly join several of my colleagues as an original cosponsor of the Civil Rights Restoration Act of 1985. The aim of this legislation is clear—to restore in full force and effect four major civil rights laws that prohibit discrimination on the basis of race, gender, disability, or age in institutions that receive Federal funds. This legislation was of the utmost importance during the 98th Congress and the passage of time has only increased the need for the speedy enactment of this bill's provisions. I am hopeful that both bodies will act responsibly by passing this legislation quickly.

America is a great land that provides boundless opportunities for her many citizens. To assure that all Americans have an equal chance to share in these opportunities, Congress has passed laws to prohibit discrimination because of one's skin color, gender, disability, or age. Whether all Americans will continue to be protected from these forms of discrimination has been thrown into doubt because of the now infamous Supreme Court decision in Grove City College versus Bell last February. As my colleagues are aware, that decision restricted the application of title IX's antisex discrimination provisions to the specific program, as opposed to the entire institution, that received Federal funds. That interpretation runs counter to congressional intent and the enforcement of title IX's provisions by all administrations, Democratic and Republican, except for the present one. Since the program or activity language interpreted by the Supreme Court appears in the laws prohibiting discrimination on the basis of race, disability and age in institutions receiving Federal funds, the Grove City decision has restricted the application of those laws' antidiscrimination provisions as well.

The bill introduced today amends title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975—the four major laws prohibiting discrimination on the basis of race, gender, disability, and age in institutions receiving Federal assistance—in the same manner. A definition of program or activity is inserted in these four laws to insure that an entire entity is covered by the nondiscrimination provisions whenever a department or unit of that entity receives Federal assistance. The bill also provides that only that unit of a State or local government, or that unit to which funds are extended, is covered. Furthermore, enforcement provisions of these laws will insure that fund termination is pinpointed to the particular unit in noncompliance. In making these changes, the bill seeks to restore coverage and enforcement of these laws in a manner that existed prior to the Grove City decision.

The issue before us today is very simple. It is a matter of justice and fairness. Regardless of whether Federal assistance is extended to educational institutions, corporations, or local governments, justice dictates that taxpayers' funds should not be used to subsidize or encourage discrimination. As a civilized society that demands equal justice and opportunity for all, we cannot permit restrictions on our commitment to prohibit unlawful discrimination. Our civil rights laws have worked well in the past 20 years. The accomplishments of our minority and women athletes in last year's Olympics are but one measure of the success that these laws have had in removing the obstacles to equal opportunity that previously existed. By passing this legislation, Congress can make clear that we will not permit these invidious forms of discrimination to reappear with the assistance of taxpayer dollars.

Mr. GLENN. Mr. President, I am proud to join my colleagues in cosponsoring the Civil Rights Restoration Act of 1985, a bill to clarify and restore the civil rights protections afforded under four key civil rights statutes. This action is necessary to nullify the severe restrictions placed on the scope of title IX of the Education Act of 1972 by the Supreme Court in last year's Grove City case and to insure that such restrictions are not imposed on civil rights laws prohibiting discrimination on the grounds of race, handicap, and age.

In the Grove City case, the Supreme Court held that title IX's prohibition against sex discrimination in educational programs or activities receiving Federal funds applied only to the specific program directly affected by Federal funds. In so doing, the Court opened the door to the possibility that other schools and institutions could receive Federal aid for some programs while discriminating in others. This dangerous precedent flies in the face of our historic commitment to eliminate discrimination in all Federal assistance programs.

This commitment was expressed most clearly by President Kennedy in his call for enactment of the Civil Rights Act:

> Simple justice requires that public funds, to which taxpayers of all races, contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination.

That basic principle was embodied in title VI of the Civil Rights Act of 1964 and has served as the model for subsequent civil rights legislation.

Congress enacted title IX of the Education Act of 1972 to outlaw discrimination on the basis of sex under any education program or activity receiving Federal financial assistance. In 1973, Congress adopted section 504 of the Rehabilitation Act to include the handicapped under the antidiscrimination rubric, and in 1975, passed the Age Discrimination Act to prohibit discrimination on the grounds of age. The language prohibiting discrimination in each of these acts is the same. It has clearly been the intent of Congress that each of these acts be given the same broad interpretation that had been given title VI of the Civil Rights Act of 1964. In each and every case it has been our intent to expand the protections of the original Civil Rights Act. This can only be accomplished by continuing to give these laws the broadest of interpretations.

Mr. President, it should be evident to all that our civil rights laws cannot protect all persons equally if they are applied selectively. And it is not just women who stand to lose if the Supreme Court Grove City decision is allowed to stand. Unchallenged, it threatens the integrity of similar provisions in the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

The bill we are introducing today clarifies the original intent of those laws to deny all Federal funds to any institution that discriminates on the basis of sex, race, national origin, handicap, or age. It restores the broad scope of those laws by carefully defining program or activity and by setting standards to determine their application.

Mr. President, we must deal swiftly and surely with this threat to civil rights protection. Women and minorities are looking to us to defend their hard-won opportunities and freedoms, and to ensure that antidiscrimination laws are not selectively enforced. This is not the time to sound the trumpet of retreat. This the time to continue the long march toward equal opportunity. Let us pass this legislation, and let us move boldly toward the day when our Nation holds this truth to be selfevident: that not just men, but all people are created equal.

Mr. MOYNIHAN. Mr. President, I rise today to join my colleagues in introducing the Omnibus Civil Rights Restoration Act of 1985.

Twenty-one years ago, President Johnson signed the Civil Rights Act of 1964, protecting certain basic rights of minorities in America. Now, more than two decades later, we find once again that we must clarify the enforcement requirements of the 1964 statute, as

well as those for statutes based on it to protect women, the disabled and the elderly from discrimination. In the process, we can reaffirm our commitment to reduce the pernicious scourge of discrimination in our society, and renew our commitment to the ideals of the Civil Rights Act of 1964.

This is legislation with the same purposes President Johnson spoke of 21 years ago, when he signed the Civil Rights Act of 1964:

> Its purpose is not to punish. Its purpose is not to divide, but to end divisions—divisions which have all lasted too long. Its purpose is national, not regional.
>
> Its purpose is to promote a more abiding commitment to freedom, a more constant pursuit of justice, and a deeper respect for human dignity.

A year earlier, at the commencement address at Howard University, President Johnson described the alliance which would help produce the 1964 legislation:

> . . . it is a tribute to America that, once aroused, the courts and the Congress, the President and most of the people, have been the allies of progress.

Mr. President, it is with much regret that I must ask today if our allies have not diminished in number, or at least in agreement on the meaning of equal protection.

The Supreme Court's interpretation of title IX of the Education Amendments of 1972, on February, 28, 1984 in the case of Grove City College versus Bell, is the case in point. The Court adopted the position of President Reagan and his Attorney General Smith, that prohibitions against discrimination under title IX extend only to a specific program discriminating on the basis of sex, and not to the entire educational institution. Does this not demonstrate how fragile are our legal responses to social ills, though crafted with the best of intentions? The Court's ruling had immediate implications for women throughout all the Nation's educational institutions—those in athletic programs, those striving for tenure, those seeking protection from sexual harrassment.

The Court's ruling has more subtle, but no less important, implications for minority Americans protected by title VI of the Civil Rights Act of 1964, for disabled Americans protected by section 504 of the Rehabilitation Act of 1973, and for senior citizens protected by the Age Discrimination Act. Under these statutes, the Federal Government, may withhold Federal funds, or apply injunctive relief, when any institution or recipient discriminates on the basis or race, national origin, disability, or age.

These statutes, cornerstones of all civil rights protections in this country, are in danger of being weakened in a similar manner as title IX. Under such an interpretation, if one program administered by a grant recipient practices discrimination, Federal funds could be withheld, for that program alone, but not for other programs, administered by the same recipient.

Mr. President, I was not a Member of the U.S. Senate when the Education Amendments of 1972, the Rehabilitation Amendments of 1973, and the Age Discrimination Act of 1975 were enacted. I was, however, a member of the Cabinet of the President of the United States, and I submit to you that it was the intent of the framers of this legislation to compel the most complete compliance.

I would again ask my colleagues to recall President Johnson's message to the Howard University class of 1965:

> Freedom is the right to share, share fully and equally in American society, to vote, to hold a job, to enter a public place, to go to school. It is the right to be treated in every part of our national life as a person equal in dignity and promise to others. But freedom is not enough . . . it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates and this is the next and more profound stage of the battle for civil rights.

This Congress can set the record straight. The Civil Rights Restoration Act of 1985 would affirm our commitment to vigorous protection of the civil rights of American women, minorities, elderly, and disabled citizens. It would make clear, in each case, that no institution or entity receiving Federal funds may practice discrimination.

Mr. President, but 4 months ago, during the final days of the 98th Congress, the predecessor to the legislation we introduce today was defeated. At that time, I noted that:

> We have learned to the extraordinary shock of the country, that we do not have a majority in the U.S. Senate to restate one simple provision of the Civil Rights Act of 1964, along with the Education Amendents of 1972, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. A simple measure which does not add to the laws of the Nation so much as it provides that the basic Constitutional laws will be enforced.

I do hope that the Civil Rights Restoration Act of 1985 will not provoke the shameful delays and procedural maneuvering we witnessed at the close of the 98th Congress. I call on my colleagues to give this matter thorough, complete and fair consideration. We can restore our Government's commitment, and in this way protect the ideals of the Civil Rights Act of 1964: "This Civil Rights Act is a challenge to all of us to go to work in our communities and our States, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved country." It was not too late to do so in 1984. It is still not too late in 1985.

THE CIVIL RIGHTS RESTORATION ACT OF 1985

Mr. LEAHY. Madam President, once again I stand with many of my colleagues in both Houses as a sponsor of a vital piece of legislation—the Civil Rights Restoration Act of 1985. What I said here last April, when we introduced the Civil Rights Act of 1984, is true today, and I will repeat it just as often as necessary, until the Congress acts: Our task is simple justice.

In February 1984, the Supreme Court greatly narrowed the prohibition against sex discrimination in colleges receiving Federal financial assistance. The case was Grove City versus Bell, and its echo was heard in Vermont, and throughout the Nation.

While Grove City only dealt with title IX of the Education Amendments of 1972, similar statutory language promised similarly restrictive interpretations of Federal protections against discrimination based on race, age, and handicap status.

These are statutes that have set the moral tone for our growth and maturity as a people. These are statutes that have both guaranteed private rights and have made the public statement that tax dollars will never again support discrimination in the United States.

Last April I argued that every generation must be the zealous guardian of the gifts of the past. Among the most important gifts are the laws that give meaning to our rights, and remedies for their violation.

The Civil Rights Act of 1984 did not become the law, but our zeal to act can be no less today, our respect for the lessons of the past can be no smaller, and our pact with future generations of Americans can be no less powerful.

The four civil rights laws that are affected by Grove City each provided institution-wide coverage against discrimination. This meant that when a college received Federal financial assistance, it was barred from discriminating in any of its programs or activities—throughout the institution—even ones that did not receive any Federal support.

A college that was covered was simply a college that could not discriminate on the basis of sex.

But not every program or activity in a covered college faced the termination of Federal funds under the pre-Grover City law if the college was guilty of sex discrimination. The law was drafted carefully to cut off funds only to those programs or activities that actually discriminated.

The coverage section of the law, therefore, was broader in its scope than the provision of the law dealing with remedies available to the Federal Government where discrimination was found. The broader coverage language allowed investigations to begin whenever a college receiving Federal financial assistance was accused of discriminating. The investigators were not required to limit their initial investigation to programs or activities receiving

Federal aid. Also, an individual who was victimized by sex discrimination could seek to enjoin a college receiving Federal financial assistance from continuing that discrimination, even though it might be taking place in a program or activity that did not receive Federal money.

In 1972 some Members of Congress felt that the remedies section of the law—the section providing for fund termination—should be as broad as the coverage section.

Others argued that where the Government's clout is involved, the strong threat of fund termination should be limited to programs that discriminate, and should not apply to the entire educational institution.

The solution of providing broad coverage and narrow fund termination was a compromise that most Americans over the years have regarded as fair and effective.

I think that is an important point to mention, because laws that mandate fairness must themselves be fair.

But the Grove City case ended that compromise and thereby injured that sense of fairness. The Supreme Court found that grants of Federal assistance to students were in effect grants to the college. So far, so good. But because the underlying law barred discrimination under any education program or activity, the Court limited the coverage of the law to whichever program or activity it could say received the Federal money. In what I think was a break with both logic and past history, the Court found that Federal aid to the students represented aid only to the college's financial aid program, and not to the college itself.

Recall that we are talking about the basic coverage of title IX, not the section dealing with the more limited Federal remedies. So what the Court was saying in Grove City College is that only those programs within a college that actually receive Federal dollars are barred from sex discrimination, that is, are covered.

This decision deeply affects the architecture of the bill that Congress fashioned in 1972 and significantly diminishes the quality of the protection it offered.

When an educational institution receives money from the taxpayers of the United States, it is very easy to say why it may not discriminate anywhere within its operations: simple justice.

The very same principle applies to racial discrimination under title VI, which stopped Federal subsidies to segregated programs or activities.

The very same principle applies to discrimination against the disabled under section 504, which ended a long era in our history when a person's so-called disabilities were more important than the person's potential.

The same principle applies to discrimination against older Americans under the Age Discrimination Act of 1975 which announced that Federal dollars will not be used to support health, education, rehabilitation, and other services that judged a person's age and which declared that the only things too old to serve this country are its sterotypes.

The debate last year over S. 2568 was long and rancorous. Opponents of the legislation claimed that the bill went beyond its restorative purpose—which most of them claimed to embrace—and extended the reach of the four statutes in question.

I am confident that the witnesses in opposition to S. 2568 sincerely believed that its true result, if not its purpose, was to expand coverage beyond its parameters in the pre-Grove City days.

But the argument was never true. You could glean the errors from how farfetched the opponents' arguments were, as well as their supporting hypothetical examples.

The strategy of many opponents became clear: To argue that because the bill was very detailed, it raised many new questions. Toward the end of the Congress, when shorter, compromise versions of the legislation were offered, they became too vague.

The fact was that few bills dealing with difficult and complex social problems have ever been as carefully and thoughtfully drafted. Again this year, a tremendous effort has gone into our new bill, and I was glad I could be a part of that effort.

While the goal of the bill is the same as the goal of last year's bill, to end tax-subsidized discrimination, the approach is different. Instead of defining recipient in all four statutes, the bill defines the very words misconstrued in Grove City, program or activity. I am unable to come up with a single hypothetical case in which this year's bill would produce a different result from last year's or would expand coverage beyond what the long-accepted administrative interpretations in pre-Grove City days.

But if the year's bill is clearer—and it is—and if its restorative purpose is more easily demonstrated—and it is—I applaud the changes.

The need is great and the time is overdue.

Let us proceed with all the speed possible. Let us deliberate. Let us debate. Let us set down our legislative purpose so clearly that future generations will have no doubts about our goals.

But let us pass this bill and pass it soon.

Simple justice will be the result.

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By Mr. LEVIN (for himself and Mr. COHEN):

S. 432. A bill to amend the Internal Revenue Code of 1954 to provide taxpayers a cause of action for wrongful levy on property and a stay of a levy during the period of an installment loan plan; to the Committee on Finance.

CIVL ACTION BY TAXPAYERS AMENDMENT

● Mr. LEVIN. Mr. President, I am pleased to offer today an amendment to the Internal Revenue Code which would help protect the taxpayer from certain irregular and arbitrary practices of the Internal Revenue Service.

The Civil Actions by Taxpayers for the Violation of Certain Procedures bill would allow a taxpayer to bring a civil action against the United States in a U.S. District Court when the IRS has imposed or maintained a lien or levy on the taxpayer's property for a tax delinquency in a manner which violates the levy and lien provisions of the Tax Code or IRS regulations, or is knowingly in violation of any written agreement entered into between the Service and the taxpayer.

On July 13, 1980, I chaired a hearing held by the Governmental Affairs Subcommittee on Oversight of Government Management, of which I am currently the ranking minority member to investigate the collection practices of the IRS and their effect on small businesses. The investigation was initiated in response to complaints from small business owners and IRS officers, regarding the IRS' arbitrary and capricious use of lien, levy, and seizure authority to collect delinquent taxes. During the hearing the subcommittee found, among other things, that the IRS was abusing their enforcement authority and the taxpayer had no meaningful recourse. At the time of the hearing, the evidence also indicated that the IRS had a penchant for seizure and enforcement statistics and sometimes pressured its revenue officers to seize taxpayer property, in contradiction of their own training and good sense, with little or no attention to considerations of the amount of money collected, the extenuating circumstances of the taxpayer, or stated IRS policy.

The forcible collection powers of lien, levy, and seizure conferred upon the IRS are extremely powerful. They play an important role in the IRS, collection ability and are necessary to ensure that taxpayers will not ignore the Federal tax system. However, these powers must not be abused or applied arbitrarily. The taxpayer should be able to rely on the IRS to follow its own policies and regulations, and not engage in collection practices that are inconsistent with these policies, regulations, or the Internal Revenue Code.

Currently, when the IRS violates its own collection policies and the regulations of the Internal Revenue Code, the aggrieved taxpayer cannot seek redress in the Federal courts, but must instead rely on the internal administrative procedures of the IRS. This is

not enough. The taxpayer should be able to bring his or her claim into an unbiased judicial forum empowered to enforce its findings on the parties. The tax collection activity of the IRS often affects the financial survival and livelihood of individuals, therefore taxpayers should be able to go into Federal court and be entitled to their full remedial power and protections.

The bill that I am offering today will in no way reduce the Service's ability to properly pursue its tax collection program, but will protect taxpayers from the unlawful administration of programs and procedures and irregular collection methods.

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. 432

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

SECTION 1. CIVIL ACTION BY TAXPAYER FOR VIOLATION OF CERTAIN PROCEDURES.

(a) IN GENERAL.—Paragraph (1) of section 7426(a) of the Internal Revenue Code of 1954 (relating to civil actions by persons other than taxpayers) is amended to read as follows:

"(1) WRONGFUL LIEN OR LEVY.—

"(A) ACTION BY TAXPAYER.—If a lien has been imposed or a levy made, on property, the person against whom the tax (with respect to which such lien or levy arose) is assessed may bring a civil action against the United States in a district court of the United States on a claim that such lien was imposed or maintained, or such levy made, knowingly in violation of the procedures provided in section 6325 or 6331 (or any regulations prescribed under such sections) or knowingly in violation of any written agreement entered into between the Secretary and such persons. Such action may be brought without regard to whether such property has been surrendered to, or sold by, the Secretary.

"(B) ACTION BY THIRD PARTY.—If a levy has been made on property or property has been sold pursuant to a levy, any person (other than the person against whom the tax with respect to which such levy arose is assessed) who claims an interest in or lien on such property and that such property was wrongfully levied upon may bring a civil action against the United States in a district court of the United States. Such action may be brought without regard to whether such property has been surrendered to or sold by the Secretary.

"(C) WRONGFUL LIEN OR LEVY ACTION BY TAXPAYER.—The district court shall have jurisdiction to grant whatever form of relief may be appropriate under the circumstances in a cause of action brought under subsection (a)(1)(A).".

(b) CONFORMING AMENDMENTS.—

(1) Section 7426 of such Code is amended—

(A) by striking out the heading thereof and inserting in lieu thereof the following:

"SEC. 7426. CIVIL ACTIONS RELATING TO COLLECTION OF TAX.".

(2) The table of contents of subchapter of chapter 76 of such Code is amended by striking out the item relating to section 7426 and inserting in lieu thereof the following:

"Sec. 7426. Civil actions relating to the collection of tax.".

(3) Subsection (c) of section 6532 of such Code (relating to periods of limitations on suits) is amended—

(A) by striking out "the levy" in paragraph (1) and inserting in lieu thereof "the lien, the levy,", and

(B) by striking out the caption thereof and inserting in lieu thereof the following:

"(c) SUITS RELATING TO COLLECTION OF TAX.—".

(4) Subsection (f) of section 6503 of such Code (relating to suspension of running of period of limitation) is amended—

(A) by striking out "of a third party", and

(B) by striking out "of a third party" in the caption thereof.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.●

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By Mr. D'AMATO (for himself, Mr. STENNIS, Mr. GORE, and Mr. SIMON):

S. 434. A bill to extend the authorization of the Robert A. Taft Institute Assistance Act; to the Committee on Labor and Human Resources.

ROBERT A. TAFT INSTITUTE ASSISTANCE ACT AUTHORIZATION

● Mr. D'AMATO. Mr. President, I rise today to introduce legislation to reauthorize one of this Nation's most outstanding programs, the Robert A. Taft Institute for Two Party Government. This institute, founded in 1961 as a memorial to the late Senator Robert A. Taft, is dedicated to a notion we all share. It is dedicated to the principle that each citizen should have an opportunity to contribute to government and politics.

The Robert A. Taft Institute of Two Party Government is a nonpartisan, nonprofit, tax-exempt corporation operating under a charter granted by the board of regents of the State of New York. Its mission is to enable teachers, administrators, and others to explore the American system of government and politics. Furthermore, it works to enhance their knowledge and teaching skills and, in turn, to stimulate and encourage their students to take an interest in, and participate in, governmental, political, and related community-based activities.

Its tasks are expounded by focusing on the compelling need for responsible citizen participation in politics. The Taft Institute approaches its tasks believing that principles of American self-government are best served by a well-informed public. One of the best ways of accomplishing this goal is through teaching. Taft has excelled in its attempt to teach these principles to our citizenry. They continue to have seminars and workshops throughout the country for the benefit of us all. I would like to list just a few of their recent seminars: A Taft Seminar for Teachers was held at the University of Oregon, Eugene during June 17-29, 1984; a Taft Seminar for Teachers was held at the Curry Memorial School of Education, the University of West Virginia, July 16-27, 1984; and a Taft Seminar was held at Eastern Kentucky University during June 11-28, 1984. There were other seminars and workshops held throughout the country that are equally worthy of mention, but I will only highlight the forementioned.

The director of the Taft Seminar for Teachers 1984 at the University of Oregon gave an excellent report of their seminar. He noted that politics was in the air as participants met from June 17 to 30, only weeks before Democrats and Republicans held national conventions in San Francisco and Dallas. They made a conscious effort to design their curriculum with the election year in view, culminating in a windup banquet debate on party prospects between an incumbent Republican Oregon attorney general and a Democrat candidate for the U.S. Senate. As stated by the director, the goal of each seminar has been refreshing and (re)educating the participants' understanding of the political world, and more particularly, their appreciation of the two-party system. The director of the Taft Seminar for Teachers at the Curry Memorial School of Education, the University of Virginia noted that he is amazed how well each cohort of teachers melds together to make the seminar a success. The director further notes that each year the seminar reflects a different group personality, but invariably they quickly solidify into a group that stimulates speakers with analytical and challenging questions and provokes each other to rethink political values. The Taft Institute director of the June 11-28, 1984, Eastern Kentucky Seminar states that the Taft program is more than a good program. It is the dedication and enthusiatic participation of teachers who add to the sacrifices they make each day of the school year to give up part of their summers to increase their understanding and appreciation of the political process and the American two-party system. These seminars have been held throughout the country and I could easily list commendable statements from directors and participants of each seminar.

Taft seminars are sponsored by universities and colleges across the country; they provide rigorous courses in practical politics and political science. Seminars vary from 2 to 4 weeks in length, and usually take place during the summer. They also award graduate level credit. Each Taft Seminar is organized according to comprehensive guidelines and is directed by a professor of political science who is a faculty member of the sponsoring institution. The Taft Institute is involved in the planning and organization of each pro-

gram. The seminars include experienced politicians and political scientists who come together with high school and elementary school teachers to explore American freedom, the two-party political process, the role of political parties, and the role of each citizen in self-government.

The Taft Institute of Two Party Government has sponsored more than 500 seminars. These seminars have included more than 100 colleges and universities with 15,000 teachers from all 50 States. In any one year 2 million students benefit from this program. Mr. President, the success of the Taft Institute cannot be denied.

Our children, families, and all communities need continued exposure to the American political system. The Taft Institute provides this opportunity. This legislation promotes a strong America, and it enhances our mission. Mr. President, American democracy takes all citizens putting forth some effort to make it work. Therefore, I urge my colleagues to join me in recognizing the importance of the Robert A. Taft Institute Assistance Act. It benefits all Americans and enhances the growth and development of our political system. It shows our continuing commitment to a strong, involved, and well-informed citizenry.

Mr. President, I ask unanimous consent that the text of my bill be printed in the RECORD at the conclusion of my remarks.

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

S. 434

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1373 of the Education Amendments of 1980, relating to the Robert A. Taft Institute, is amended by inserting after "1985" a comma and the following: "$1,000,000 for the fiscal year 1986 and for each succeeding fiscal year ending prior to October 1, 1988".●

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By Mr. BUMPERS:

S. 435. A bill to amend the consolidated Farm and Rural Development Act to improve and streamline the provision of farm credit assistance through the consolidation of the real estate, operating, economic emergency, soil and water, limited resource, recreation, and rural youth loan programs into one Agricultural Adjustment Loan, to reduce paperwork and make the Farmers Home Administration loan process more responsive to farmers' needs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

CONSOLIDATED AGRICULTURAL ADJUSTMENT LOAN ACT

Mr. BUMPERS. Mr. President, I am introducing a bill today which is similar to S. 2057, which I introduced in the 98th Congress. It deals with the consolidation of loan programs in the Farmers Home Administration.

I might preface my remarks by saying that last year when I introduced this bill, I sent a copy of it to every State Farmers Home director in the United States; and before the national Farmers Home Administration office could send word to the State directors telling them not to endorse the bill, we received several responses from directors saying that they thought it was the greatest thing since night baseball, because what it does is to consolidate into one loan program the seven loan programs that the Farmers Home Administration has the authority to make. It consolidates all seven programs under one.

It would be a monumental cut in redtape and paperwork for both the farmer and the Farmers Home Administration. I hope the Farmers Home Administration this year will not take such an intransigent attitude as they did last Congress, because I am convinced that there are substantial savings and improvements in this bill. There is not a business in the country, particularly a banker or a financial lending officer, who would not jump at the chance to consolidate seven lending programs under one.

Mr. President, this would give a farmer the opportunity to put both his land and his equipment and his property, and his operating loan all into one loan, at one rate of interest and one payment.

The farmers would welcome this simplicity, this reform, and they certainly would welcome eliminating a lot of redtape that they are subjected to now.

This bill also would limit a farmer, either for insured or guaranteed loans, to $500,000. The whole rationale of this bill, of course, is simplicity and convenience.

Right now, one of the biggest cries from my State is that we do not have enough Farmers Home personnel to even begin to process all the applications for loans that they have. So, perhaps even with the amount of personnel Farmers Home has right now, they could do a much better job if we consolidated all the loan programs and they did not have to know so many different rules and regulations.

There are some changes in this bill which are different from S. 2057, which was introduced last year. The most significant one and the one I think farmers will welcome most, is that the bill requires the Farmers Home Administration, if it forecloses on a farmer's land, No. 1, to give him an opportunity to extract his home from the foreclosure. FmHA would be given the authority to make a separate loan to a farmer in default to cover his principal residence.

Farmers are strapped in this country. But I do not think farmers should forfeit their homes to Farmers Home if there is any way at all that the Farmers Home Administration can arrange to secure themselves with the collateral they are foreclosing on without taking the farmer's home too. If they could reschedule the loan covering the home only, at the equity the farmer owns in it, they should do so. This requires them in good faith to consider and implement such a plan if at all possible under the circumstances.

Second, the bill requires Farmers Home to take the land they have foreclosed on and keep it for 5 years in inventory. The farmer, under this bill, is granted 5 years to redeem the land.

Farmers Home could take the land on which they have foreclosed, put it in inventory, and maybe do nothing with it except give it a chance to rest, and use it for good soil conservation practices.

At the end of 5 years or any time during the 5-year period the farmer against whom the foreclosure was levied will have the right to redeem his farm. The second salutary purpose of this, incidentally, in addition to the soil conservation practices that they could put into effect on the farm, is that Farmers Home could choose to take that land out of production, and everyone knows one of the biggest problems we have with the farm programs in this country is overproduction. Incidentally, it is an interesting thing that 2 percent of the farms in this country have gone on the market because the farmers cannot make it, and just putting 2 percent of the farmland in this country on the market has depressed the price of farmland by 10 percent. And at least if the Farmers Home Administration is going to foreclose on the land, it will take the land off the market if this bill is passed and keep it in inventory for 5 years, and at least give that farmer some hope of redeeming his land.

Third, this bill provides that the Farmers Home Administration will not take any more collateral than is absolutely necessary to secure their loan. Right now the Farmers Home Administration takes as collateral everything they can—they take the home, the land, the equipment, they take the crop, they take the wife, they take the children, they take a mortgage on everything they can lay their hands on whether it is necessary or not. And this bill would require them to limit their collateral to just what they really need to secure their loan, and no more.

Mr. President, our farmers need help, the kind of help that this bill will provide. Certainly, it will be no panacea, but if the processes of the farmers' primary lending agency, Farmers Home Administration, are streamlined and redtape is cut dra-

matically, if farmers can keep their homes and redeem their lands, and provide only that collateral necessary to secure loans, then certainly a lot of pain, heartache, and financial burden will be lifted from them.

Mr. President, in the last few days several Senators—Senators BOREN, EXON, BENTSEN, MELCHER, and others—have in floor statements graphically outlined the crisis our farmers are facing. As Senator BENTSEN pointed out, the term "farm crisis" has been used so often that it has lost its shock value. Those of us from farm States are almost at a loss as to how to really get the attention of the general public and the attention of the administration on this very serious issue. Over the last few days, Senators have put statistics in the record that graphically illustrate the enormity of the problem. At the risk of repetition, here is the extent of the problem. Equity in American agricultural land has declined by more than $105 billion in the last 4 years. Bankruptcies and forced liquidations have increased 200 percent over the past 5 years. Over the past 3 years, land values have declined by 22 percent in real terms, and in some parts of the country, they have fallen by fully 50 percent in value.

Thirty-five years ago, in 1959, total farm debt was $12.5 billion and total net farm income was $19 billion. By last year, 1984, farm income in constant dollars had fallen to $5.4 billion and farm debt had increased to the staggering sum of $215 billion. Mr. President, the situation is very sad, and we will see thousands of farmers go out of business this year and never return.

As I said, our farmers need all the help we can provide. I do not offer this legislation as a complete solution to our agriculture credit problems. I do think, however, that streamlining our processess, protecting farmers' homes, providing them the right to redeem their lands, and limiting the collateral taken on FmHA loans only to that absolutely necessary to secure the debt, are very important steps that this Congress ought to take to help our farmers.

Mr. President, this is a long, comprehensive bill, and I hope Senators will have their staffs analyze it very carefully and critique it for them. I hope the Agriculture Committee will allow hearings to be held on this bill at the earliest possible time. And certainly I will offer it at the right time, if the Agriculture Committee does not report it out, as an amendment on some agricultural bill.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the text of the bill and the section-by-section analysis were ordered to be printed in the RECORD, as follows:

S. 435

*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 "Consolidated Agricultural Adjustment Loan Act of 1985".

REFERENCES TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

SEC. 2. Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

CONSOLIDATED AGRICULTURAL ADJUSTMENT LOANS

SEC. 3. The Act (7 U.S.C. 1921 et seq.) is amended—

(1) by striking out subtitle A (except for sections 306 through 310C), subtitle B (except for section 314), and subtitle C and redesignating subtitle D as subtitle C;

(2) by redesignating sections 308, 309, 309B, and 310 (7 U.S.C. 1928, 1929, 1929b, and 1930) as sections 312, 313, 314, and 315, respectively;

(3) by inserting after section 315 (as redesignated by clause (2)) the following new heading:

"Subtitle B—Rural Development Assistance";

(4) by redesignating sections 306, 307, 309A, 310A, 310B, 310C, and 314 (7 U.S.C. 1926, 1927, 1929a, 1931, 1932, 1933, and 1944) as sections 321, 322, 323, 324, 325, 326, and 327, respectively; and

(5) by inserting after section 301 the following:

"Subtitle A—Consolidated Agricultural Adjustment Loans

"SEC. 302. As used in this subtitle:

"(1) The term 'agricultural conservation program' means the program authorized by sections 7 through 15, 16(a), 16(f), and 17 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590g through 590o, 590p(a), 590p(f), and 590q) and sections 1001 through 1008 and 1010 of the Agricultural Act of 1970 (16 U.S.C. 1501 through 1508 and 1510).

"(2) The term 'applicant' means a person who is engaged in a farming operation and who has made an application for loan assistance under this subtitle.

"(3) The term 'aquaculture' means the husbandry of an aquatic organism (including any species of finfish, mollusk, crustacean, invertebrate, amphibian, reptile, or aquatic plant) under a controlled or selected environment by an applicant or borrower.

"(4) The term 'borrower' means a person who is liable for a loan made or insured under this subtitle.

"(5) The term 'consolidate' means to combine and reschedule a loan made or insured under this subtitle with—

"(A) one or more other loans made or insured under this subtitle;

"(B) one or more loans made or insured under this Act as in effect before the date of the enactment of the Consolidated Farm and Rural Development Act Amendments of 1985; or

"(C) any combination of loans referred to in subparagraphs (A) and (B).

"(6) The term 'cooperative' means an entity which—

"(A) is engaged in farming in a State as its principal business;

"(B) shares profits produced by the entity among members of the entity;

"(C) is recognized as a farm cooperative under the laws of such State; and

"(D) is authorized to engage in farming under such laws.

"(7) The term 'corporation' means a private domestic corporation which is created, organized, and authorized to engage in farming under the laws of a State.

"(8) The term 'defer' means to postpone the payment of interest or principal, or both, on a loan made or insured under this subtitle.

"(9) The term 'family farm' means a farm which—

"(A) produces agricultural commodities for sale in sufficient quantities such that it is recognized in the surrounding community as a farm rather than as a rural residence;

"(B) provides a sufficient amount of income from farming operations and nonfarm enterprises (including the rental of land) to enable an applicant for a loan made or insured under this subtitle to—

"(i) pay necessary family and operating expenses;

"(ii) maintain essential chattel and real property; and

"(iii) pay debts;

"(C) is managed, and has a substantial amount of the labor for the farm and related nonfarm enterprises provided, by—

"(i) the individual applicant for a loan made or insured under this subtitle; or

"(ii) the members, stockholders, or partners responsible for operating the farm of a cooperative, corporation, or partnership which has received a loan made or insured under this subtitle; and

"(D) may require a reasonable amount of full-time hired labor and seasonal labor during certain times of the year.

"(10) The term 'farm' means—

"(A) land, improvements, and other appurtenances which are considered farm property in the surrounding community and are used in the production of crops, livestock, or aquaculture; and

"(B) a dwelling house that is ordinarily considered as part of the farm in the surrounding community notwithstanding that the dwelling house may be physically separate from the farm acreage.

"(11) The term 'farmer' means an individual, cooperative, corporation, or partnership that operates a farm, ranch, or aquaculture operation.

"(12) The term 'fish' means—

"(A) any aquatic gilled animal commonly considered fish; and

"(B) any mollusk, crustacean, or other invertebrate produced under controlled conditions in a pond, lake, stream, or similar holding area.

"(13) The term 'Great Plains conservation program' means the program authorized by section 16(b) of the Soil Conservaton and Domestic Allotment Act (16 U.S.C. 590p(b)).

"(14) The term 'limited resource applicant' means an applicant for a loan made or insured under this subtitle who—

"(A) is a farmer who operates a family farm;

"(B) meets the eligibility requirements for such loan but, due to the low income of the applicant, cannot make interest payments on such loan at rates prescribed for borrowers of such loans who are not limited resource applicants; and

"(C) because of underdeveloped managerial ability, limited education, relatively low

farm productivity (due to lack of development or improved production practices), or related problems of the applicant, the applicant requires a low-interest loan or special loan assistance, or both, to assure a reasonable prospect for success and a reasonable standard of living in comparison to other residents of the surrounding community.

"(15) The term 'mortgage' means any form of security interest or lien upon any rights or interest in any real property or, in the case of property owned by a resident of Louisiana or Puerto Rico, any chattel property.

"(16) The term 'nonfarm enterprise' means any business enterprise which produces income to supplement farm income by providing goods or services for which there is a need and a reasonably reliable market.

"(17) The term 'partnership' means an entity which—

"(A) consists of individuals who are engaged in farming in a State;

"(B) is recognized as a partnership by the laws of such State; and

"(C) is authorized to engage in farming under such laws.

"(18) The term 'production loan' means a loan made or insured under section 306(b).

"(19) The term 'real estate loan' means a loan made or insured under section 306(a).

"(20) The term 'reamortize' means—

"(A) to modify the order of payments on a loan made or insured under this subtitle within the original term for the repayment of the loan; or

"(B) to extend such term to the maximum term permitted under this subtitle for the repayment of the loan.

"(21) The term 'reschedule' means to modify the rates or terms, or both, of a loan made or insured under this subtitle.

"(22) The term 'rural youth' means a person who—

"(A) has reached ten years of age but has not reached twenty-one years of age; and

"(B) resides in an area which is not part of a local subdivision that has a population greater than ten thousand inhabitants.

"(23) The term 'security' means any property subject to a real or personal property lien.

"SEC. 303. (a) To be eligible to obtain a loan under this subtitle, an applicant must file with the Secretary an application for such loan which contains—

"(1) certification by the applicant that the applicant is unable to obtain sufficient credit elsewhere to finance actual needs of the applicant at reasonable rates and terms (as prescribed by the Secretary), taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time;

"(2) a plan of operation for using such loan; and

"(3) such other information as may be required by the Secretary.

"(b) The Secretary shall encourage applicants for, and borrowers of, loans made or insured under this subtitle to supplement such loans with credit made available from other sources to the extent economically feasible and in accordance with sound management practices.

"SEC. 304. (a) If the Secretary determines that adequate funds are not available to approve fully all applications on file for loans under this subtitle, the Secretary shall give preference in approving such applications to applications filed by veterans (as defined by the Secretary) over applications filed by nonveterans.

"(b) At the time an application is made for assistance under this subtitle, or during the normal course of processing an application for such assistance, the Secretary shall inform the applicant in writing of the provisions of this subtitle relating to limited resource applicants and the procedures by which persons may apply for such assistance as limited resource applicants.

"SEC. 305. (a) Subject to the conditions prescribed in this section, the Secretary may make or insure loans under this subtitle—

"(1) to farmers in the United States who are individuals; or

"(2) to cooperatives, corporations, or partnerships that are controlled by individual farmers and are engaged primarily and directly in farm, ranch, or aquaculture operations in the United States.

"(b) To be eligible for such loans, applicants who are individuals, or in the case of cooperatives, corporations, and partnerships, members, stockholders, or partners, as applicable, holding a majority interest in such entity, must—

"(1) be citizens of the United States;

"(2) have either training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operations;

"(3) be or will become operators of not larger than family farms (or in the case of cooperatives, corporations, and partnerships in which a majority interest is held by members, stockholders, or partners, as applicable, who are related by blood or marriage, as defined by the Secretary, such individuals must be or will become either owners or operators of not larger than a family farm);

"(4) be unable to obtain sufficient credit elsewhere to finance their actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similiar purposes and periods of time; and

"(5) have the application and plan of operation filed by the applicant under section 303(a) approved by the Secretary.

"(c) In addition to the requirements prescribed in subsections (a) and (b)—

"(A) in the case of corporations and partnerships, the family farm requirement of subsection (b)(3) shall apply as well to the farm or farms in which the entity has an operator interest; and

"(B) in the case of cooperatives, corporations, and partnerships, the requirement of subsection (b)(4) shall apply as well to the entity.

"(d)(1) The Secretary may make loans under this subtitle, without regard to the requirements of clauses (2) or (3) of subsection (b), to rural youths to enable the youths to operate enterprises in connection with their participation in 4-H Clubs, Future Farmers of America, and similiar organizations and for the purposes specified in section 306.

"(2) A person receiving a loan under this subsection who executes a promissory note therefor shall thereby incur full personal liability for the indebtedness evidenced by such note in accordance with its terms free of any liability of minority.

"(3) For loans made under this subsection, the Secretary may accept the personal liability of a cosignor of the promissory note in addition to the personal liability of the borrower.

"SEC. 306. (a) Subject to subsection (c), the Secretary may make or insure a loan under this subtitle in order to assist an applicant in the payment of real estate costs incurred in operating a farm during a crop or lease year, including assistance for—

"(1) purchasing or enlarging the farm, including—

"(A) the purchase of land for recreational or other nonfarm enterprises, of subdivided land, and of easements and rights-of-way needed to operate the farm or nonfarm enterprise; and

"(B) the making of a downpayment on the purchase of land if the applicant—

"(i) signs a purchase contract for the land which—

"(I) obligates the applicant to pay the purchase price of the land;

"(II) gives the applicant the right to present possession, control, and beneficial use of the property; and

"(III) entitles the applicant to receive a deed upon paying all or part of the purchase price of the land;

"(ii) secures the unpaid balance of the loan by a note and mortgage, a land purchase contract, or a similar instrument;

"(iii) is able to purchase the land without any prior first lien on the land; and

"(iv) is able under normal farm conditions to carry out the terms and conditions of the loan;

"(2) constructing, purchasing, or improving buildings and facilities that are necessary to conduct farm operations and are on or near the farm, including—

"(A) the construction, purchase, or improvement of a farm dwelling or service buildings that are essential to conduct farming operations or nonfarm enterprises and have a modest design and cost, including buildings and facilities that are necessary—

"(i) to engage in nonfarm enterprises or fish farming (including the construction, purchase, or improvement of a dock, fish hatchery, or such other nonfarm enterprises as are approved by the Secretary and are consistent with this Act); or

"(ii) to expand facilities used for food preparation and storage, vehicle storage, or laundry or office space, except that the size and cost of such facilities may not exceed the size and cost of such facilities owned by typical family farmers in the surrounding community;

"(B) the improvement, alteration, repair, replacement, relocation, or purchase and transfer of dwellings, service buildings, facilities, structures and fixtures (including pollution control and energy saving devices) that are essential for farming operations and are part of the real estate, or are transferred to a purchaser, upon the sale of the farm; and

"(C) the construction of methane and gas facilities and equipment essential to such facilities;

"(3)(A) developing land and water resources which are owned by the applicant and which the applicant needs to conduct farming operations or nonfarm enterprises, including—

"(i) the institution of pollution control and energy saving measures;

"(ii) the acquisition of water supplies and rights;

"(iii) the implementation of essential conservation measures;

"(iv) the development of fencing, drainage, and irrigation facilities, basic applications of lime and fertilizer, and facilities for land clearing;

"(v) the establishment of forestry practices, fish ponds, trails, and lakes approved by the Secretary;

"(vi) the improvement of orchards;

"(vii) the establishment and improvement of permanent hay or pasture;

"(viii) the installation of water, power, gas, and other utility lines on land owned by the applicant or, if the applicant obtains rights or easements for such lines that ensure that such rights will be transferred if the farm is sold, on land not owned by the applicant;

"(ix) the purchase or rental of machinery or equipment necessary to develop such resources, except that the total cost of such purchase or rental may not exceed the cost of hiring a person to develop such resources; and

"(x) the payment of the costs of facilities, improvements, and practices for which the applicant will be reimbursed under a conservation program (including the agricultural conservation program or the Great Plains conservation program) if—

"(I) the applicant cannot pay such costs through purchase orders or assignments to material suppliers or contractors; and

"(II) in any case in which loan funds are advanced and the amount of such payment exceeds an amount determined by the Secretary, but in no case less than $1,000, the applicant assigns such payment to the Secretary;

"(B) developing land and water resources for which the applicant has defective title or owns an undivided interest and which the applicant needs to conduct farming operations or nonfarm enterprises, including the purposes referred to in subparagraph (A), if—

"(i) the amount of the loan used to develop such resources does not exceed an amount determined by the Secretary, but in no case less than $25,000;

"(ii) the loan is adequately secured; and

"(iii) such resources are not used by the Secretary to determine the eligibility of the applicant for the loan;

"(C) developing land and water resources which the applicant leases and which the applicant needs to conduct farming operations or nonfarm enterprises, including the purposes referred to in subparagraph (A), if—

"(i) the amount of the loan used to develop such resources does not not exceed an amount determined by the Secretary, but in no case less than $10,000;

"(ii) the loan is adequately secured;

"(iii) the terms of the lease are such that there is a reasonable assurance the applicant will enjoy the value of the improvement over its useful life; and

"(iv) the lease provides that the lessor will reimburse the lessee upon termination of the lease for any unexhausted value of the developed resources;

"(4) refinancing debts of the applicant if—

"(A) the current creditors of the applicant will not furnish to the applicant credit at rates and terms which the applicant can meet;

"(B) the Secretary verifies the need to refinance all secured, and major unsecured, debts of the applicant and verifies the unpaid balance of each debt to be refinanced; and

"(C) in the case of the refinancing of loans made or insured under this subtitle, such refinancing is necessary to enable the applicant to continue farming operations;

"(5) paying reasonable expenses incurred in obtaining, planning, closing, and making the loan, including the costs of legal, architectural, and other technical services and, during the year following the closing of the loan, real estate insurance; and

"(6) financing nonfarm enterprises if the income from such enterprises is necessary and the applicant earns the major portion of the gross income of the applicant from farming operations notwithstanding that the acreage purchased for nonfarm enterprises may be physically separate from the farm acreage.

"(b) Subject to subsection (c), the Secretary may make or insure a loan under this subtitle in order to assist an applicant in the payment of production costs incurred in operating a farm during a crop or lease year, including assistance for—

"(1) purchasing essential livestock, poultry, fur bearing and other farm animals, aquatic organisms, bees, and farm equipment;

"(2) paying costs incurred in converting a farm into a viable operation;

"(3) consolidating, restructuring, or refinancing (including making installment payments on principal and interest due on) secured or unsecured real estate indebtedness incurred by the applicant (including real estate loans) if assistance under this subsection is necessary to enable the applicant to repay such indebtedness or continue the farm operation of the applicant;

"(4) purchasing milk base (with or without cows) if such purchase is necessary to provide the applicant with a satisfactory market for the dairy products of the applicant;

"(5) purchasing a grazing license or permit right of a private party that can be validly sold and transferred;

"(6) augmenting or improving water supplies;

"(7) paying costs incurred for fuel, seed, fertilizer, insecticide, farm supplies, labor, and other production expenses if such costs are essential to the continuation of farm production;

"(8) paying customary cash rent or charges for the use during such year of essential buildings, pasture, crops, hay, land, or grazing permits if the applicant—

"(A) is obligated under a written lease or other agreement to pay such rent or charges before the income will be available from the operation of the farm to make such payments, except that an invoice or, in the case of a small amount of fees, a recorded explanation of an agreement may be used to demonstrate an obligation to pay grazing fees;

"(B) cannot arrange to have such rent or charges become due when income will be available from the operation of the farm to make such payments;

"(C) will have satisfactory tenure during such year under such lease or agreement; and

"(D) uses a loan made or insured under this paragraph in the current year to pay for such rent or charges incurred only in the current year, except that the Secretary may include funds in a loan made or insured under this paragraph near the end of the current year for such rent or charges which will be incurred in the succeeding year and the applicant may use such funds for such rent or charges;

"(9) paying real or personal property taxes due or about to become due on water or drainage charges or assessments;

"(10) paying income taxes imposed under Federal or State law, or Social Security taxes imposed under the Federal Insurance Contributions Act (26 U.S.C. 3101 et seq.), for the operation of the farm if the applicant is unable to pay such taxes from personal or other funds;

"(11) paying premiums for insurance on real and personal property, including premiums for insurance for liability from, and property damage to, farm and other essential equipment (including farm trucks);

"(12) paying costs required to meet family subsistence needs, including expenses for medical care and premiums for a reasonable amount of health and life insurance;

"(13) purchasing stock in a cooperative lending agency if such purchase is necessary to obtain the loan; and

"(14) paying costs incurred for improvements or repairs to real property owned or leased by the applicant, or refinancing unsecured debts clearly incurred for such costs, if—

"(A) the total amount of loans made to an applicant in a year under this paragraph does not exceed an amount determined by the Secretary, but in no case less than $25,000;

"(B) such property is not used to secure a loan made or insured under this subtitle;

"(C) the loan is not used to improve or repair the living quarters of the applicant;

"(D) the applicant will not require a loan made or insured under this paragraph repeatedly in subsequent years;

"(E) the applicant owns the land or leases the land under an agreement with the lessor under which the lessor will reimburse the lessee upon termination of the lease for any unexhausted value of such improvements or repairs; and

"(F) the loan is clearly necessary for the successful operation of the farm.

"(c) The Secretary may make or insure a loan under this subtitle only if such loan will be used for a purpose which is consistent with applicable environmental quality standards established under Federal, State, and local law.

"SEC. 307. (a) The outstanding principal balance on all loans made or insured to or for a borrower, other than a rural youth, under this subtitle (as of the time the loan is made) may not exceed $500,000.

"(b) The outstanding principal balance on all loans made or insured to or for a rural youth under this subtitle (as of the time the loan is made) may not exceed $10,000.

"SEC. 308. (a)(1) Except as provided in paragraph (2), the interest rate on a loan made or insured under this subtitle shall be determined by the Secretary.

"(2) The interest rate on a loan made or insured to or for a limited resource applicant under this subtitle shall be the greater of 5 per centum or a rate which is 5 per centum less than the rate established for loans made or insured in the case of applicants who are not limited resource applicants.

"(3) The Secretary may make payments to the borrower or lender of a loan insured under this subtitle in order to reduce the annual rate of interest paid by such borrower on such loan to a level equal to the annual rate of interest paid by a borrower on a loan made by the Secretary under this subtitle.

"(b)(1) Except as provided in paragraphs (2) through (4), the schedule of repayments on a loan made or insured under this subtitle shall be established by the Secretary in a manner consistent with the purpose of and need for the loan, the useful life of the security pledged for the loan, and the reasonable repayment ability of the borrower as determined in accordance with the plan of operation of the borrower approved under section 305.

"(2) Such loan repayment schedule shall require such borrower to make at least one annual installment payment on such loan during the period of the loan unless the Secretary defers repayment of the loan under section 309.

"(3) The period for the repayment of a real estate loan may not exceed forty years.

"(4)(A) Except as provided in subparagraph (B), the period for the repayment of a production loan may not exceed seven years.

"(B) The period for the repayment of a production loan used for the annual production of crops may not exceed one year.

"SEC. 309. (a) To be eligible for the consolidation, rescheduling, reamortization, or deferral of a loan made or insured under this subtitle, the borrower of the loan must file with the Secretary a revised plan of operation for using such loan or insured loan which justifies such action and demonstrates that such action will enable the borrower to carry out the terms and conditions of the loan.

"(b) The Secretary shall consolidate, reschedule, reamortize, or defer a loan made or insured under this subtitle if—

"(1) the Secretary—

"(A) approves the revised plan of operation referred to in subsection (a); and

"(B) determines that such action will assist in the orderly collection of the loan;

"(2) the borrower of the loan—

"(A) is unable to make payments on the loan in accordance with the original payment schedule established for the loan—

"(i) due to circumstances beyond the control of the borrower; or

"(ii) due to circumstances within the control of the borrower which the borrower agrees to correct in accordance with the revised plan of operation;

"(B) meets the eligibility criteria established for the loan under section 305, except that the Secretary may not require, as a condition of eligibility for such action, that the borrower be able to repay a loan other than a loan subject to such action; and

"(C) is cooperating with the Secretary in servicing the loan;

"(3) such action—

"(A) will enable the borrower to continue farming operations; and

"(B) is not taken solely to remove a delinquency in making payments on the loan or to delay liquidation of the loan; and

"(4) in the case of the consolidation of such loans, the Secretary consolidates—

"(A) real estate loans only if such loans have a period of repayment of less than forty years; and

"(B) production loans only if—

"(i) the loans to be consolidated were made to a borrower under section 306(b) for the same purpose; and

"(ii) the Secretary assures that only one note must be serviced for each such loan.

"(c)(1) The interest rate on a loan consolidated, rescheduled, or reamortized under this section shall be the lower of—

"(A) the rate required under section 308(a) to be paid on a loan made or insured under this subtitle on the date the loan was consolidated, rescheduled, or reamortized; or

"(B) the rate prescribed in the original note made for the loan.

"(2) If the borrower of a loan consolidated, rescheduled, or reamortized under this section qualified as a limited resource applicant at the time such action was taken and subsequently does not qualify as a limited resource applicant, the Secretary shall reschedule the loan in accordance with this section.

"(d)(1) Except as provided in paragraphs (2) through (4), the schedule of repayments on a loan consolidated, rescheduled, reamortized, or deferred under this section shall be established by the Secretary in a manner consistent with the purpose of and need for the loan, the useful life of the security pledged for the loan, and the reasonable repayment ability of the borrower as determined in accordance with the revised plan of operation referred to in subsection (a).

"(2) The period for the repayment of a real estate loan reamortized under this section may not exceed forty years from the date of such action.

"(3) The period for the repayment of a production loan consolidated or reamortized under this section may not exceed seven years from the date of such action.

"(4) If the Secretary elects to defer the payment of installments on principal or interest, or both, due on a loan made or insured under this subtitle, or consolidated, rescheduled, or reamortized under this section, the Secretary shall—

"(A) defer no more than three such installments;

"(B) require the borrower in each installment payment made on the loan to repay—

"(i) at least part of the interest payment due in such installment; and

"(ii) at the earliest possible date permitted under the revised plan of operation of the borrower, all of such payment due in such installment;

"(C) defer such payments for no longer than the period ending on the final due date on the loan;

"(D) encourage the borrower to make such payments as soon as the borrower is able to make such payments notwithstanding the fact the repayment period for the loan has not expired; and

"(E) give preference in deferring such loans to beginning farmers, limited resource applicants, and borrowers who have suffered production and economic losses due to natural or economic conditions.

"(e) If the Secretary modifies the terms of a loan under this section and determines that a new mortgage on property used to secure the loan is necessary to protect the loan priority of the Secretary, the Secretary may require that a new mortgage on such property be executed.

"(f)(1) If the Office of the General Counsel of the Department of Agriculture or a United States Attorney is taking servicing actions with respect to a loan made or insured under this subtitle or are planning to take such actions in the near future, the Administrator of the Farmers Home Administration may not take servicing actions under this subtitle with respect to such loan.

"(2) The Secretary may not take servicing actions with respect to a loan made or insured under this subtitle in order to circumvent any agreement to permit a graduated loan repayment schedule.

"SEC. 310. (a) If a loan made under this subtitle is secured by the principal residence of the borrower of the loan and the borrower defaults on the repayment of the loan and, as a result of such default, the borrower is required to forfeit the residence to the Secretary or to pay to the Secretary an amount equal to the equity of the borrower in the residence, the appropriate Director of the State office of the Farmers Home Administration may make a loan to the borrower in accordance with this section.

"(b) In order to be eligible to obtain a loan under this section, a borrower must have the ability (as determined by the Secretary) to repay the loan and otherwise meet the eligibility requirements established under section 305.

"(c) The amount of a loan made under this section may not exceed the lesser of—

"(1) an amount equal to the amount of equity the borrower has in such residence at the time such loan is made; or

"(2) the outstanding amount of principal and interest owed by the borrower to the Secretary on the loan referred to in subsection (a) on which the borrower has defaulted.

"(d) The interest rate on a loan made under this section shall be the rate required under section 308(a) to be paid on a loan made or insured under this subtitle on the date the loan is made.

"(e) The period for the repayment of a loan made under this section may not exceed twenty-five years.

"(f) If a borrower makes all payments due on a loan made under this section in accordance with the loan agreement entered into with respect to such loan, an action may not be brought against the borrower for the repayment of such loan or the loan referred to in subsection (a) on which the borrower has defaulted.

"SEC. 311. (a) Except as provided in subsection (b), to be eligible to obtain a loan under this subtitle, a borrower of the loan shall—

"(1) provide only such security for the loan as the Secretary determines is necessary to secure the loan, including real estate, buildings, machinery, equipment, crops, crop insurance, crop assignments, livestock product assignments, livestock, furniture, fixtures, inventory, accounts receivable, cash, stocks, bonds, personal and corporate guarantees, marketable securities, the cash surrender value of life insurance, or any combination thereof;

"(2) dispose of all real property which the Secretary determines is not essential to the operation of farm and nonfarm enterprises by the borrower;

"(3) in the case of a loan used for the annual production of crops or livestock, pledge such crops or livestock and any other property which the Secretary determines is necessary to secure the loan;

"(4) in the case of a real estate loan, pledge real estate to secure such loan; and

"(5) in the case of a loan secured by chattels whose loss would jeopardize the interests of the Federal Government, insure such chattels against hazards customarily covered by insurance in the surrounding community.

"(b) If a borrower provides security for a loan in accordance with subsection (a), the Secretary may not require as a condition of eligibility for the consolidation, rescheduling, reamortization, or deferral of the loan under section 309 that the borrower provide additional security for the loan.

"(c) If a borrower conveys real property to the Secretary in connection with a loan made under this subtitle, the Secretary shall permit the borrower to redeem the rights of the borrower in the property at any time during the five year period beginning on the date of such conveyance.".

CONFORMING AMENDMENTS

SEC. 4. (a)(1) Section 313 (as redesignated by section 3(2) of this Act) is amended—

(A) by inserting "or subtitle B" after "this subtitle" each place it appears in the second sentence of subsection (a), the third sen-

tence of subsection (c), the first sentence of subsection (d), and subsection (f)(1);

(B) by striking out "section 309A" in subsection (f)(6) and inserting in lieu thereof "section 323"; and

(C) by striking out "section 308, the last sentence of section 306(a)(1), and the last sentence of section 307" in the second sentence of subsection (g)(1) and inserting in lieu thereof "section 312, the last sentence of section 321(a)(1), and the last sentence of section 322".

(2) The second sentence of section 314 (as redesignated by section 3(2) of this Act) is amended by striking out "section 309A(a)" and inserting in lieu thereof "section 323(a)".

(3) Section 321(a)(7) (as redesignated by section 3(4) of this Act) is amended by striking out "sections 304(b), 310B, and 312(b), (c), and (d)" and inserting in lieu thereof "section 325".

(4) Section 322 (as redesignated by section 3(4) of this Act) is amended—

(A) in subsection (a)—

(i) by striking out "(A)" in paragraph (3)(A);

(ii) by striking out subparagraph (B) of paragraph (3);

(iii) by striking out "sections 304(b), 306(a)(1), and 310B" in paragraph (4) and inserting in lieu thereof "sections 321(a)(1) and 325"; and

(iv) by striking out subparagraph (B) of paragraph (6) and inserting in lieu thereof the following new subparagraph:

"(B) The authorities referred to in subparagraph (A) are—

"(i) the provisions of section 321(a)(1) relating to loans for recreational developments and essential community facilities;

"(ii) section 321(a)(15);

"(iii) clause (1) of section 325(a); and

"(iv) subsections (d) and (e) of section 325."; and

(B) by striking out "section 306" in the first sentence of subsection (c) and inserting in lieu thereof "section 321".

(5) Section 323 (as redesignated by section 3(4) of this Act) is amended—

(A) by striking out "sections 304(b), 306(a)(1), 306(a)(14), 310B, and 312(b)" in the second sentence of subsection (a) and inserting in lieu thereof "sections 321(a)(1), 321(a)(14), and 325";

(B) in subsection (b)—

(i) by striking out "section 309(a)" in the first sentence and inserting in lieu thereof "section 313(a)";

(ii) by striking out "section 306(a)(1)" in the first sentence and inserting in lieu thereof "section 321(a)(1)"; and

(iii) by striking out "section 308" in the second sentence and inserting in lieu thereof "section 312"; and

(C) by striking out "sections 306(a) and 310B" in subsection (g)(8) and inserting in lieu thereof "sections 321(a) and 325".

(6) Section 324 (as redesignated by section 3(4) of this Act) is amended by striking out "sections 308 and 309, the last sentence of section 306(a)(1), and the last sentence of section 307" and inserting in lieu thereof "sections 312 and 313, the last sentence of section 321(a)(1), and the last sentence of section 322".

(7) Section 325(d) (as redesignated by section 3(4) of this Act) is amended—

(A) by striking out "sections 304(b), 310B, and 312(b)" each place it appears in paragraphs (1), (2), and (3) and inserting in lieu thereof "this section"; and

(B) by striking out ", section 304, or section 312" in paragraph (5).

(8) Section 331B (7 U.S.C. 1981b) (as added by section 605 of the Emergency Agricultural Credit Act of 1984 (Public Law 98-258; 98 Stat. 139)) is repealed.

(9) Section 333 (7 U.S.C. 1983) is amended—

(A) by striking out "this title" in the matter preceding subsection (a) and inserting in lieu thereof "subtitle B";

(B) in subsection (b)—

(i) by striking out "sections 306, 310B, 314, and 321(a)(2)" and inserting in lieu thereof "sections 321, 325, and 327"; and

(ii) by striking out "; and for loans under section 321(a)(2), the Secretary shall require the recommendation of the county committee as to the making or insuring of the loan";

(C) by striking out "(or, in the case of a borrower under section 310D of this title, the borrower may be able to obtain a loan under section 302 of this title)" in subsection (c); and

(D) by striking out "subtitle A or B" in subsection (e) and inserting in lieu thereof "subtitle B".

(10) Section 338(e) (7 U.S.C. 1988) is amended by inserting "or B" after "subtitle A".

(11) The first sentence of section 344 (7 U.S.C. 1992) is amended by striking out "section 304(b), 306(a)(1), 310B, 312(b), or 312(c)" and inserting in lieu thereof "section 321(a)(1) or 325".

(12) Section 346 (7 U.S.C. 1994) (as amended by section 607 of the Emergency Agricultural Credit Act of 1984 (Public Law 98-258; 98 Stat. 140)) is amended by striking out subsections (b), (d), and (e) and redesignating subsection (c) as subsection (b).

(b)(1) The second sentence of section 607(c)(6) of the Rural Development Act of 1972 (7 U.S.C. 2204b(c)(6)) is amended by striking out "section 306(a)(12) of the Consolidated Farm and Rural Development Act" and inserting in lieu thereof "section 321(a)(12) of the Consolidated Farm and Rural Development Act".

(2) Section 9 of the Act entitled "An Act to amend the emergency loan program under the Consolidated Farm and Rural Development Act, and for other purposes", approved April 20, 1973 (15 U.S.C. 636 note), is amended to read as follows:

"SEC. 9. No portion of any loan made by the Small Business Administration in connection with any disaster occurring on or after April 20, 1973 under sections 7(b) (1), (2), or (4) of the Small Business Act (15 U.S.C. 636(b) (1), (2), or (4)) shall be subject to cancellation under the provisions of any law.".

(3) The first sentence of section 18(a) of the Small Business Act (15 U.S.C. 647(a)) is amended by striking out "prior" and all that follows through "Act, and".

(4) The last sentence of section 7(b)(3) of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2106(b)(3)) is amended by striking out "section 306(a)(7) of the Consolidated Farm and Rural Development Act" and inserting in lieu thereof "section 321(a)(7) of the Consolidated Farm and Rural Development Act".

(5)(A) The first sentence of the first section of the Act entitled "An Act to provide for loans to Indian tribes and tribal organizations, and for other purposes", approved April 11, 1970 (25 U.S.C. 488), is amended by striking out "sections 308 and 309, of the Consolidated Farmers Home Administration Act of 1961, as amended (7 U.S.C. 1988(c), 1928, 1929)," and inserting in lieu thereof "sections 312 and 313, of the Consolidated Farm and Rural Development Act".

(B) Section 5 of such Act (25 U.S.C. 492) is amended by striking out "section 307(a) of the Consolidated Farmers Home Administration Act of 1961, as amended," and inserting in lieu thereof "section 322(a) of the Consolidated Farm and Rural Development Act".

(6)(A) Section 515(b)(4) of the Housing Act of 1949 (42 U.S.C. 1485(b)(4)) is amended by striking out "section 309 and the second and third sentences of section 308 of the Consolidated Farmers Home Administration Act of 1961, including the authority in section 309(f)(1) of that Act" and inserting in lieu thereof "section 313 and the second and third sentences of section 312 of the Consolidated Farm and Rural Development Act, including the authority in section 313(f)(1) of such Act".

(B) The third sentence of section 517(b) of such Act (42 U.S.C. 1487(b)) is amended by striking out "(7 U.S.C. 1929)" and inserting in lieu thereof "(section 313 of the Consolidated Farm and Rural Development Act)".

(7) Section 901(b) of the Agricultural Act of 1970 (42 U.S.C. 3122(b)) is amended by striking out "section 306(a)(7) of the Consolidated Farmers Home Administration Act of 1961, as amended (7 U.S.C. 1926)" and inserting in lieu thereof "section 321(a)(7) of the Consolidated Farm and Rural Development Act".

(8) Section 415(c) of the New Communities Act of 1968 (42 U.S.C. 3914(c)) is amended by striking out "section 306(a)(2) of the Consolidated Farmers Home Administration Act" and inserting in lieu thereof "section 321(a)(2) of the Consolidated Farm and Rural Development Act".

(9) Section 718(c) of the Urban Growth and New Community Development Act of 1970 (42 U.S.C. 4519(c)) is amended by striking out "section 306(a)(2) of the Consolidated Farmers Home Administration Act" and inserting in lieu thereof "section 321(a)(12) of the Consolidated Farm and Rural Development Act".

(10) Paragraph (5) of section 313(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5153(a)(5)) is amended to read as follows:

"(5) section 321 of the Consolidated Farm and Rural Development Act;".

(11) The first sentence of section 213(c)(1) of the Biomass Energy and Alcohol Fuels Act of 1980 (42 U.S.C. 8813(c)(1)) is amended—

(A) by striking out "section 309 of the Consolidated Farm and Rural Development Act" and inserting in lieu thereof "section 313 of the Consolidated Farm and Rural Development Act"; and

(B) by striking out "section 309A of such Act" and inserting in lieu thereof "section 323 of such Act".

BRIEF SECTION-BY-SECTION ANALYSIS—"CONSOLIDATED AGRICULTURAL ADJUSTMENT LOAN ACT OF 1985"

Section 302. Includes the definitions to be used in the act establishing the Agricultural Adjustment Loan program. The section maintains definitions found in current law.

Section 303. Establishes application requirements for applicants, maintaining the credit elsewhere test. To maintain continuity and avoid confusion, the changes that the bill makes in application requirements are only those necessary to carry out the overall purpose of the Act, which is to consolidate seven loan programs into one.

Section 304. Establishes a veterans preference in approving applications.

Section 305. Establishes eligibility requirements for applicants, maintaining most re-

quirements found in current law. Eligibility requirements for corporations are left to the discretion of the Secretary. The same eligibility process and the same set of regulations will apply, regardless of the purpose for which a producer seeks a loan (except rural youth loans), thus greatly streamlining the loan operation.

Section 306. This section sets out the purposes of the consolidated loan. The purposes for the new Agricultural Adjustment loan include the purposes found currently in the operating, farm ownership, soil and water, economic emergency, limited resource, recreation, and rural youth loan programs. (The emergency loan [EM] program is not included.) The accumulated loan purposes expand loan flexibility within a single loan program. Rigid divisions between loan programs will be eliminated, which in turn will accelerate the loan process, reduce paperwork, minimize borrower confusion, and improve FmHA efficiency.

Section 307. Establishes a total loan limit of $500,000 for Agricultural Adjustment loans, for both insured and guaranteed loans. No division is required among the several loan purposes. Under the bill, rural youth loans may not exceed $10,000. A single loan limit will emphasize a consolidation of these aforementioned farm loan programs. Currently, insured operating loans have a $100,000 limit, guaranteed at $200,000. Insured farm ownership loans have a limit of $200,000, guaranteed at $300,000.

Section 308. Allows Secretary discretion in setting loan interest rates. Limited resource interest rates would be the greater of 5 percent or a rate 5 percent below the regular established rate set by the Secretary. Authority for limited resource graduation is included. Loan repayment requirements are similar to those in current law.

Section 309. Establishes conditions for loan consolidation, rescheduling, reamortization and deferral. Once the plan is approved, the Secretary will be required to accept loan servicing if financial stress is due to circumstances beyond the borrower's control. The Secretary would be prohibited from requiring repayment ability as a condition for loan servicing for any loan other than the loan or loans being serviced. Loans which are rescheduled, reamortized, or consolidated will retain the interest rate in the original note or the current rate, whichever is lower.

Section 310. Establishes the security requirements for an Agricultural Adjustment loan. The Secretary would be prohibited from requiring additional security as a condition for loan consolidation, rescheduling, reamortization, or deferral. In making loans, the Secretary could take as collateral only that necessary to secure the loan. Any real property forfeited could be redeemed by the borrower within 5 years.

Upon default, the Secretary would be authorized to make a separate loan to the borrower to cover the borrower's principal residence, thereby allowing the borrower to retain possession of his home.

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By Mr. HATCH (for himself and Mr. THURMOND):

S. 436. A bill to amend section 1979 of the Revised Statutes (42 U.S.C. 1983), relating to civil actions for deprivation of rights, to limit the applicability of that statute to laws relating to equal rights, and to provide a special defense to the liability of political subdivisions of States; to the Committee on the Judiciary.

MUNICIPAL LIABILITY

Mr. HATCH. Mr. President, during the post-Civil War Reconstruction era, the 42d Congress passed the Civil Rights Act of 1871 to protect persons from the Deprivation under the color of State law, "of any rights, privileges, or immunities secured by the Constitution of the United States." The Revised Statutes of the United States enacted in 1874, contained a remedial provision, now 42 U.S.C. 1983, for securing these rights. I am in strong agreement with the intent of these laws—to guarantee to every American the rights secured by the Constitution and laws providing for equal rights. Indeed, I feel one of our most sacred obligations is to insure the constitutional rights of all our citizens.

However, over the past 23 years, due to a pair of recent Supreme Court rulings that have caused literal havoc in the interpretation of section 1983, a virtual explosion has occurred in the number of suits brought under that section.

In 1961, according to the administrative office of the U.S. courts, 270 civil rights cases were brought in Federal courts; this figure and those following exclude cases in which the United States was a party. Unfortunately, statistics are not available on specifically the number of section 1983 cases brought in Federal courts, but, in practice, the vast majority of these cases are suits against State and local governments, virtually all of which allege a section 1983 claim. By 1976 the number of these suits had leaped to 10,585; in addition, 6,958 State prisoners suits were brought—all of which would be section 1983 suits; habeas corpus suits are not included in this figure. During 1984 the number of civil rights suits brought in Federal court had increased to 19,299, plus 18,034 State prisoners suits. Therefore, between 1976 and 1984 the number of civil rights suits brought in Federal court—still excluding suits in which the United States was party—per year increased from 17,543 to 37,333, a 113-percent increase.

Thus, a very conservative estimate would indicate that 30,000 suits were brought alleging section 1983 claims against State and local governments or officials in 1984 alone. Some would estimate the number to be closer to 33,000. An extremely large amount of taxpayer money must be spent to merely defend States and municipalities in these suits.

This explosion of civil rights lawsuits was almost entirely the result of two Supreme Court cases, which in reality had little or nothing to do with anyone's constitutional rights. The following is an explanation of the cases as well as their undesired effects.

In the case of *Maine* v. *Thibqutot*, 448 U.S. 1 (1980), the Court expressly ruled, for the first time ever, that the phrase "and laws" was intended by Congress to provide a section 1983 remedy for deprivations of rights secured by any law of the United States. Civil actions may now be brought against State and local officials under 42 U.S.C. 1983 based on violations of laws which have no relevance whatsoever to deprivations of constitutional or statutory equal rights.

In *Owen* v. *City of Independence*, 445 U.S. 622 (1980), the court held that local governmental entities may not assert the good faith of their agent as a defense to liability under section 1983 suits. In other words, a local government may be liable in damages for violating a constitutional right that was unknown when the event occurred.

The burdens imposed by these holdings will be onerous. At the very least, our crowded courts will become even more crowded; our tax dollars will increasingly be spent in damages suits instead of providing needed services. Further, our State and local governments will be paranoid to the point of paralysis lest their action or inaction be later interpreted as unconstitutional and thus subject to costly damage suits.

The court has been careful to point out in many of its section 1983 cases, including Owen and Thiboutot, that Congress could, if it chose to do so, modify the statute or limit its application to certain types of statutes. Although the Supreme Court has been far from unimaginative in its section 1983 decisions over the last 20 years, its most recent interpretation of congressional silence compels us to let our voice be heard on this matter.

Mr. President, because the Court's recent rulings, in the cases of Maine v. Thiboutot and Owen v. City of Independence, involve areas of the law which are better left to Congress than to judicial activism, I wish to introduce some relatively simple, yet important amendments to 42 U.S.C. 1983. I want to emphasize that my amendments will not compromise the intent of section 1983—to provide persons with a remedy for violations of rights secured by the Constitution and laws providing for equal rights.

MAINE VERSUS THIBOUTOT

The Thiboutots were recipients of AFDC benefits administered by the Maine Department of Human Services. The amount paid to the family was calculated on the number of dependents of Mr. Thiboutots—three children from a previous marriage—rather than on the number of dependents he and his present wife claimed. Their petition for a reassessment of the benefits was based on amounts due them as parents of eight children. The Superior Court of Maine, in an order affirmed by the Supreme Judicial Court of Maine, required the agency

to make the requested changes and adopt new policies for similar cases.

The Court observed that the debate over the "scanty legislative history" of section 1983 did not result in a definitive answer on the intended scope of section 1983. Justice Brennan, writing for the majority of the Court, interpreted the "plain language" of section 1983 as providing a broad base for claims arising not only out of violations of constitutional rights, but also out of statutory rights unrelated to equal rights. Such claims are not limited to constitutional rights or equal rights created by statute, reasons Justice Brennan, because the section merely states "and laws" and "Congress attached no modifiers" to explain what type of laws were intended to be covered by the section.

The result is that a cause of action under section 1983 may now rest on the violation or deprivation of any rights secured by any statute. In other words, a disgruntled citizen, feeling that an official deprived him or her of some benefit under a program provided for by Federal law, may sue that official for damages under section 1983. Prior to this decision, section 1983 cases only involved rights secured by the Constitution and statutes which provided for equal rights. Now, the Court has transformed this remedy into a catchall cause of action for the redress of any infringement of statutory rights.

In his dissenting opinion, Justice Powell, joined by the Chief Justice and Justice Rehnquist, stated that the "legislative history alone refutes the Court's interpretation of section 1983," and, further, that "until today this court never had held that section 1983 encompasses all purely statutory claims."

CONSEQUENCES OF THIBOUTOT

Even if we assume that the court's interpretation of legislative history and legal precedent are correct, an assumption that is questionable at best, the devastating effect of the decision in *Thiboutot* on our State and local governments would necessitate our action.

Commenting on the ruling in *Thiboutot,* the Wall Street Journal said that the decision:

> Couldn't do more harm if it were deliberately designed to subvert the federal system and bankrupt cities from coast to coast.

I do not think this statement is too far off the mark.

Justice Powell illustrates the new areas likely to be affected by the court's extension of liability. I include the appendix to his opinion at this point, because of the importance of understanding the extent to which this holding will intrude into the performance of State and local government activities.

Note the wide range of programs included in the list:

A small sample of statutes that arguably could give rise to § 1983 actions after today may illustrate the nature of the "civil rights" created by the Court's decision. The relevant enactments typically fall into one of three categories: (A) regulatory programs in which States are encouraged to participate, either by establishing their own plans of regulation that meet conditions set out in federal statutes, or by entering into cooperative agreements with federal officials; (B) resource management programs that may be administered by cooperative agreements between federal and state agencies; and (C) grant programs in which federal agencies either subsidize state or local welfare plans that meet federal standards.

A. JOINT REGULATORY ENDEAVORS

1. Federal Insecticide, Fungicide, and Rodenticide Act, 86 Stat. 973 (1972), as amended, 7 U.S.C. §§ 136 et seq.; see, e.g., 7 U.S.C. §§ 136u, 136v.

2. Federal Noxious Weed Act of 1974, 88 Stat. 2148 (1975), 7 U.S.C. §§ 2801-2813; see 7 U.S.C. § 2808.

3. Historic Sites, Buildings, and Antiquities Act, 49 Stat. 666 (1935), as amended, 16 U.S.C. §§ 461-467; see 16 U.S.C. § 462(e).

4. Fish and Wildlife Coordination Act, 48 Stat. 401 (1934), as amended, 16 U.S.C. § 661-666c; see 16 U.S.C. § 661.

5. Anadromous Fish Conservation Act, 79 Stat. 1125 (1965), as amended, 16 U.S.C. § 757a-757d; see 16 U.S.C. § 757a(e).

6. Wild Free-Roaming Horses and Burros Act, 85 Stat. 649 (1971), as amended, 16 U.S.C. §§ 1331-1340; see 16 U.S.C. § 1336.

7. Marine Mammal Protection Act of 1972, 86 Stat. 1027, as amended, U.S.C. §§ 1361-1407; see 16 U.S.C. § 1379.

8. Wagner-Peyser National Employment System Act, 48 Stat. 113 (1933), 29 U.S.C. §§ 49 et seq; see 29 U.S.C. § 49g (employment of farm laborers).

9. Surface Mining Control and Reclamation Act of 1977, 91 Stat. 447, 30 U.S.C. §§ 1201-1328; see 30 U.S.C. § 1253.

10. Interstate Commerce Act Amendments of 1935, 49 Stat. 548, as amended, 49 U.S.C. § 11502(a)(2) (enforcement of highway transportation law).

B. RESOURCE MANAGEMENT

1. Laws involving the administration and management of national parks and scenic areas: e.g., Act of May 15, 1965, § 6, 79 Stat. 111, 16 U.S.C. § 281e (Nez Perce National Historical Park); Act of Sept. 21, 1959, § 3, 73 Stat. 591, 16 U.S.C. § 410u (Minute Man National Historical Park); Act of Oct. 20, 1972, § 4, 86 Stat. 1302, 16 U.S.C. § 460bb-3(b) (Muir Woods National Monument).

2. Laws involving the administration of forest lands: e.g., Act of March 1, 1911, § 2, 36 Stat. 961, 16 U.S.C. §§ 563; Act of Aug. 29, 1935, ch. 808, 49 Stat. 963, 16 U.S.C. §§ 567a-567b.

3. Laws involving the construction and management of water projects: e.g., Water Supply Act of 1958, § 301, 72 Stat. 319, 43 U.S.C. § 390b; Boulder Canyon Project Act, §§ 4, 8, 45 Stat. 1058, 1062 (1928), as amended 43 U.S.C. §§ 617c 617g; Rivers and Harbors Act of 1899, § 9, 30 Stat. 1151, 33 U.S.C. § 401.

4. National Trails System Act. 82 Stat. 919 (1968), as amended, 16 U.S.C. §§ 1241-1249; see 16 U.S.C. § 1246(h).

5. Outer Continental Shelf Lands Act Amendment of 1978, § 208, 92 Stat. 652, 43 U.S.C. § 1345 (oil leasing).

C. GRANT PROGRAMS

In addition to the familiar welfare, unemployment, and medical assistance programs established by the Social Security Act, these may include:

1. Food Stamp Act of 1964, 78 Stat. 703, as amended, 7 U.S.C. §§ 2011-2025; see, e.g., 7 U.S.C. §§ 2020e-2020(g).

2. Small Business Investment Act of 1958, § 602(d)(1), 72 Stat. 698, as amended, 15 U.S.C. § 636(d).

3. Education Amendments of 1978, 92 Stat. 2153, as amended, 20 U.S.C. §§ 2701 et seq.; see, e.g., 20 U.S.C. §§ 2734, 2902.

4. Federal-Aid Highway legislation, e.g., 21 U.S.C. §§ 128, 131.

5. Comprehensive Employment and Training Act Amendments of 1978, 92 Stat. 1909, 29 U.S.C. §§ 801 et seq.; see, e.g., 29 U.S.C. §§ 823, 824.

6. United States Housing Act of 1937, as added, 88 Stat, 653 (1974), as amended, 42 U.S.C. § 1437 et seq.; see e.g., 42 U.S.C. §§ 1437d(c), 1437j.

7. National School Lunch Act, 60 Stat. 230 (1946), as amended, 42 U.S.C. §§ 1751 et seq.; see, e.g., 42 U.S.C. § 1758.

8. Public works and Economic development Act of 1965. 79 Stat. 552, as amended, 42 U.S.C. §§ 3121 et seq.; see, e.g., 42 U.S.C. §§ 3132, 315a, 3243.

9. Justice System Improvement Act of 1979, 93 Stat. 1167, 42 U.S.C. §§ 3701-3797; see e.g. 42 U.S.C. §§ 3742, 3744(c).

10. Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 1109, as amended, 42 U.S.C. §§ 5601 et seq.; see, e.g., 42 U.S.C. § 5633.

11. Energy Conservation and Production Act of 1976, 90 Stat. 1125, as amended, 42 U.S.C. §§ 6801 et seq.; see, e.g., 42 U.S.C. §§ 6805, 6836.

12. Developmentally Disabled Assistance and Bill of Rights Act, 89 Stat. 486 (1975), as amended, 42 U.S.C. §§ 6001 et seq.; see, e.g., §§ 6011, 6063.

13. Urban Mass Transportation Act of 1964, 78 Stat. 302, as amended, 49 U.S.C. §§ 1601 et seq.; see e.g., §§ 1602, 1604(g)(m).

Now, "virtually every * * * program, together with the State officials who administer [them] becomes subject to Federal judicial oversight at the behest of a single citizen, even if such a dramatic expansion of Federal court jurisdiction never would have been countenanced when these programs were adopted." See *Chapman* v. *Huston Welfare Rights Org.,* 441 U.S. 600, 645 (1978), (concurring opinion, Justice Powell).

Ironically, with the expenses of increased litigation and court-ordered spending that will accompany this decision, local governments will be less able to implement Federal programs than they were before the ruling in Thiboutot.

This is not to say that a person should be left without a remedy when a State official harms him in violation of a Federal statute. In 1980, Congress abolished the amount-in-controversy requirement for Federal question jurisdiction. This means that any person has access to Federal courts on the basis of a violation of a Federal statute. If the Federal statute does not specifically grant such access, it can be implied from congressional intent under the doctrines of Cort v. Ash, another Supreme Court safeguard to

guarantee violations of Federal rights have a remedy. Because injured persons can get into Federal court without resort to 42 U.S.C. 1983 for violations of Federal law, the primary significance of the Thiboutot decision becomes monetary. By alleging a civil rights violation under *Thiboutot*, lawyers may become eligible for court-awarded attorney fees, even though Congress has decided not to provide a fee-shifting provision for the violated Federal statute. *Thiboutot* has become a way for lawyers to get easy compensation, instead of a way to vindicate Federal rights. Those rights can be adjudicated in Federal court without *Thiboutot*. It only makes sense for Congress to limit this "back door" means of shifting legal fees to violations of traditional civil rights.

Justice Powell summed up the effect of the Thiboutot decision:

> No one can predict the extent to which litigation from today's decision will harass State and local officials; nor can one foresee the number of new filings in our already overburdened courts. But no one can doubt that these consequences will be substantial.

As we all know, our local governments face the problem of providing services to the public with limited budgets. Our State and local governments are already strapped. Why should we leave them in a tighter straitjacket?

PROPOSED AMENDMENT

My amendment to section 1983 would add the words "and by any law providing for equal rights" in the place of the ambiguous and broad "and laws" language. The text would then read:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights privileges, or immunities secured by the Constitution and by any law providing for equal rights of citizens or of all persons within the jurisdiction of the United States, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

This wording would provide that section 1983 actions be based on deprivations of those rights secured by the Constitution and by those laws which provide for equal rights. Thus, State and local governments would not face the harassment that is sure to follow the decision in Thiboutot, while at the same time, the civil rights of individuals will be protected as Congress originally intended.

OWEN VERSUS CITY OF INDEPENDENCE

In this decision, a dismissed city police chief sued the city, city manager, and city council for violating his due process rights. The Supreme Court, reversing the court of appeals, held that the city was liable to the police chief because its ordinance allowing his summary dismissal was unconstitutional and contravened the Court's holdings in *Roth* v. *Board of Regents*, 408 U.S. 564 (1972) and *Perry* v. *Sindermann*, 408 U.S. 593 (1972). These decisions had been handed down after the actions taken by the city of Independence. Therefore, the district court had allowed a good faith defense because the city and its officials could not have anticipated the Supreme Court's future interpretations of constitutional law. The Supreme Court, however, disallowed the good faith defense and held the city liable even though it had no way of predicting the Court's actions. The Court reasoned that since Congress was silent on municipal immunity, no immunity was intended.

Justice Powell, joined by the Chief Justice, Justice Rehnquist, and Justice Stewart, stated in dissent:

> This strict liability approach inexplicably departs from this court's prior decisions under section 1983 and runs counter to the concerns of the 42d Congress when it enacted the statute. The court's ruling also ignores the vast weight of common-law precedent as well as the current state of municipal immunity.

The dissenters also noted that—

> Municipalities . . . have gone in two short years from absolute immunity under section 1983 to strict liability.

CONSEQUENCES OF OWEN

Again, even if we accept the questionable use of legislative history and legal precedent, the policy considerations of this ruling force us to act. The ruling is not only unfair in holding a city responsible for violating a right which first came into existence after the city acted, but it is also detrimental in shackling local governments with the need to predict future Federal court decisions. In this ruling, the Court has administered what could be, for many of our local governments, a fatal dose of municipal immobilization.

While the Court could find no reason for any immunity for local governments, it has given numerous reasons for immunity to government officials such as judges, police officers, school board members, prison officials, and prosecutors. In Owen, the Court stated that—

> We concluded that overriding considerations of public policy nevertheless demanded that the official be given a measure of protection from personal liability

The Court's justification for individual immunity was—

> That the threat of personal monetary liability will introduce an unwarranted and unconscionable consideration into the decision making process, thus paralyzing the governing official's decisiveness and destorting his judgment on matters of public policy.

Justice Harlan also listed reasons for granting immunity to government officials:

> Officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties—suits which would consume time and energies which would otherwise be devoted to government service . . . *Barr* v. *Matteo*, 360 U.S. 564.

The Court stated that these considerations did not apply when the damage award comes from the public treasury instead of the official's pocket.

With such reasoning, the Court must assume that our State and local governments are guided by irresponsible individuals who would be prudent with their own money but would not flinch at the risk of depleting the public treasury. This type of official is not characteristic of the men and women I have associated with, in Utah and throughout the country, who take seriously their trust over the taxpayer's money. State and local leaders like these will be forced to continually look over their shoulder and into the mind of the Federal judiciary to determine future decisions—lest ruinous judgments threaten municipal solvency. Each decision will be made with constant consideration of section 1983 liability, and officials will no doubt feel the pressure of accountability to citizens and colleagues for costly judgments. Also, small towns, where retained counsel is an unaffordable luxury, will now be forced to cut back on services to try to protect themselves by retaining counsel. Do all these concerns not introduce "an unwarranted and unconscionable consideration into the decisionmaking process?" Since a municipality's actions are essentially the actions of its chief officials and since most of our local officials are conscientious in their stewardship over public funds, I see little logic in distinguishing between the actions of the municipality and the acts of the individual officials: therefore, the dire effects that the Court sees in a lack of immunity for an individual official also apply to the lack of municipal immunity.

The Court also reasoned that the municipality's liability for constitutional violations is a proper concern of its officials. I certainly agree that the constitutional rights of individuals should be of the utmost concern in the decisions of municipalities and that they should be liable for violations of existing constitutional rights, but I do not agree that municipalities should be immobilized by rights that have not been invented yet. I do not think that the Supreme Court itself could predict future constitutional rights—in the Owen case, for example, four justices found no constitutional violation while five found that there was a violation. Local governments will need more

than counsel, they will need a crystal ball.

Furthermore, the doctrine of separation of powers provides that some Government decisions should be insulated from review by the courts. A costly damage judgment or court-ordered spending, where officials have acted in good faith, represents a needless intrusion into municipal decision-making. As Justice Powell noted in Owen:

> The allocation of public resources and the operational policies of the government itself are activities that lie peculiarly within the competence of the executive and legislative, bodies. When charting those policies, a local official should not have to gauge his employer's possible liability under section 1983 if he incorrectly—though reasonably and in good faith—forecasts the course of constitutional law. Excessive judicial intrusion into such decisions can only distort municipal decision-making and discredit the courts. Qualified immunity would provide presumptive protection for discretionary acts, while still leaving the municipality liable for bad faith or unreasonable constitutional deprivations.

Another problem, as Justice Powell pointed out, is that the Court's decision in this case is completely out of step with the prevailing situation of the law of municipal immunity in the States. Most States have some form of immunity, the most common being a qualified immunity. Only five States practice the form of blanket immunity introduced by the Court in Owen.

Finally, Judge Learned Hand once observed:

> To submit all officials, the innocent as well as the guilty to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again, the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be a means of punishing public officers who have been truant at their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation. *Gegoire* v. *Biddle,* 177F. 2d 579, 581. Quoted in *Barr* v. *Matteo.*

PROPOSED AMENDMENT

In its Owen decision, the Court provides for municipal liability because Congress had not provided for municipal immunity. The second amendment which I propose today will provide that municipalities and other political subdivisions of States shall have a good faith defense in section 1983 actions. This new section on the liability of political subdivisions will read:

> No civil action may be brought against a political subdivision of a State under this section if the political subdivision acted in good faith with a reasonable belief that the actions of the political subdivision were not in violation of any rights, privileges, or immunities secured by the Constitution or by laws providing for equal rights of citizens or persons.

Section 1983 will continue to allow recovery when there had been an intentional or bad faith violation by the municipality, or, in other words, when officials "knew or should have known that their conduct violated the constitutional norm." (*Procunier* v. *Navarette,* 434 U.S., a 562.) Municipalities will be protected when they have acted in good faith. This amendment strikes an equitable balance between two very important considerations—the constitutional rights of individuals and the ability of local governments to serve all the people.

STATUTE OF LIMITATIONS

Over the past 20 to 25 years, a stark discrepancy has existed as to which statute of limitations should be utilized for civil rights violations. Federal judges have virtually vacilated from one end of the spectrum to the other. One court requires the application of the limitation of the State wherein the alleged violation occurred (*Briley* v. *California,* 564 F.2d 849; *Jennings* v. *Shuman,* 567 F.2d 1213), while another court demands the application of the statute of limitations of the forum State, or the State wherein the civil rights violation was adjudicated (*Jones* v. *Bales,* 480 F.2d 805). Such incongruency and unpredictability by the judicial system on this matter has led many on a search for a resolution; a resolution that would bring order and uniformity to the present lack thereof.

The "rule" generally adhered to by the Federal courts is to use the limitation of the State wherein the violation was perpetrated (*Jennings* v. *Shuman,* 567 F.2d 1213); this alone, however, poses a major problem. Present State limitations extend all the way from 180 days (*Warren* v. *Norman Realty Co.,* 375 F.Supp. 478), to 15 years (*Graffals Gonzalez* v. *Garcia Santiago,* 550 F.2d 687), depending on the location and the offense. For example, if one were to be tried for a civil rights infringement in Alabama, a 1-year statute of limitations would most likely be used (*Boshell* v. *Alabama Mental Health Board,* 473 F.2d 1369); if tried in Louisiana, the general 10-year "catch-all" limitation could be applied (*Heyn* v. *Board of Supervisors,* 417 F.Supp. 603); if in the commonwealth of Puerto Rico, the variability of a 1-year to a 15-year limitation would be entirely possible *Graffals Gonzalez* v. *Garcia Santiago,* 550 F.2d 687); and finally, in Colorado, in light of the fact that no statute of limitations has officially been declared for some offenses, the sky could essentially be the limit (*Salazar* v. *Dowd,* 256 F. Supp. 220).

In referring to a thoroughly prepared analysis by Mr. Daniel E. Feld, J.D., entitled, "What Statute of Limitations is Applicable to Civil Rights Action Brought Under 42 U.S.C.S. Section 1983," we find that fortunately, some States, seeking to establish a common ground whereon litigants of all section 1983 cases can meet, have adopted a single limitation, thus providing a most needed element of certainty and uniformity. Other States, however, have chosen varying statutes of limitations for 1983 cases, "Depending on the facts of the case" (American Law Reports, vol. 45, p. 553). Such indecision has overwhelmed our already encumbered court system requiring virtually a separate ruling for each individual suit.

I draw your attention now to three vividly representative cases that have recently been adjudicated. The lack of judicial limitation uniformity when rendering a final opinion will become blatantly obvious. The first two cases I present successively to show the lack of direct correlation between the decisions.

A 1978 Pennsylvania U.S. District Court ruling held that, for charges of alleged malicious apprehension and prosecution, the Pennsylvania 1-year statute of limitations was correctly applied (*Kedra* v. *Philadelphia,* 454 F.Supp. 652). As contradictory as it may seem, an identical case was filed in the Third Circuit Court of Appeals challenging the 6-year statute of limitations in New Jersey for similar civil rights violations. The New Jersey 6-year limitation was upheld (*Butler* v. *Sinn,* 423 F.2d 1116), justifiably casting doubt upon the Pennsylvania 1-year limitation.

Questions quickly arise in one's mind. First, who is right? Second, how can such disparity exist for similar offenses? And third, can such incongruency between State statutes lead to an orderly consideration of limitation suits on the Federal level?

Allow me to cite a final case that will further leave us groping for stability and a solid foundation to which we can refer for security.

An alleged constitutional rights infringement was adjudicated in the Second District Circuit Court of Appeals. The court stated, and I quote, "that a section 1983 complaint may contain more than one cause of action and thus may require the borrowing and the application of more than one State statute of limitations" (*Williams* v. *Walsh,* 558 F.2d 667).

Where is the necessary predictability, stability, and uniformity that will allow our court system to be freed of the onerous burden of hearing each individual case, and then subsequently try to determine the correct statute of limitations to apply from the existing diverse possibilities? As rhetorical as

this question may appear, the situation irrefutably exists.

In view of the difficulties of uncertainty and unpredictability, not to mention the vagaries of fruitless litigation, over an issue easily decided by a simple exercise of legislative line-drawing, I propose an 18-month statute of limitations for all section 1983 violations. Given the current inconsistencies, plaintiffs, defendants, and the courts alike would benefit from the creation of a uniform statute of limitations.

EXHAUSTION

Another section 1983 problem that demands a resolution is the apparent overzealousness of the Federal courts to rule on cases that were initially to be reserved for States and their adjudicatory processes.

During the proposal and subsequent enactment of the Ku Klux Act of 1871, presently represented in the 42 U.S.C. 1983 language, Gen. James A. Garfield, a major spokesman on the subject, supported the bill as "so guarded as to preserve intact the autonomy of the States, the machinery of the State governments, and the municipal organizations established under State laws."

The framers of the Constitution, after having been subjected to stringent controls of an authoritative English monarch, established a division of powers doctrine that was to be inherent in the success of a demoractic republic.

The venerable Justice Frankfurter grasped the careful balance struck by the 42d Congress when it drafted the 1871 act. The act conferred upon Federal courts the jurisdiction to prevent State officers and judges acting "under color of State law" from denying individuals their constitutional entitlements. When, on the other hand, a State has proven its willingness to enforce those rights, "it is to the State tribunals that individuals within a State must look for redress against other individuals within that State;" 365 U.S. 167, 238. This balance struck in 1871 "reflects to no small degree the recognition that to no small degree the effectiveness of the legal order depends upon the infrequency with which it solves its problems by resorting to ultimate determinations of power;" Id. at 241. This exhaustion provision merely restores the careful balance enacted by the 42d Congress and permits States to execute their role as "primary guardians of the fundamental security of person and property." Id. at 237.

This exhaustion provisions will state that "the Federal court shall not have jurisdiction—in section 1983 suits—unless the person filing such action has exhausted all administrative and judicial remedies available in the courts of the State." Chief Justice Burger and Justice Powell have described how this provision would work in a recent Supreme Court opinion:

It does not defeat federal court jurisdiction, it merely defers it. It permits states to correct violations through their own procedures and it encourages the establishment of such procedures.

In other words, a litigant would still have ultimate recourse to Federal courts to enforce section 1983 rights, but that recourse would come only after the State had first had an opportunity to correct the violation. If the states correction is not adequate, the Federal court would have jurisdiction to take the case and decide the unresolved issues. This does not extinguish any rights whatsoever, but merely redirects the adjudication to State courts in the first instance.

This would have many benefits. For instance, Federal courts would profit from the detailed factual record and earlier legal findings of State institutions. The issues would be narrowed and focused by the time they reached the Federal bench. Furthermore, the States familiarity with its own laws and regulations would facilitate both flexibility to adapt to local needs and uniformity in statewide administration. In the words of a Harvard Law Review article:

Even a limited exhaustion rule would not only serve the state's interest in controlling its own affairs and correcting its officials but could also increase state sensitivity to federal rights and encourage implementation of adequate procedural responses to constitutional objections.

CONCLUSION

Evidently tired of waiting for Congress to break its silence on the intended scope of 42 U.S.C. 1983, the U.S. Supreme Court has rendered decisions in Maine versus Thiboutot and Owen versus City of Independence which will severely impair the ability of our local governments to serve the people, while doing little for individual constitutional rights. It is most essential that Congress let its voice be heard. Justice Rehnquist foresaw such a need in his dissenting opinion in Monell versus City of New York Department of Social Services:

Only Congress, which has the benefit of the advice of every segment of this diverse Nation, is equipped to consider the results of such a drastic change in the law. It seems all but inevitable that it will find it necessary to do so after today's decision—Monell versus City of New York Department of Social Services, 436 U.S. 658,715—dissenting opinions.

In closing, I would like to remind my colleagues of a few observations of Justice Sandra O'Connor when she was still a State court judge. She noted:

In view of the great caseload increase in the federal courts and the expressed desire of the Reagan Administration to hold down the federal budget, one would think that congressional action might be taken to limit Section 1983. It could be done directly or indirectly by limiting or disallowing recovery of attorney fees. Such a move would be welcomed by state courts, as well as state legislatures and state executive officers. 22 W & M L.Rev. 801,810 (1981).

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By Mr. QUAYLE:

S. 437. A bill to designate the Veterans' Administration Outpatient Clinic to be located in Crown Point, IN, as the "Adam Benjamin, Jr. Veterans' Administration Outpatient Clinic"; to the Committee on Veterans' Affairs.

ADAM BENJAMIN, JR. VETERANS' ADMINISTRATION OUTPATIENT CLINIC

● Mr. QUAYLE. Mr. President, I am introducing today legislation to designate the Veterans' Administration Outpatient Clinic, to be located in Crown Point, IN, as the Adam Benjamin, Jr. Veterans' Administration Outpatient Clinic.

This clinic is badly needed in northwestern Indiana. Presently, the Veterans' Administration Lakeside Medical Center, on the near north side of Chicago, is the closest VA facility to my constituents in northwestern Indiana. It is roughly 18 miles from the area, and it is inconvenient and sometimes very difficult for ill and handicapped veterans to travel through the Nation's second largest city to the center to get medical care. The two next nearest facilities, the Westside Medical Center on the near west side of Chicago, and the Edward Hines, Jr. Hospital in west Chicago, are over twice as far from northwestern Indiana.

This new outpatient clinic will mean the end of the time and expense of transportation for travel to these centers and to some of the delays caused by their workload. Further, the new clinic will provide badly needed jobs in an area that, as of December 1984, still suffered from 15 percent unemployment.

I believe it is only fitting and appropriate to name this new VA clinic after the late Adam Benjamin, Jr., who served the residents of northwestern Indiana in Congress for nearly 6 years until his untimely death in September 1982. Adam and I came to the U.S. House of Representatives together in 1977, and it was my great privilege and honor to work with him. Even though we belonged to different political parties, we had many areas of agreement. We were both especially proud to serve our Indiana constituents. I am pleased that our joint efforts on behalf of Indiana were harmonious and productive.

Adam Benjamin's tragically short life was dedicated to helping those in need of assistance. The veterans of northwestern Indiana came to him with a particular problem: the need to assure proper health care in a VA facility reasonably close to home. In November 1981 the House Veterans' Affairs Committee's Subcommittee on Hospitals and Health Care went to

northwestern Indiana to determine the need for an outpatient clinic. In May 1983, the Veterans' Administration made the long-awaited announcement that they intended to establish such a clinic in Crown Point. We are now looking forward to the smooth completion of the planning stages of this clinic and to a groundbreaking in early 1986.

Since the VA's announcement, I, along with Senator LUGAR and Congressman HILLIS, who represents Indiana's Fifth District and Crown Point, have been active in monitoring the plans for and progress of this clinic. As these plans move toward fruition, I believe it is only fitting and appropriate to honor Adam Benjamin, Jr., by naming this outpatient clinic after him. Indeed, this clinic will stand as a symbol for all Adam stood for and of his indefatigable work on behalf of those he represented. This outpatient clinic will serve to honor a dedicated public servant who is sorely missed.●

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By Mr. FORD (for himself and Mr. MCCONNELL):

S. 441. A bill to amend the Internal Revenue Code of 1954 to revise the withholding rules relating to certain parimutuel wagering payouts; to the Committee on Finance.

PARIMUTUEL WITHHOLDING

● Mr. FORD. Mr. President, today I am introducing legislation to correct an inequity in the Internal Revenue Code which for the past 8 years has caused serious, unreasonable problems for a segment of the taxpaying public as well as for productive and worthwhile industry. This legislation would modify the current parimutuel withholding tax.

Horse racing is a sport and recreation activity in 37 States; a business which rightfully prides itself on the double accomplishment of entertaining some 80 million fans each year while contributing billions of dollars annually to State economies through employment, direct tax payments and the purchases of goods and services by its racetrack and breeding farm segments.

Parimutuel withholding is a unique aspect of this unique industry. This preliminary tax payment was instituted in 1977 at the suggestion of the Treasury Department, which claimed many bettors were winning substantial amounts of money at racetracks, but not reporting the proceeds on their income tax forms. As a result, an amendment to the Internal Revenue Code was made requiring the withholding of 20 percent of any racetrack payout which exceeded $1,000 at odds of at least 300 to 1.

The parimutuel withholding law was built on a foundation of shaky assumptions and inaccurate estimates. Because of that, it has failed to produce revenue for our Government remotely approaching the amounts originally estimated. Instead it has subjected taxpayers to a totally unwarranted withholding of their money, made it nearly impossible for them to get those dollars back, and at the same time, severely hurt the racing and breeding business so important to my State and others.

For the taxpayer, parimutuel patrons are not net winners in their wagering efforts at the races, regardless of receiving an occasional payout on which there is withholding. Thus, they do not owe any taxes. What's more, the taxpayers must itemize deductions in order to claim legitimate offsetting losses to this isolated gain and recoup the tax dollars lost through withholding, a choice which usually is not practical and is almost always impossible for lower income individuals.

Finally, if itemizing is possible, the IRS standards for substantiating these losses are complex and unreasonable, to the point where complying with them would require a fan to bring an accountant along to document the activities of each day at the races.

It is also a fact that a reporting system has always been in place at racetracks, and remains so today, which informs IRS of large payouts without the need for withholding.

The damages to these taxpayers, the business and the States in which it exists are far from inconsequential. According to estimates developed by the American Horse Council, racing patrons are forced to relinquish $67 million in parimutuel withholding payments each year. Because that money is taken out of circulation, wagering at racetracks drops by an estimated $235 million each year. And that decrease in wagering reduces State tax revenues and industry receipts by an estimated $47 million annually.

The fact that the gains to the Federal Government from this withholding are negligible, especially in relation to this $47 million loss to the States and their horse industry, makes it imperative that we attempt to rectify this inequity.

We are spinning our wheels with this law. We are trying to squeeze tax revenue from people who owe no taxes, at least not for the activity in question, and we then give them almost no recourse to get that tax payment back. At the same time we are hurting the horse racing industry and the 37 States where horse racing takes place.

Considering the inequity and damage associated with this seemingly insignificant measure, I hope my colleagues will agree that it is worth correcting.

The legislation I am introducing will raise the threshold at which parimutuel withholding is instituted from the current $1,000 level to $5,000 in annual increments of $1,000. Coupled with the fact that Treasury today receives very little in the way of legitimate tax revenue from withholding, this phasein will insure that the revenue effects, if any, of the legislation will be truly insignificant.

More importantly, it will reduce the regressive effects of the current law and the negative impact on State and industry revenue while maintaining a withholding assessment on larger payouts, those most likely to represent net income to the recipients.

This correction is worthwhile and necessary. I hope that even those of my colleagues not familiar with the intrinsic beauty and importance of the racing and breeding industry can recognize that this example of counterproductive tax law deserves our attention and action.●

● Mr. MCCONNELL. Mr. President, I'm pleased to join with my colleague, Senator FORD, to introduce legislation important to the horse racing industry in Kentucky.

The parimutuel withholding law in its current form is unfair to taxpayers, and the industry. The bill Senator FORD and I are introducing today seeks to alleviate some of the burden individual taxpayers have to bear.

My colleague has outlined the specifics of our proposal, so there's no need for repetition. I believe raising the withholding threshhold from the current $1,000 level to $5,000 is an equitable proposal, one which should be acceptable to the Treasury.

Our bill will go a long way toward reducing the negative impact on the average taxpayer. I urge my colleagues to give this bill their serious consideration.●

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By Mr. MITCHELL (for himself, Mr. COHEN, Mr. CHAFEE, Mr. STEVENS, and Mr. MURKOWSKI):

S. 438. A bill to provide a lower rate of duty for certain fish netting and fishing nets; to the Committee on Finance.

LOWER RATE OF DUTY ON CERTAIN FISH NETTING AND FISHING NETS

● Mr. MITCHELL. Mr. President, today I am introducing legislation which would greatly benefit commercial fishermen who use synthetic nets in their operations. This bill would reduce immediately the substantial and costly import duty levied by our Government and borne by U.S. fishermen.

Netting is an important and expensive component of any fishing operation. A large Maine fishing vessel, for example, may purchase over $15,000 in netting during a 12-month period. At current tariff levels, $3,720 of that amount plus 12 cents per pound of netting is paid into the U.S. Treasury. The costs to a large U.S. tuna boat

with expensive seine nets can be significantly greater.

Needless to say, this is a significant cost that must be borne by a wide variety of Atlantic, Pacific, and Gulf coast fishermen.

In 1979, the United States agreed to gradually reduce the very high 20-year old tariff on synthetic fish nets as part of the Multilateral Trade Negotiations (MTN). These staged reductions were then delayed 2 years. Thus, the full reduction in the tariff—from 24.8 percent and 12 cents per pound this year to a simple but still substantial 17 percent ad valorem—will not go into effect until 1989. This means at least $2 million in additional costs to U.S. commercial fishermen at a time when they are experiencing stiff competition from subsidized Canadian harvesters and processors.

This bill will help American fishermen compete with foreign fishermen and reduce our $4.1 billion fisheries trade deficit.

It helps offset the mounting financial pressures on U.S. commercial fishermen.

It reduces the inequity created when U.S. fishermen pay higher tariffs than their foreign counterparts.

And it allows U.S. fishermen access to a quality and variety of nets not available in the United States. U.S. fishermen import roughly a third of their nets each year despite the high rate of duty.

We believe that the gradual reduction to 17 percent over such a lengthy period adversely affects 165,000 commercial fishermen from all parts of the country. The reduction to 17 percent ad valorem should take place as soon as possible.

I urge all Members of the Senate who are interested in the health of our domestic fishing industry to join with me and Senators COHEN, CHAFEE, STEVENS, and MURKOWSKI in seeking enactment of this important legislation.

Mr. President, I ask that the text of this legislation appear in the RECORD at this point.

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

S. 438

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

SEC. 119. FISH NETTING AND FISHING NETS.

Item 355.45 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended to read as follows:

| | | | |
|---|---|---|---|
| "355.45 | Other | 17% ad val. | 82% ad val.". |

SEC. 2. The amendments made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date of enactment of this Act.●

By Mr. MITCHELL (for himself, Mr. COHEN, Mr. CHAFEE, Mr. BENTSEN, Mr. MATHIAS, Mr. STEVENS, Mr. MURKOWSKI, and Mr. PELL):

S. 439. A bill to make permanent the exemption from the Federal Unemployment Tax Act for services performed on certain fishing boats; to the Committee on Finance.

UNEMPLOYMENT TAX EXEMPTION FOR CERTAIN DUTIES PERFORMED ON FISHING BOATS

● Mr. MITCHELL. Mr. President, for the last 4 years, owners of fishing vessels manned by a share-paid crew of 10 or less have been exempt from paying unemployment taxes on crew members. That exemption expired on December 31, 1984.

Today, I am introducing legislation that will permanently reinstate that exemption for owners of fishing vessels exceeding 10 net tons and manned by a shared-paid crew of 10 or less. This will correct an oversight in the Tax Reform Act of 1976 by making the treatment of crew members for purposes of the Federal Unemployment Tax Act [FUTA] consistent with the treatment of crew members for the purposes of withholding Social Security [FICA] and Federal income taxes.

A commercial fisherman in the State of Maine is, by definition, self-employed.

He considers himself to be self-employed, and the owner of the vessel on which he fishes considers him self-employed. They both know fishermen do not receive the fixed salary that employees traditionally receive. Instead, fishermen receive a share of the catch, or proceeds from a share of the catch.

If a fishing vessel returns to port with an empty hold, the crew members take home no pay because there is no catch to share. In some cases, these crew members actually lose money because, as shareholders, they must contribute to the vessel's overhead costs. Successful or not, these costs must be paid each time a vessel leaves port.

Thus, owners and crew members share alike in the risks of their profession. Each invest time, energy, and capital. And they succeed or fail together.

Despite this situation, 13 years ago the Internal Revenue Service determined that crewmen should be regarded as employees of the vessel owners rather than as self-employed persons.

This situation was partially corrected by Congress in the Tax Reform Act of 1976—which treated crewmen of fishing vessels as self-employed, rather than as employees, for the purposes of FICA and Federal income tax withholding. The size of most crews, the nature of their financial relationship, and the tendency for most vessels to experience high crew turnover, made this an eminently sensible approach.

When the 1976 Tax Reform Act was enacted, the Maine fishing industry was not concerned about the Federal Unemployment Tax Act [FUTA] because most of the vessels affected by the IRS policy were under 10 net tons in size. Under FUTA, vessels under 10 net tons were already exempted from paying unemployment taxes on their crew members.

Since the United States adopted the 200-mile limit, many fishermen in Maine and other States have found it more economical to move to larger vessels. Many vessels now exceed the 10 net ton limitation and are consequently facing greater financial and administrative burdens due to the FUTA tax liability, even though the program is not well suited for their situation.

The fishing industry is composed largely of small independent businessmen. The turnover of crews and the nature of their financial relationship make it very difficult to meet the kind of reporting requirements intended for larger businesses with stable employer/employee relationships. It is doubly burdensome because many States tax laws mirror those at the Federal level.

I first introduced my bill March 24, 1981, in the 97th Congress. Since that time, Congress has twice seen fit to exempt vessel owners from unemployment taxes—covering the years 1981 to 1984. Without congressional action for 1985 and beyond, vessel owners will be in the difficult position of treating their crew members as self-employed persons for Social Security and income tax purposes, and employees for purposes of FUTA.

This inconsistency should not be permitted. Passage of the bill I am reintroducing today will lay this issue to rest.

Mr. President, I ask that the text of this legislation appear in the RECORD at this point.

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

S. 439

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 822(b) of the Economic Recovery Tax Act of 1981, as amended by section 203 of the Miscellaneous Revenue Act of 1982 and section 1074 of the Deficit Reduction Act of 1984, is amended to read as follows:

"(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to remuneration paid after December 31, 1980.".●

By Mr. TRIBLE:

S. 440. A bill to amend title 18, United States Code, to create an offense for the use, for fraudulent or other illegal purposes, of any computer owned or operated by certain financial institutions and entities affecting interstate commerce; to the Committee on the Judiciary.

COMPUTER SYSTEMS PROTECTION ACT

Mr. TRIBLE. Mr. President, the United States has experienced a technological explosion in recent years. The era of high technology is upon us, and the computer has become a centerpiece of our daily lives.

Unfortunately, the high-tech era has also bred a new type of criminal—one who uses computers to steal, to defraud, and to vandalize the property of others. I am introducing legislation today that would establish Federal penalties for those who misuse computers in this way.

American businesses use some 3.5 million computers. More than 100,000 computers have been installed in the Nation's schools, and personal computers are found in millions of American homes.

The benefits conferred by high technology are immeasurable. However, our criminal justice system has failed to keep abreast of these rapid changes, and the work of businesses and individuals in America is at risk.

To correct this problem, I am introducing the Computer Systems Protection Act of 1985. This bill would make it a violation of Federal law to use a computer to commit a theft, or to damage or destroy information stored in a computer. It would also impose a misdemeanor offense on those who intentionally access a computer without proper authorization.

A number of States have enacted computer crime laws in recent years, and I do not believe that Federal legislation should intrude on areas traditionally under the States' purview. Computer crime becomes a serious Federal concern only when it affects the Federal Government, the federally insured banking system, or interstate commerce.

Last year, the Congress took steps to protect the computers of the Federal Government, particularly with regard to national security and credit-related information. This was a valuable first step in the effort to combat computer crime, and I believe we must build on it by extending similar protections to federally insured banks and entities that operate in interstate commerce.

My bill would do so by making it a crime to tamper with the computers in federally insured financial institutions. The potential for large-scale theft and fraud against these institutions is tremendous, especially given the increased use of electronic fund transfers. Our national and international economic activities must be protected against computer crimes, and my bill would help to ensure the integrity of the banking system.

This bill would also cover computers that operate in another traditional area of Federal concern—interstate commerce.

Mr. President, the need for this legislation is clear. Fifty percent of businesses and government agencies surveyed by the American Bar Association last year reported being victimized by some form of computer crime over the previous 12 months. Total losses from these crimes were estimated at between $145 and $730 million.

It is also worth noting that these figures are almost certainly understated. Many companies might be reluctant to admit that their computers are vulnerable to tampering. According to the ABA survey, many organizations also don't know when a computer crime has been committed and often cannot monitor their own systems effectively enough to detect such a crime. As a result, many computer crimes go unreported and unpunished.

My legislation would also eliminate the many obstacles to prosecution of computer crimes now found in existing statutes. Because of the lack of a specific Federal statute covering banks and interstate commerce, prosecutors must often try computer crime cases under the Federal wire fraud law.

However, there is an inherent difficulty in attempting to prosecute an action under a statute that was written and intended to apply to a different crime. The Department of Justice has already testified that the lack of a specific computer crime statute "could lead to the dismissal of a prosecution, notwithstanding the egregious nature of the offense or the extensiveness of trial preparation, because decades old statutory elements designed to deal with other crimes have been stretched too far to accommodate modern criminality." My bill would eliminate this problem by providing penalties specifically for the use of a computer in committing one of the covered offenses.

The ABA computer crime task force concluded last year that the need for a Federal computer crime statute is clear and unmistakable. This is precisely what my bill provides.

Mr. President, crime has moved into the computer age, and it is time for Federal law to respond. I urge my colleagues to support this bill and ask unanimous consent that a copy be included in the RECORD at this time.

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

S. 440

*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 "Computer Systems Protection Act of 1985".

SEC. 2. The Congress finds that—

(1) computer-related crime poses a serious threat to the Nation's economy;

(2) computer crimes tend to cause far higher losses than other white-collar crimes, and therefore create a heavy financial burden on the public;

(3) the Nation's growing reliance on high technology creates an opportunity for widespread computer abuse;

(4) computer-related crime directed at computers which operate in or use a facility of interstate commerce has a direct effect on interstate commerce;

(5) prosecution of persons engaged in certain computer-related crime is difficult under current Federal law; and

(6) the lack of effective prosecution often leads affected businesses to conceal computer crimes, and that no effective deterrent to such crimes exists as a result.

SEC. 3. Section 1030 of title 18, United States Code, is amended by—

(1) redesignation subsection (e) as subsection (f); and

(2) adding after subsection (d) the following new subsection:

"(e)(1) Whoever knowingly—

"(A) accesses a computer described in paragraph (4) without authorization, or

"(B) having accessed such a computer with authorization, uses the opportunity such access provides for purposes to which such authorization does not extend,

and thereby knowingly—

"(i) executes or attempts to execute a scheme or artifice to defraud;

"(ii) obtains or attempts to obtain the property of another;

"(iii) causes or attempts to cause the withholding or denial of the use of such computer; or

"(iv) modifies, damages, or destroys property of another.

shall be fined not more than two times the amount of the gain directly or indirectly derived from the offense or $50,000, whichever is higher, or imprisoned for not more than five years, or both.

"(2) Whoever knowingly and without authorization accesses a computer described in paragraph (4) shall be fined not more than $5,000 or imprisoned for not more than, one year, or both.

"(3) This subsection does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States.

"(4) For purposes of this subsection, there is Federal jurisdiction over an offense if the computer—

"(A) is owned by, under contract to, or operated for or on behalf of a financial institution, and the prohibited conduct directly involves or affects the computer operation for or on behalf of the financial institution; or

"(B) operates in, or uses a facility of, interstate or foreign commerce.

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

"(A) 'financial institution' means—

"(i) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(ii) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve bank;

"(iii) a credit union with accounts insured by the Federal Savings and Loan Corporation;

"(iv) a credit union with accounts insured by the National Credit Union Administration;

"(v) a member of the Federal home loan bank system and any home loan bank;

"(vi) a member or business insured by the Securities Investor Protection Corporation; or

"(vii) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities and Exchange Act of 1934;

"(B) 'property' means anything of value, and includes tangible and intangible person-

al property; information in the form of computer processed, produced, or stored data; information configured for use in a computer; information in a computer medium; information being processed, transmitted, or stored; computer operating or applications programs; or computer services;

"(C) 'Computer services' includes computer data processing and storage functions;

"(D) 'Computer medium' includes the means of effecting or conveying data for processing in a computer, of a substance or surrounding medium which is the means of transmission of a force or effect that represents data for processing in a computer, or a channel of communication of data for processing in a computer; and

"(E) 'Computer program' means an instruction or statement or a series of instructions or statements in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.

"(6)(A) Notwithstanding subsection (d), in a case in which Federal jurisdiction over an offense as described in this subsection exists concurrently with State or local jurisdiction, the existence of Federal jurisdiction does not, in itself, require the exercise of Federal jurisdiction, nor does the initial exercise of Federal jurisdiction preclude its discontinuation.

"(B) In a case in which Federal jurisdiction over an offense as described in this subsection exists or may exist concurrently with State or local jurisdiction, Federal law enforcement officers, in determining whether to exercise jurisdiction, shall consider—

"(i) the relative gravity of the Federal offense and the State or local offense;

"(ii) the relative interest in Federal investigation or prosecution;

"(iii) the resources available to the Federal authorities and the State or local authorities;

"(iv) the traditional role of the Federal authorities and the State or local authorities with respect to the offense;

"(v) the interests of federalism; and

"(vi) any other relevant factor.

"(C) The Attorney General shall—

"(i) consult periodically with representatives of State and local governments concerning the exercise of jurisdiction in cases in which Federal jurisdiction as described in this subsection exists or may exist concurrently with State or local jurisdiction;

"(ii) provide general direction to Federal law enforcement officers concerning the appropriate exercise of such Federal jurisdiction which, for the purposes of investigation, is vested concurrently in the Department of Justice and the Department of the Treasury;

"(iii) report annually to Congress concerning the extent of the exercise of such Federal jurisdiction during the preceding fiscal year; and

"(iv) report to Congress, within one year of the date of enactment of this subsection, on the long-term impact of this subsection upon Federal jurisdiction and the increasingly pervasive and widespreasd use of computers in the United States (the Attorney General shall periodically review and update such report).

"(D) Except as otherwise prohibited by law, information or material obtained pursuant to the exercise of Federal jurisdiction under this subsection may be made available to State or local law enforcement officers having concurrent jurisdiction, and to State or local authorities otherwise assigned responsibility with regard to the conduct constituting the offense.

"(E) An issue relating to the propriety of the exercise of or of the failure to exercise Federal jurisdiction over an offense as described in this subsection, or otherwise relating to the compliance, or to the failure to comply, with this subsection, may not be litigated, and a court may not entertain or resolve such an issue except as may be necessary in the course of granting leave to file a dismissal of an indictment, an information, or a complaint.".

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By Mr. SIMPSON (for himself, Mr. ARMSTRONG, Mr. BINGAMAN, Mr. DOMENICI, Mr. GARN, Mr. HART, Mr. HATCH, Mr. HECHT, Mr. LAXALT, and Mr. WALLOP):

S. 442. A bill to grant the consent of the Congress to the Rocky Mountain Low-Level radioactive waste compact; to the Committee on the Judiciary.

CONSENT OF THE CONGRESS TO THE ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

Mr. SIMPSON. Mr. President, I am pleased to reintroduce legislation today on behalf of myself, Senator BINGAMAN, Senator DOMENICI, Senator GARN, Senator HART, Senator HATCH, Senator HECHT, Senator LAXALT, and Senator WALLOP, granting the consent of the Congress to the Rocky Mountain low-level radioactive waste compact. This compact has been submitted to Congress, pursuant to section 4(A)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(A)(2)), for the required congressional approval.

Low-level waste is currently disposed of in three commercial shallow land burial sites—in South Carolina, Washington, and Nevada. Up until 1980, these three sites were accepting virtually all of the commercial low-level waste produced in the United States, with no plans on the drawing board for licensing any new sites. The residents of these three sites felt quite strongly that they alone should not be responsible for disposing of all the low-level waste produced in the United States. In fact, efforts were mounted in each of these States to try to close these three sites to out-of-State low-level wastes or, as an alternative, to significantly reduce the volume of waste that the sites would accept.

In response to these concerns, Congress passed the Low-Level Radioactive Waste Policy Act in December 1980. In this act, Congress declared that low-level disposal should be the responsibility of the States, not the Federal Government, and that this task could be handled most effectively and efficiently if States would organize regional interstate compacts. Accordingly, this act authorizes States to enter into regional compacts for the purpose of providing for adequate low-level waste disposal.

Compacts formed under this legislation will be responsible for selecting a location for a regional disposal site, submitting a license application to the Nuclear Regulatory Commission for that site and, once licensed, operating the site in accordance with the rules established by the NRC. In order to encourage the formation of regional compacts, Congress authorized those regions with approved compacts to restrict the use of their regional disposal facilities to the disposal of low-level waste generated within the region after January 1, 1986.

Shortly after passage of the Low-Level Radioactive Waste Policy Act, the process of discussion and negotiation among the States began. Shouldered with a new and important responsibility, States set about the task of formulating the agreements called for under the act. In large part, the compact regions that resulted from the discussions have been geographical in character—with groups of States from a given region joining together to address the problem of low-level waste disposal within that particular region.

The Rocky Mountain low-level radioactive waste compact is the result of the efforts of six States—Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming—to formulate a policy for disposal of low-level waste generated within this region. Four of those States—Colorado, Nevada, New Mexico, and Wyoming—have formally joined the Rocky Mountain compact, and Arizona and Utah, if they choose to do so, are eligible to join as well.

I do want to congratulate all of those within the Rocky Mountain region who worked so long and diligently to pull this compact together. The issues that had to be addressed were by no means simple to resolve. Beyond that, there were limits on the time available to reach agreement, with the remaining low-level waste disposal sites authorized to close in 1986. With all of these pressures, these States have taken on their responsibilities in a responsible and timely fashion, and for that I would wish to commend and congratulate them.

After I introduced this legislation in the 98th Congress, a hearing was held before the Committee on the Judiciary, of which I am a member, in Cheyenne, WY, on January 12, 1984. This hearing, which is available in printed form from the Committee on the Judiciary, provided an opportunity for a broad range of parties to express their views on this compact.

It is now our responsibility to address this and other compacts in a responsible and timely fashion, in order that the States may get on with the task of resolving this important issue. I trust that my very fine and close friend and distinguished colleague from South Carolina, the chairman of the Judiciary Committee, STROM THURMOND, will feel the same, and I shall look forward to working closely

with him and with his staff as this committee moves forward with its consideration of this compact. In fact, Mr. President, I had the good fortune of chairing the first hearing held by the Congress on the low-level waste compacts for the Judiciary Committee, on the chairman's behalf, in Seattle, WA, in November 1982, and I have every confidence that these compacts will be guided by the very able skills of the Senator from South Carolina—who, in large part, is most directly responsible for the progress that we have achieved in this field—for STROM THURMOND was the original sponsor of the Low-Level Radioactive Waste Policy Act.

Finally, Mr. President, I should like to emphasize that low-level nuclear waste disposal has been and will continue to be a subject of considerable controversy. Numerous States are now in various stages or organizing compacts, and parallel efforts are underway in these States to try to locate potentially acceptable sites for low-level waste disposal facilities. As these various efforts move forward, we must do everything we can to ensure that not only are these sites safe to operate, but that the legitimate and well-founded concerns of local citizens are addressed. The licensing process established by the Nuclear Regulatory Commission, which includes detailed substantive and procedural requirements for the licensing of low-level waste sites, is designed to ensure that a site will be licensed only after a determination is made that the public health and safety and the environment will be protected.

In my role as chairman of the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, I shall continue to exercise close oversight of this process to ensure that all licensing decisions meet this objective. Equally important, Mr. President, is the need to ensure that local citizens have an opportunity to participate in the process and to have their views considered and addressed. This opportunity for the public to participate in the licensing proceeding is an essential part of the vitally important educational process that, in my judgment, is central to the success of this whole initiative. For that reason, Mr. President, early public involvement is essential. Accordingly, I will be continuing my efforts to ensure that adequate opportunities are available for citizens to express their concerns and that, as part of any licensing decision reached, those concerns are addressed and resolved.

Mr. President, I ask unanimous consent that a summary of this compact prepared by the Rocky Mountain region be placed in the CONGRESSIONAL RECORD following my remarks. In addition, I ask unanimous consent that the text of the bill be printed in the CONGRESSIONAL RECORD following my remarks. Thank you.

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

S. 442

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, in accordance with section 4(a)(2) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(2)), the consent of the Congress hereby is given to the States of Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming to enter into the Rocky Mountain Interstate Low-Level Radioactive Waste Compact.

Such compact is substantially as follows:

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT

Article I. Findings and Purpose

(a) The Party states agree that each state is responsible for providing for the management of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. Moreover, the party states find that the United States Congress, by enacting the "Low-Level Radioactive Waste Policy Act" (P.L. 96-573), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.

(b) It is the purpose of the party states, by entering into an interstate compact, to establish the means for cooperative effort in managing low-level radioactive waste; to ensure the availability and economic viability of sufficient facilities for the proper and efficient management of low-level radioactive waste generated within the region while preventing unnecessary and uneconomic proliferation of such facilities; to encourage reduction of the volume of low-level radioactive waste requiring disposal within the region; to restrict management within the region of low-level radioactive waste generated outside the region; to distribute the costs, benefits and obligations of low-level radioactive waste management equitably among the party states; and by these means to promote the health, safety and welfare of the residents within the region.

Article II. Definitions

As used in this compact, unless the context clearly indicates otherwise:

(a) "Board" means the Rocky Mountain low-level radioactive waste board;

(b) "Carrier" means a person who transports low-level waste;

(c) "Disposal" means the isolation of waste from the biosphere, with no intention of retrieval, such as by land burial;

(d) "Facility" means any property, equipment or structure used or to be used for the management of low-level waste;

(e) "Generate" means to produce low-level waste;

(f) "Host state" means a party state in which a regional facility is located or being developed;

(g) "Low level waste" or "waste" means radioactive waste other than:

(i) Waste generated as a result of defense activities of the federal government or federal research and development activities;

(ii) High-level waste such as irradiated reactor fuel, liquid waste from reprocessing irradiated reactor fuel, or solids into which any such liquid waste has been converted;

(iii) Waste material containing transuranic elements with contamination levels greater than ten (10) nanocuries per gram of waste material;

(iv) By-product material as defined in Section 11e.(2) of the "Atomic Energy Act of 1954," as amended November 8, 1978; or

(v) Wastes from mining, milling, smelting or similar processing of ores and mineral-bearing material primarily for minerals other than radium.

(h) "Management" means collection, consolidation, storage, treatment, incineration or disposal;

(i) "Operator" means a person who operates a regional facility;

(j) "Person" means an individual, corporation, partnership or other legal entity, whether public or private;

(k) "Region" means the combined geographic area within the boundaries of the party states; and

(l) "Regional facility" means a facility within any party state which either:

(i) has been approved as a regional facility by the board; or

(ii) is the low-level waste facility in existence on January 1, 1982, at Beatty, Nevada.

Article III. Rights, Responsibilities, and Obligations

(a) There shall be regional facilities sufficient to manage the low-level waste generated within the region. At least one (1) regional facility shall be open and operating in a party state other than Nevada within six (6) years after this compact becomes law in Nevada and in one (1) state.

(b) Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states; *Provided, however,* that a host state may close a regional facility when necessary for public health or safety.

(c) Each party state which, according to reasonable projections made by the board, is expected to generated twenty percent (20%) or more in cubic feet except as otherwise determine by the board of the low-level waste generated within the region has an obligation to become a host state in compliance with subsection (d) of this article.

(d) A host state, or a party state seeking to fulfill its obligation to become a host state, shall:

(i) Cause a regional facility to be developed on a timely basis as determined by the board, and secure the approval of such regional facility by the board as provided in Article IV before allowing site preparation of physical construction to begin;

(ii) ensure by its own law, consistent with any applicable federal law, the protection and preservation of public health and safety in the siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state;

(iii) Subject to the approval of the board, ensure that charges for management of low-level waste at the regional facilities within the state are reasonable;

(iv) Solicit comments from each other party state and the board regarding siting, design, development, licensure or other regulation, operation, closure, decommissioning and long-term care of the regional facilities within the state and respond in writing to such comments;

(v) Submit an annual report to the board which contains projections of the anticipated future capacity and availability of the regional facilities within the state, together

with other information required by the board; and

(vi) Notify the board immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the board.

(e) Once a party state has served as a host state, it shall not be obligated to serve again until each other party state having an obligation under subsection (c) of this article has fulfilled that obligation. Nevada, already being a host state, shall not be obligated to serve again as a host state until every other party state has so served.

(f) Each party state:

(i) Agrees to adopt and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to packaging and transportation requirements and regulations. Such procedures shall include but are not limited to:

(A) Periodic inspections of packaging and shipping practices;

(B) Periodic inspections of waste containers while in the custody of carriers; and

(C) Appropriate enforcement actions with respect to violations.

(ii) Agrees that after receiving notification from a host state that a person in the party state has violated packaging, shipping or transportation requirements or regulations, it shall take appropriate action to ensure that violations do not recur. Appropriate action may include but is not limited to the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected;

(iii) May impose fees to recover the cost of the practices provided for in paragraphs (i) and (ii) of this subsection;

(iv) Shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility; and

(v) May impose requirements or regulations more stringent than those required by this subsection.

Article IV. Board Approval of Regional Facilities

(a) Within ninety (90) days after being requested to do so by a party state, the board shall approve or disapprove a regional facility to be located within that state.

(b) A regional facility shall be approved by the board if and only if the board determines that:

(i) There will be, for the foreseeable future, sufficient demand to render operation of the proposed facility economically feasible without endangering the economic feasibility of operation of any other regional facility; and

(ii) The facility will have sufficient capacity to serve the needs of the region for a reasonable period of years.

Article V. Surcharges

(a) The board shall impose a "compact surcharge" per unit of waste received at any regional facility. The surcharge shall be adequate to pay the costs and expenses of the board in the conduct of its authorized activities and may be increased or decreased as the board deems necessary.

(b) A host state may impose a "state surcharge" per unit of waste received at any regional facility within the state. The host state may fix and change the amount of the state surcharge subject to approval by the board. Money received from the state surcharge may be used by the host state for any purpose authorized by its own law, including but not limited to costs of licensure and regulatory activities related to the regional facility, reserves for decommissioning and long-term care of the regional facility and local impact assistance.

Article VI. The Board

(a) The "Rocky Mountain low-level radioactive waste board", which shall not be an agency or instrumentality of any party state, is created.

(b) The board shall consist of one (1) member from each party state. Each party state shall determine how and for what term its member shall be appointed, and how and for what term any alternate may be appointed to perform that member's duties on the board in the member's absence.

(c) Each party state is entitled to one (1) vote. A majority of the board constitutes a quorum. Unless otherwise provided in this compact, a majority of the total number of votes on the board is necessary for the board to take any action.

(d) The board shall meet at least once a year and otherwise as its business requires. Meetings of the board may be held in any place within the region deemed by the board to be reasonably convenient for the attendance of persons required or entitled to attend and where adequate accommodations may be found. Reasonable public notice and opportunity for comment shall be given with respect to any meeting; provided, however, that nothing in this subsection shall preclude the board from meeting in executive session when seeking legal advice from its attorneys or when discussing the employment, discipline or termination of any of its employees.

(e) The board shall pay necessary travel and reasonable per diem expenses of its members, alternates, and advisory committee members.

(f) The board shall organize itself for the efficient conduct of its business. It shall adopt and publish rules consistent with this compact regarding its organization and procedures. In special circumstances the board, with unanimous consent of its members, may take actions by telephone; provided, however, that any action taken by telephone shall be confirmed in writing by each member within thirty (30) days. Any action taken by telephone shall be noted in the minutes of the board.

(g) The board may use for its purposes the services of any personnel or other resources which may be offered by any party state.

(h) The board may establish its offices in space provided for that purpose by any of the party states, or, if space is not provided or is deemed inadequate, in any space within the region selected by the board.

(i) Consistent with available funds, the board may contract for necessary personnel services to carry out its duties. Staff shall be employed without regard for the personnel, civil service, or merit system laws of any of the party states and shall serve at the pleasure of the board. The board may provide appropriate employee benefit programs for its staff.

(j) The board shall establish a fiscal year which conforms to the extent practicable to the fiscal years of the party states.

(k) The board shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the board shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the board.

(l) The board shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuring year.

(m) Upon legislative enactment of this compact, each party state shall consider the need to appropriate seventy thousand dollars ($70,000.00) to the board to support its activities prior to the collection of sufficient funds through the compact surcharge imposed pursuant to subsection (a) of article V of this compact.

(n) The board may accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donation, grant or other resources accepted pursuant to this subsection, together with the identify of the donor or grantor, shall be detailed in the annual report of the board.

(o) In addition to the powers and duties conferred upon the board pursuant to other provisions of this compact, the board:

(i) Shall submit communications to the governors and to the presiding officers of the legislators of the party states regarding the activities of the board, including an annual report to be submitted by December 15;

(ii) May assemble and make available to the governments of the party states and to the public through its members information concerning low-level waste management needs, technologies and problems;

(iii) Shall keep a current inventory of all generators within the region, based upon information provided by the party states;

(iv) Shall keep a current inventory of all regional facilities, including information on the size, capacity, location, specific wastes capable of being managed and the projected useful life of each regional facility;

(v) May keep a current inventory of all low-level waste facilities in the region, based upon information provided by the party states;

(vi) Shall ascertain on a continuing basis the needs for regional facilities and capacity to manage each of the various classes of low-level waste;

(vii) May develop a regional low-level waste management plan;

(viii) May establish such advisory committees as it deems necessary for the purpose of advising the board on matters pertaining to the management of low-level waste;

(ix) May contract as it deems appropriate to accomplish its duties and effectuate its powers, subject to its projected available resources; but no contract made by the board shall bind any party state;

(x) Shall make suggestions to appropriate officials of the party states to ensure that adequate emergency response programs are available for dealing with any exigency that might arise with respect to low-level waste transportation or management;

(xi) Shall prepare contingency plans, with the cooperation and approval of the host state, for management of low-level waste in the event any regional facility should be closed;

(xii) May examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge;

(xiii) Shall have the power to sue; and

(xiv) When authorized by unanimous vote of its members, may intervene as of right in any administrative or judicial proceeding involving low-level waste.

Article VII. Prohibited Acts and Penalties

(a) It shall be unlawful for any person to dispose of low-level waste within the region, except at a regional facility; provided, however, that a generator who, prior to January 1, 1982, had been disposing of only his own waste on his own property may, subject to applicable federal and state law, continue to do so.

(b) After January 1, 1986, it shall be unlawful for any person to export low-level waste which was generated within the region outside the region unless authorized to do so by the board. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(i) The economic impact of the export of the waste on the regional facilities;

(ii) The economic impact on the generator of refusing to permit the export of the waste; and

(iii) The availability of a regional facility appropriate for the disposal of the waste involved.

(c) After January 1, 1986, it shall be unlawful for any person to manage any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the board and by the state in which said management takes place. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(i) the impact of importing waste on the available capacity and projected life of the regional facilities;

(ii) the economic impact on the regional facilities; and

(iii) the availability of a regional facility appropriate for the disposal of the type of waste involved.

(d) It shall be unlawful for any person to manage at a regional facility any radioactive waste other than low-level waste as defined in this compact, unless authorized to do so both by the board and the host state. In determining whether to grant such authorization, the factors to be considered by the board shall include, but not be limited to, the following:

(i) the impact of allowing such management on the available capacity and projected life of the regional facilities;

(ii) the availability of a facility appropriate for the disposal of the type of waste involved;

(iii) the existence of transuranic elements in the waste; and

(iv) the economic impact on the regional facilities.

(e) Any person who violates subsection (a) or (b) of this article shall be liable to the board for a civil penalty not to exceed ten (10) times the charges which would have been charged for disposal of the waste at a regional facility.

(f) Any person who violates subsection (c) or (d) of this article shall be liable to the board for a civil penalty not to exceed ten (10) times the charges which were charged for management of the waste at a regional facility.

(g) The civil penalties provided for in subsections (e) and (f) of this article may be enforced and collected in any court of general jurisdiction within the region where necessary jurisdiction is obtained by an appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

(h) Out of any civil penalty collected for a violation of subsection (a) or (b) of this article, the board shall pay to the appropriate operator a sum sufficient in the judgment of the board to compensate the operator for any loss of revenue attributable to the violation. Such compensation may be subject to state and compact surcharges as if received in the normal course of the operator's business. The remainder of the civil penalty collected shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

(i) Any civil penalty collected for a violation of subsection (c) or (d) of this article shall be allocated by the board. In making such allocation, the board shall give first priority to the needs of the long-term care funds in the region.

(j) Violations of subsection (a), (b), (c), or (d) of this article may be enjoined by any court of general jurisdiction within the region where necessary jurisdiction is obtained in any appropriate proceeding commenced on behalf of the board by the attorney general of the party state wherein the proceeding is brought or by other counsel authorized by the board. In any such proceeding, the board, if it prevails, is entitled to recover reasonable attorney's fees as part of its costs.

(k) No state attorney general shall be required to bring any proceeding under any subsection of this article, except upon his consent.

Article VIII. Eligibility, Entry Into Effect, Congressional Consent, Withdrawal, Exclusion

(a) Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming are eligible to become parties to this compact. Any other state may be made eligible by unanimous consent of the board.

(b) An eligible state may become a party state by legislative enactment of this compact or by executive order of its governor adopting this compact; provided, however, a state becoming a party by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless before such adjournment the legislature shall have enacted this compact.

(c) This compact shall take effect when it has been enacted by the legislatures of two (2) eligible states. However, subsections (b) and (c) of article VII shall not take effect until Congress has by law consented to this compact. Every five (5) years after such consent has been given, Congress may by law withdraw its consent.

(d) A state which has become a party state by legislative enactment may withdraw by legislation repealing its enactment of this compact; but no such repeal shall take effect until two (2) years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that State shall remain available to receive low-level waste generated within the region until five (5) years after the effective date of the withdrawal; provided, however, this provision shall not apply to the existing facility in Beatty, Nevada.

(e) A party state may be excluded from this compact by a two-thirds (⅔) vote of the members representing the other party states, acting in a meeting, on the ground that the state to be excluded has failed to carry out its obligations under this compact. Such an exclusion may be terminated upon a two-thirds (⅔) vote of the members acting in a meeting.

Article IX. Construction and Severability

(a) The provisions of this compact shall be broadly construed to carry out the purposes of the compact.

(b) Nothing in this compact shall be construed to affect any judicial proceeding pending on the effective date of this compact.

(c) If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

SEC. 2. The Congress hereby finds that the compact consented to in this Act is in furtherance of the policy set forth in section 4(a)(1) of the Low-Level Radioactive Waste Policy Act (42 U.S.C. 2021d(a)(1)). In order that such compact may be given full effect, the Nuclear Regulatory Commission shall consult and cooperate with the States that are parties to such compact in carrying out this subsection.

SEC. 3. Nothing contained in this Act or in the compact consented to in this Act may be construed as impairing or otherwise affecting in any manner any right or jurisdiction of the United States with respect to the region that is the subject of such compact.

SEC. 4. The right of the Congress to alter, amend, or repeal this Act is expressly reserved.

ROCKY MOUNTAIN LOW-LEVEL RADIOACTIVE WASTE COMPACT—SUMMARY OF KEY PROVISIONS

I. FINDINGS AND PURPOSE

States are responsible for providing for the management of non-federal low-level radioactive waste.

II. DEFINITIONS

1. Host state means a state in which a regional facility for the disposal or incineration of low-level radioactive waste is located.

2. Low-level waste excludes federal waste, high-level waste, material contaminated with transuranic elements emitting more than 10 nanocuries per gram, and mining and milling waste.

3. Facility means any property, equipment or structure used for the management (collection, consolidation, storage, treatment, incineration, disposal) of low-level waste.

III. RESPONSIBILITIES OF PARTY AND HOST STATES

1. At least one regional facility other than Beatty, Nevada must be open and operating in a party state other than Nevada within 6 years after Nevada and at least one other state have adopted the compact.

2. Low-level waste generated within the region shall be managed at regional facilities without discrimination among the party states.

3. Each party state that generates 20% or more of the region's waste has an obligation to host a regional facility.

4. A state seeking to fulfill its obligation to become a host state shall cause a regional facility to be developed on a timely basis as determined by the board.

5. Once a party state has served as a host state it shall not be obligated to serve again until each other party state having an obligation to host a regional facility has fulfilled that obligation.

6. The decisions on how and where to site a facility are left to the laws and policies of the host state(s).

7. All party states shall maintain an inventory of all generators within the state that may have low-level waste to be managed at a regional facility.

8. All party states must enforce transportation and packaging regulations.

IV. BOARD APPROVAL OF REGIONAL FACILITIES

The board must approve or disapprove all regional facilities, based only on consideration of economic feasibility and capacity requirements.

V. SURCHARGES

1. The board will impose a surcharge on waste disposed at regional facilities to provide funding for administration of the compact.

2. A host state may impose a surcharge on waste disposed at a regional facility in order to offset regulatory costs, local government impacts, to provide for closure and long-term care and to provide a positive financial incentive for state and local governments.

3. The board is authorized to ensure that all surcharges are reasonable.

VI. THE BOARD

1. The board, which shall meet at least once per year is composed of one representative from each party state.

2. Each party state must pay $70,000 to fund the initial two year operating costs of the compact.

3. The board shall keep an inventory of all waste generators and regional facilities.

4. The board shall prepare a contingency plan in the event a regional facility is closed and may develop a regional low-level waste management plan and provide information to the party states.

5. The board shall submit an annual report to the party states' governors and legislatures.

6. The board is authorized to assure that charges by regional facilities are reasonable.

VII. PROHIBITED ACTS

1. It is unlawful for low-level waste to be disposed of at other than a regional facility approved by the board.

2. After January 1, 1986, low-level radioactive waste may not be shipped out of the region without approval of the board and host state(s).

3. After January 1, 1986, no low-level radioactive waste may be shipped into the region unless approved by the board and host state(s).

4. No defense or federal low-level radioactive waste or any other type of waste not defined by the compact as low-level waste may be managed at a regional facility unless authorized by the board and host state.

5. The board may impose civil penalties and seek court orders to enforce the provisions of the compact.

VIII. ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

1. The States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming are eligible to join.

2. Other states may join with the unanimous consent of the board.

3. The compact must be ratified by Congress.

4. If a state fails to fulfill its obligations under the compact, it may be excluded by a two-thirds vote of the remaining states on the board.

5. A state may withdraw from the compact two years after legislative repeal of the compact.

6. If a host state chooses to withdraw from the compact, its facility will continue to be available to the remaining party states for five years so that another facility can be developed.

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By Mr. COHEN (for himself, Mr. MITCHELL, Mr. STEVENS, Mr. MURKOWSKI, and Mr. PELL):

S. 443. A bill to amend the Internal Revenue Code of 1954 to provide that certain fishermen who are treated as self-employed for social security tax purposes shall be treated as self-employed for pension plan purposes; to the Committee on Finance.

PENSION PLAN TAX TREATMENT OF CERTAIN FISHERMEN

● Mr. COHEN. Mr. President, I rise today to joining my colleague Senator MITCHELL as an original sponsor of two bills S. 438 and S. 439 that we are reintroducing and this we are introducing for the first time in the Senate. Adoption of these three measures would greatly benefit fishermen in our home State of Maine and the fishing industry generally.

The first bill, S. 438, would amend the tariff schedules of the United States by lowering the duties imposed on imported, synthetic fish nets to levels already agreed to by the United States.

At present, the import duty on synthetic fish netting and nets is $0.12 per pound plus 24.8 percent ad valorem. Under the multilateral trade negotiations [MTN], which were concluded in 1979, this rate is scheduled to be reduced in increments until 1989 when the flat rate of 17 percent ad valorem will be reached. The bill that we are introducing today S. 443 would immediately reduce the duty to the 17-percent level.

While the U.S. fishing industry holds great promise as an industry that will make larger and larger contributions to the prosperity of this country, that promise has not yet been fully realized. The United States holds within its exclusive economic zone as much as 20 percent of the world's fisheries resources, but in 1983 the industry suffered a $3.6 billion trade imbalance in edible fisheries products.

This trade imbalance is due, in large part, to the fact that imported fish products enter our country virtually duty free. As a matter of national policy, I believe that it is unfair to subject our fishermen, at the same time, to large duties on fishing gear which they must import because domestic manufacturers are unable to provide them with the high quality netting that they need.

Many impediments that face the fishing industry are inherent in the capital-intensive nature of the industry. Large amounts of money must be spent for the construction of fishing vessels and the acquisition of fishing gear. In addition, American fishermen must compete with foreign fishermen who are beneficiaries of an array of Government subsidies ranging from vessel loan and grant programs to subsidized fuel and insurance.

Fishing nets constitute a significant expense to all fishermen. In New England, large groundfish boats may use up to 500 pounds of netting each month while smaller boats may use 500 to 1,000 pounds each year simply for repairs. Depending upon the size of these boats, nets may cost as much as $30,000 and most boats typically carry two or more nets onboard all of the time. At the current tariff level, more than a quarter of the cost of this gear is accounted for by the duty that the U.S. Government imposes on the importation of necessary fish netting.

Because the domestic net companies do not manufacture the quality or variety of netting or nets required by the U.S. fishing industry, our commercial fishermen depend greatly upon imports. Today, we are importing about one-third of the synthetic netting used by salmon gillnetters in the Pacific Northwest, tuna purse seiners in the Pacific, Great Lakes gillnetters, gulf shrimpers, and Atlantic groundfish trawlers. Economists have estimated that import duties on synthetic nets alone may consume as much as 9 percent of the profits made by these fishermen.

The MTN timetable for reducing this duty is simply too long. The principal thrust of the administration's trade policy is to open world markets by reducing the number of barriers to international trade. By lessening domestic trade restrictions, we will encourage efficiency and competitiveness in our fishing industry.

Today, over 200,000 fishermen, with a catch valued at $2.4 billion, are being forced to pay an excessively high duty on the nets they use. In 1982, the U.S. International Trade Commission estimated that only 1,000 persons were employed in our domestic net industry and that enactment of legislation, which was identical to that which we are introducing today, would have resulted in a total loss of less than $6 million to the U.S. Treasury. Since that time, the duty has been reduced according to the MTN schedule so that the loss to the Treasury this year, as well as any possible employment loss, would be significantly less. In view of the overall positive impact that this legislation would have on the U.S. fishing industry and our economy as a whole, I urge my colleagues to join us in supporting its passage.

The second bill that I am sponsoring with Senator MITCHELL, S. 439, today would provide a permanent exemption from the Federal Unemployment Tax Act [FUTA] to those fishing boat owners who are engaged in the halibut or salmon trade or whose vessels are over 10 net tons.

The issue which this legislation addresses is not new. Passage of this bill would end a long effort to correct a very unfair interpretation of tax law as it affects an independent and proud group of working people—commercial fishermen.

In 1975, while serving as a Member of the House of Representatives, I introduced the Sternman's Exemption Act which became a part of the Tax Reform Act of 1976. At that time, the IRS was enforcing an agency ruling which held that certain fishermen, known as sternmen in the lobster industry, could not be considered independent workers but were employees of the boatowners with whom they happen to work.

This view of the relationship of the sternmen and the boatowners could not have been further from reality. For decades, Maine sternmen and boatowners have worked with the understanding that the sternman is an independent contractor. Their relationship was born of both practicality and the independent nature of these individuals. The sternman's competency is respected by the boatowner to the point that he is expected to be able to take control in an emergency situation and, sometimes, fish the boat should the owner become temporarily disabled.

The advent of the IRS's novel rulings in this field have placed a great strain on the resources of the independent boatowners in the State of Maine and elsewhere. It has forced some boatowners to the brink of bankruptcy and others to pursue the very dangerous practice of going out in their boats alone.

The Sternman's Exemption Act corrected this intolerable state of affairs and allowed those fishermen who are paid a share of the catch, and who work on vessels with crews of less than 10 people, an exemption from the tax imposed by the Federal Insurance Contributions Act [FICA]. In addition, the wages received by those fishing boat crew members, whose services were exempted for purposes of FICA, were no longer considered wages for purposes of income tax withholding, and those crewmen were considered to be self-employed for purposes of the Self-Employment Contributions Act.

Under current law, if crew members meet these criteria, boat owners are exempt from social security or income tax withholding requirements.

The legislation that we are introducing today, in addition to giving further recognition to the practice of hiring fishermen as independent contractors, will bring the FUTA into conformity with the other tax acts which I have mentioned. The legislation does not penalize those individuals who wish to work as employees on fishing boats. Rather, it provides those who choose otherwise with an opportunity to prove that they are, in fact, self-employed.

Mr. President, as I have said, the issue which this legislation addresses is not new. In 1978, S. 3080, an identical bill, was the subject of hearings in the full Finance Committee and, in 1980, S. 1194, another identical bill was considered by the Committee's Subcommittee on Taxation and Debt Management. Final action was not taken on either of these bills.

The first bright spot in this effort appeared in 1981 when S. 791, passed the Senate. The language of that legislation applied the FUTA tax exemption to wages paid after December 31, 1980. Unfortunately, the conference agreement on that bill made the FUTA exemption effective only for the tax year 1981.

The Miscellaneous Revenue Act of 1982 provided another temporary extension of the FUTA exemption for tax year 1982 and, in the 98th Congress, as the result of Senate passage of S. 146, the Deficit Reduction Act of 1984 provided additional, temporary exemptions for tax years 1983 and 1984.

Since January 1 of this year, many commercial fishing vessel owners and operators are, once again, subject to inappropriate FUTA withholding requirement burdens for the wages of their crewmen who are considered to be self-employed, independent contractors for the purposes of all other employment taxes.

The legislation that we are introducing today would correct this inequity and respects the working relationship that has served independent boatowners and fishermen so well in my State for decades. This is important legislation and its passage should be expedited.

Finally, I am introducing a new bill today, S. 443, that would further Congress' recognition of commercial fishermen as self-employed independent contractors by amending the portion of the Tax Code that now precludes commercial fishermen from establishing their own Keogh pension plans.

As I indicated earlier, certain commercial fishermen have been considered self-employed for purposes of FICA since 1977. Last May, however, the IRS Revenue Ruling 79-101 held that the establishment of Keogh plans by those self-employed fishermen is impermissible. This interpretation is not the result of any stated congressional intent, but rather results from an oversight which should be quickly rectified.

In an understandable effort to plan for their future financial security, many commercial fishermen established Keogh plans for themselves when they were first recognized as being self-employed for purposes of FICA. Consequently, the bill that I am introducing today includes a retroactive provision so that any financial penalties which these fishermen may now be subject to as a result of the IRS recent ruling can be avoided.

Group retirement programs are impractical in the commercial fishing industry. Fishermen frequently work on more than one boat in any given year in order to take full advantage of better opportunities on other vessels. The bill that I am introducing today simply provides that fishermen who are treated as self-employed for Social Security tax purposes will be treated similarly for pension plan purposes.

Congress has extended this opportunity to other groups, such as ministers and salesmen who have found themselves facing the same inequitable situation. It is equally important that we provide the same opportunity to those fishermen who are seeking to provide for their own financial security.

This legislation is sound public policy and deserves prompt consideration by the Senate.

Mr. President, I ask unanimous consent that a copy of the bill, the revenue ruling which I referred to in my statement and a copy of an article concerning the Keogh situation, which appeared recently in National Fisherman, be printed in the RECORD immediately following my remarks.

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

S. 443

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) clause (ii) of section 401(c)(2)(A) of the Internal Revenue Code of 1954 (defining earned income) is amended by striking out "paragraphs (4) and (5)" and inserting in lieu thereof "paragraphs (2)(F), (4), and (5)".

(b) The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1207(e) of the Tax Reform Act of 1976.

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(26 CFR 1.401-1: Qualified pension, profit-sharing, and stock bonus plans. (Also Sections 1402, 3121, 3401.))

REV. RUL. 79-101

A fishing boat operates with a crew of fewer than ten individuals who are common-law employees under the usual common-law rules for determining the employer-employee relationship. The crewmembers, however, perform their services under the conditions referred to in section 3121(b)(20) of the Internal Revenue Code of 1954. As a result, their services are excepted from employment for purposes of the Federal Insurance Contributions Act; their remuneration is excepted from wages by section 3401(a)(17) (relating to income tax withholding); and their services are a "trade or business" under section 1102(c)(2)(F) (relating to the self-employment tax).

Held, the crewmembers are employees for purposes of determining whether an employee's pension, annuity profit sharing, or stock bonus plan is qualified under section 401 of the Code.

[From The National Fisherman, December 1984]

DISPARITY IN TAX LAWS COULD HURT CREWMEN

Thanks to a recent Internal Revenue Service ruling, crew members on commercial fishing vessels now face a Catch-22 situation in regard to self-established Keogh retirement plans.

Under one section of the Internal Revenue Code, those who work aboard boats with fewer than 10 crewmen are considered to be self-employed—provided the vessels involved operate on a share system, as is customary. Such crewmen file their tax returns as self-employed persons and pay self-employment taxes.

According to the law, a self-employed individual is entitled to claim a deduction on all contributions that person makes to a self-established, "qualified" Keogh retirement plan. These plans can be set up directly through a local bank or arranged with the help of an accountant, pension planning specialist or lawyer.

The problem is that in another, different section of the IRS code—one that deals with pension plans—crewmen aboard fishing vessels are identified not as self-employed persons but as "common-law employees," thus making them ineligible to establish (and claim deductions on) their own Keogh retirement plans.

This disparity in law is spelled out in what is known as an IRS "private letter ruling" dated May 17, 1984. It was brought to the attention of "National Fisherman" by a Narragansett, R.I., certified public accountant, whose clients are commercial fishermen.

In the May 17 letter, Alan Pipkin, an IRS official, tells a crewman that although he may be self-employed for income tax purposes, he is a common-law employee when it comes to the pension code. Pipkin cites a 1979 formal IRS ruling to this effect.

The May 17 letter came as a surprise to the Narragansett accountant and may have a similar effect both on other professionals helping crewmen with tax returns and on crewmen themselves. However, according to Wilson Fadely, a public affairs officer for the IRS, the agency's position is not new.

As he sees it, the only tax deductible individual retirement option now open to crewmen is the widely known Individual Retirement Account of IRA. Fadely, however, concedes this alternative is far more limited than a Keogh plan because one can contribute only $2,000 a year to an IRA account.

Apart from that, the owner/operator of the boat on which the crewman worked could establish any one of a variety of pension plans on his employee's behalf. However, unless the vessel owner found a "master" plan already set up by a bank, insurance company or financial firm, he would probably have to bear the administrative costs of establishing one. That done, the boat owner might make matching contributions to the plan or, under retirement funds with different structures, the crewman might be the sole contributor and beneficiary.

Fishing vessel crew members should also note the demise of a provision which once made it mandatory for a vessel owner setting up his own retirement plan to likewise provide for full-time employees with three years or more of service. This requirement was repealed under the Tax Equity and Fiscal Responsibility Act of 1982.

Meanwhile, crewmen wanting the flexibility to set up their own Keogh retirement plans face two alternatives. Either they can join together and lobby Congress to amend the existing tax laws, or they can mount a challenge to the rule that now bars them from setting up their own Keogh plans. Reportedly, just a case is now being heard in a tax court on the West Coast.

While crewmen's options may be limited—at least for the moment—owner/operators of commercial fishing vessels have more flexibility. According to the IRS, these individuals are self-employed and may establish Keogh plans as long as they are not working for a corporation they, themselves, have created.

But, even if an owner/operator is an emplhey can contribute each year to their Keogh plans.

The Tax Equity and Fiscal Responsibility Act of 1982 did away with the former limit on annual contributions of $15,000 or 15% of one's earned income, whichever was less. This change, of course, means that the more an individual puts into a Keogh plan account, the larger the deduction he can claim on his income taxes.—Susan Pollack.●

● Mr. MITCHELL. Mr. President, I am pleased to join in introducing this legislation today to correct an inequity in current law that prevents self-employed fishermen from setting up pension type arrangements under section 401 of the Internal Revenue Code. This legislation provides that certain fishermen who are treated as self-employed for Social Security tax purposes shall be treated as self-employed for section 401 Keogh and other pension plan purposes. As explained in other legislation that is being introduced today, the issue is how to properly characterize the employment relationship of fishermen who serve on boats with fewer than 10 crewmembers.

In the typical commercial fishing venture in Maine and throughout the Nation individuals come together to operate fishing boats on a "share of the catch" arrangement. The owner of the boat does not pay a salary to the crewmembers of the boat and there is no guarantee of compensation. Instead, each crewmember receives a share of the catch or a share of the proceeds of the catch. Like other self-employed independent businessmen, fishing boat crewmembers bear the risk of their trade, contributing to the overhead cost of operating the vessel and incurring business losses if those costs exceed the income from catching fish.

By the nature of the compensation arrangement and the customs of the industry the individual crewmember is clearly self-employed. He operates independently, moving between different fishing boats, providing for his own needs and carrying the costs and burdens of any other business entity.

Federal law has generally reflected industry custom by treating crewmembers of fishing vessels as self-employed rather than as employees for purposes of Social Security taxation, Federal income tax withholding, and Federal unemployment tax contributions. Crewmembers of fishing vessels that are manned by a share paid crew of 10 or less individuals are considered to be self-employed individuals and thus must pay the higher Social Security payroll tax required of self-employed individuals. Those same crewmembers are exempted from income tax withholding requirements. In addition, under the Federal Unemployment Tax Act owners of vessels of less than 10 net tons have been exempted from paying unemployment taxes on their crewmembers recognizing that the crewmembers are self-employed individuals. The same treatment has applied to fishing vessels that exceed 10 net tons up until December 31, 1984. Legislation is being introduced today to preserve that treatment and I expect that exemption from future taxes will continue.

Unfortunately, Federal pension law under section 401 is unclear as to the self-employed status of these fishermen. And the Internal Revenue Service has ruled, in spite of clear precedent in other Federal law, that these fishermen are employees for purposes of setting up a qualified pension-type plan.

Under that interpretation, the owner of the boat can set up a qualified pension for his crewmembers but they may not establish their own retirement plan. This is clearly not satisfactory because by the nature of the industry, where there is frequent turnover of crewmembers, these fishermen do not work long enough on any one boat to qualify for pension benefits under the vesting standards of Federal pension law.

As a result these self-employed individuals are unable to satisfactorily provide for their retirement. They are able to set up individual retirement accounts but cannot provide for further retirement protection by setting up Keogh or other pension arrangements.

All other Federal law treats the crewmembers as self-employed individuals and it is only fair that they should be treated the same for purposes of providing for their retirement. Other self-employed individuals in similar circumstances such as salesmen, ministers, and independent contractors are able to set up pension-type plans to provide for their retirement; the same rules should apply to fishermen under these circumstances.

I urge my colleagues to support this legislation.●

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By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 444. A bill to amend the Alaska Native Claims Settlement Act; to the Committee on Energy and Natural Resources.

ALASKA NATIVE CLAIMS SETTLEMENT ACT AMENDMENTS

● Mr. MURKOWSKI. Mr. President, on behalf of myself and Senator STE-

VENS, I am today introducing legislation to affirm the terms and conditions of a land consolidation and exchange agreement between NANA Regional Corp., Inc., a corporation organized pursuant to the provisions of the Alaska Native Claims Settlement Act, and the United States, acting through the Department of the Interior. The agreement negotiated by NANA and the Secretary of the Interior is, by its own terms, specifically subject to congressional affirmation.

This land exchange will allow the construction of an access road to a mineral deposit that the NANA Regional Native Corp. hopes to develop. At the outset, I want to stress two points: The access road is proposed to be built along the environmentally preferred route. Other alternatives have been studied, a complete environmental impact statement has been prepared, and a consensus exists that a land exchange is necessary to allow the road to be built along the preferred route, across what is now the Cape Krusenstern National Mounment. I also want to stress, Mr. President, that this exchange enhances our own mineral security. Should any of my colleagues oppose this legislation and the exchange it affirms, they will be acting against our national self-interest and our desire to enhance our own mineral security.

This exchange will accomplish three major objectives: First, it will enhance the opportunities for NANA to fulfill the economic purposes of the Alaska Native Claims Settlement Act by the Development of NANA's Red Dog Mine, a major lead and zinc deposit, and thus provide for the social and economic needs of NANA's shareholders.

Second, the exchange will benefit the Krusenstern National Monument by reducing private inholdings and providing for the consolidation of land ownership patterns and more rational management within the monument. Therefore, the interest of the public in the ownership and management of our public lands is served by the exchange.

Finally, the exchange will benefit the United States by enhancing our mineral security and improving our balance of trade. The development of Red Dog will increase our recoverable reserves of zinc by more than 33 percent, from almost 25 million tons to almost 40 million tons of metal. When in full production, Red Dog will produce 300,000 tons of zinc per year, almost doubling the Nation's annual production. Domestic mines now produce less than one-third of our annual zinc requirements. After Red Dog comes on line we will increase annual production to two-thirds of our requirements.

While the enhanced ability to mine this resource is important to our national security, the ability to market the resource abroad can be helpful in the reduction of our trade imbalance, particularly with Japan. Exports from the Red Dog Mine are expected to total about $250 million a year in current dollars. About a third of the exports will go to Japan, hence the project will be particularly helpful in reducing our staggering trade deficit with that nation.

Mr. President, for the benefit of a complete record, I'll now go into some detail about the project's background.

NANA, pursuant to the Alaska Native Claims Settlement Act (ANCSA), selected and received lands containing a major lead/zinc deposit. NANA then negotiated an agreement with Cominco Alaska, a mining company, to develop those deposits known as the Red Dog Mine.

The timely development of the Red Dog Mine is extremely important to NANA if its native shareholders are to enjoy all of the potential benefits of ANCSA. When fully developed, the mine will employ approximately 400 individuals, most of whom will be residents of the NANA region and NANA shareholders. The estimated life of the project is 50 years, and the annual income from these jobs is estimated to be approximately $15 million.

At the present time there is no economic base within the NANA region that can offer even remotely sufficient job opportunities to the residents. As a result, many of NANA's residents are seeking employment outside the region, creating a great deal of dislocation. The development of the Red Dog Mine will change all that.

The Red Dog Mine is landlocked, and it is located northeast of Cape Krusenstern National Monument. In order to develop the mine, an access road and port site will have to be built. A September 1984 environmental impact statement for the project determined that the environmentally preferred as well as economically acceptable route was across the monument.

NANA owns land and conveyance rights in lands totaling approximately 195,043 acres within the monument. While not all of the lands subject to selection by NANA within the monument will ultimately be conveyed to NANA, it is anticipated that substantial acreage will eventually be conveyed.

In order to facilitate access to the Red Dog Mine, NANA proposed a land exchange to the Department of the Interior, whereby NANA would exchange lands conveyed to it and lands subject to conveyance to it within the monument for other lands within the monument. These lands could then be used for the environmentally preferred and economically acceptable access road. All required Federal and State permits would still be needed, however, before the road could be constructed.

While access could be sought across the monument pursuant to title XI of the Alaska National Interest Lands Conservation Act [ANILCA], by what in effect is a Federal right of way, title XI remains an untested procedure for obtaining congressional approval of a right of way. NANA believes that a legislated land exchange is the most expeditious manner by which it can receive the right of way. This approach will eliminate the uncertainty associated with a title XI application.

The proposed exchange consists of the following major provisions:

First, a consolidation of land ownership into contiguous patterns that would provide administrative and resource management benefits to the United States and provide NANA with a block of land meeting its access needs.

Second, NANA would receive: First, title to approximately 62,084 acres of Federal lands within the monument and 600 acres of limited subsurface estate, concentrating its holdings at the northwestern and southeastern corners of the monument; second, easements for two winter use trails between Kivalina and Noatak across the monument and other Federal lands; and third, title to approximately 1,915.25 acres outside the monument. NANA would also take conveyance to 31,884.67 acres of lands in the northwest corner of the monument to which it already has vested rights pursuant to ANCSA. This would consolidate NANA's inholdings within the monument.

Third, the United States would receive from NANA: First, conveyance of 1,345 acres of coastal land and relinquishment of selections and selection rights to approximately 103,338 acres within the monument. Coastal land is more important from an archeological standpoint and having this land in Federal ownership is important; second, a grant in perpetuity of an easement and public use and occupancy rights for a 5-acre administrative tract at the Onion Portage Archeological District at Kobuk Valley National Park; third, equitable servitudes and conservation easements for the protection and study of resource values on 10,942 acres of land near Sheshalik—an important cultural resource area along the coast; fourth, interests and easements for the protection and study of resource values within the 65,274-acre block which would be crossed by the Red Dog Mine road. These include protections which are essentially the same as would be attached to an approved title XI right-of-way; fifth, trail easements providing for public access across NANA lands to monument lands; and sixth, for purposes of administrative convenience

and to effect the land consolidation within the monument, NANA will take conveyance to 31,884.67 acres of Settlement Act selections within the northwest corner of the monument. This spent acreage entitlement may diminish NANA's potential conveyances within other units of conservation systems within the NANA region.

Mr. President, in my opinion, the exchange clearly benefits NANA by facilitating development of its Red Dog Mine and benefits and protects the interests of the United States. It provides the United States an opportunity to reduce private inholdings in the Cape Krusenstern National Monument, consolidate land ownership patters within the monument, and it resolves the long-term status of major portions of the Federal and non-Federal lands. It provides for manageable land units and gains additional protective and study provisions that might not otherwise exist for park resources on NANA's private land holdings. Easements also are established which provide for general public access to Federal lands and waters and an administrative site is provided at a key location in the Kobuk Valley National Park.

The agreement also protects vital subsistence values. NANA is most sensitive to the subsistence needs of its people and has provided for this protection both in the agreement NANA negotiated with Cominco and in the land exchange negotiated with the Department. Section 810 of the Alaska National Interests Land Conservation Act requires that if an exchange such as this were accomplished administratively, the Agency head or his designee must evaluate the effect of such action on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved and other alternatives which would reduce or eliminate the disposition of public lands needed for subsistence purposes. A subsistence evaluation was prepared by the Department. That evaluation concludes that the exchange will not significantly restrict subsistence uses. NANA's potential development activities will be subject to strict environmental safeguards and restrictions, developed by NANA, in consultation with appropriate State and Federal agencies; significant displacement of fish and wildlife is, therefore, not expected to occur, and any relocation of resources utilized for subsistence purposes will not result in those resources becoming unavailable to the nearby residents. No significant restriction of subsistence uses is foreseen. NANA has provided stringent protections as part of the agreement.

In addition, formal consulation was undertaken with the Alaska Regional Office of the Fish and Wildlife Service and a biological opinion was provided concerning endangered species. The opinion concluded that the Arctic peregrine falcon is the only endangered species in the area of the proposed exchange, and that the exchange is not considered to jeopardize any falcons.

Also, in order to assure that the exchange and the activities resulting from the exchange will not adversely affect properties on or eligible for inclusion on the National Register of Historic Places, consultation was initiated with the Alaska State historic preservation officer and the advisory council on historic preservation. Since the United States acquires lands of significant acreage with cultural resource values, and as a result of the significant restrictions on NANA's development activities, including provisions designed to prevent damage to cultural sites, both the State officer and the advisory council concluded that the exchange would have no adverse effect.

On the Federal level, the intergovernmental review of Federal programs was combined with the review of the proposed exchange by the State of Alaska pursuant to the Coastal Zone Management Act. The State was advised of the exchange and although the State did not agree that the exchange was consistent to the greatest extent practicable, it indicated that, if certain additional provisions were included in the exchange, it would be consistent with the State program. All but one or two of the suggested changes were agreed to by NANA and the Department and included in the agreement.

The National Park Service, as a matter of sound administrative practice and in order to understand fully the environmental impacts associated with this exchange, prepared a resource evaluation which is the functional equivalent of an environmental impact statement. That evaluation demonstrates that any environmental impacts associated with the land exchange can be mitigated to an acceptable degree and that the essential integrity of the monument's resources and values will not be undermined by the exchange, and instead that resource protection and management will be enhanced in several respects.

NANA and the Department formally advised the Alaska Land Use Council of the proposed exchange and it was given an opportunity to comment. A resolution of the council's land use advisors committee supported the exchange, and the council unanimously approved a resolution supporting the exchange.

Notice of the proposal also was published in the Federal Register advising the public of the availability of draft materials regarding the exchange, of a public meeting to be held on the subject May 1, 1984, at Anchorage, AK, and the opportunity for public comment at the meeting or in writing. Public comment was heard, received and considered by the parties. In addition, NANA conducted village meetings throughout the region accompanied by National Park Service personnel to explain the land exchange.

Mr. President, this proposed exchange is in NANA's best interests, the best interests of the Krusenstern Monument and the best interests of the United States. I ask unanimous consent that a copy 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. 444

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

SECTION 1. The Alaska Native Claims Settlement Act (43 U.S.C. 1601, et seq.) is amended by adding at the end thereof the following new section.

"SEC. 42. The Secretary shall convey to NANA Regional Corporation, Inc., in accordance with the terms and conditions set forth in an agreement entitled 'Terms and Conditions Governing Legislative Land Consolidation and Exchange between NANA Regional Corporation, Inc., and the United States,' which was executed by the parties on January 31, 1985, lands and interests in lands in exchange for lands and interests in lands of NANA Regional Corporation, Inc., upon fulfillment by NANA Regional Corporation, Inc., of its obligations under said agreement."●

Mr. STEVENS. Mr. President, my distinguished colleague from Alaska had done an excellent job of setting forth the merits of the Cape Krusenstern land exchange, which I strongly support. I would like to make only two brief comments.

The Department of the Interior already has the authority to effect this exchange under the provisions of the Alaska National Interest Lands Conservation Act of 1980. Unfortunately, NANA Regional Corp. has been informed in no uncertain terms by certain environmental and wilderness groups that an administrative land exchange would be challenged in court. Delay arising from such litigation would seriously injure NANA, its shareholders, and the other residents of northwest Alaska. We have decided to proceed with this bill in order to circumvent unreasonable efforts to delay or derail the exchange through litigation.

As Senator MURKOWSKI's statement clearly demonstrates, the Red Dog-Cape Krusenstern exchange is a good deal not only for NANA and Alaska but also for the Federal Government and the Cape Krusenstern National Monument. One major conservation group, the National Audubon Society, has already come out in support of the exchange. It is my hope that other environmental and wilderness organizations will do the same. This bill is a test of the willingness of those groups

to support balanced, environmentally sound development of Alaska's resources and thus improve the human environment of northwest Alaska.

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By Mr. HART:

S. 445. A bill to amend the Price-Anderson Act to remove the liability limits for nuclear accidents, to provide better economic protection for people living near nuclear powerplants and nuclear transportation routes, and for other purposes; to the Committee on Environment and Public Works.

CIVILIAN NUCLEAR POWER REGULATION IMPROVEMENT AND SAFETY INCENTIVES ACT

● Mr. HART. Mr. President, today I am introducing legislation to enhance the safety of nuclear power in this country—the Civilian Nuclear Power Regulation Improvement and Safety Incentives Act of 1985. Representative JOHN SEIBERLING has introduced an identical companion measure in the House. Our legislation makes three simple but fundamental modifications in the so-called Price-Anderson Act:

It removes the current $560 million limitation on total liability for damages to the public caused by an accident at a nuclear powerplant;

It makes the nuclear industry strictly liable for the damages caused by all accidents, regardless of severity. Injured persons would not have to prove negligence in the design, construction, or operation of a plant in order to receive compensation for any injuries they might sustain;

And it eliminates the current 20-year statute of limitations on recovering damages caused by a nuclear accident. Instead, it would permit injured persons to recover for damages if they sue within 3 years after they discover, or reasonably could have discovered, their injuries.

This bill does not in any way alter the other provisions in the Price-Anderson Act, particularly those requiring that a nuclear utility, as a condition of its operating license, maintain either the maximum available private insurance or some other form of financial protection and contribute to a retrospective premium pool should an accident cause damages exceeding that financial protection.

LIMITATION ON LIABILITY

Mr. President, in perhaps its most important—and most controversial—provision, the Price-Anderson Act insulates the nuclear industry—utilities, designers, vendors, and contractors—from liability for any damages caused by a nuclear accident exceeding $560 million. For 35 years, this provision has served as an umbilical cord for the nuclear industry.

By relieving the nuclear industry of the cost of insuring itself against the full range of damages caused by a nuclear accident, this statutory limitation on liability offers perhaps the largest single subsidy granted any industry.

Those favoring the limitation on liability base their argument on an irreconcilable—and fatal—contradiction. On the one hand, they maintain that removal of the limitation would foreclose the nuclear power option, presumably because the risk of a serious accident is too great for the nuclear industry to bear without this protection. Yet, they also argue there is only a slight risk that a nuclear accident ever would cause damages exceeding the statutory limitation. Therefore, they say, the public likely will recover for all the injuries it may suffer, the limitation notwithstanding.

The defenders of this limitation on liability should not have it both ways. They cannot describe the risks of a serious accident as so slight that the public need not worry, but then suggest the risks are so great that the nuclear industry cannot survive without it.

Mr. President, the time has come for us to sever this umbilical cord and wean the nuclear industry.

First, any justification for this limitation on liability that may have existed 25 years ago, when it was enacted, do not exist now.

Although originally intended as temporary measure to nurture the infant nuclear industry, the liability limitation in the Price-Anderson Act has a survival record rivaling that of Rasputin.

In 1957, Congress first enacted the Price-Anderson Act to remove what many say was the major roadblock to commercial development and use of nuclear power. Without the liability limitation, investors, vendors, engineers, and utilities refused to risk involvement in a dangerous, umproven technology. The act was to expire in 10 years when the fledging nuclear industry presumably could survive on its own.

But apparently 10 years was not long enough. In 1965, the nuclear industry sought another 10-year extension. Congress once again agreed. Few temporary laws have proven so permanent.

Mr. President, if the Congress accedes to the nuclear industry's latest request for an extension of the liability limitation, it will wind up nurturing a 40-year-old infant industry. One need only look at its size to realize we are not talking about a babe in arms. The nuclear industry represents billions of dollars of assets and thousands of jobs. It has 80 reactors built and operating, and has accumulated more than 700 reactor-years of operating experience. An additional 70 reactors are under construction.

In addition, the nuclear industry seems so confident in its current technology that it seeks to graduate into a new generation of reactors. It annually requests hundreds of millions of Federal dollars for developing breeder reactors, high-temperature gas-cooled reactors, and magnetic fusion. This hardly requires a crib of liability limitation.

Compare this industry to another risky industry. In 1957, few Americans traveled by air, and space exploration was the stuff of science fiction. Today, we fly on supersonic Concordes and Boeing 767's. Air transportation is a multibillion-dollar industry. Our space probes have explored the far reaches of the solar system, and use of the space shuttle soon may become a commercial enterprise.

If the air transportation industry—with its risk of accidents causing potentially great damages—survives without a limitation on its liability, why cannot the nuclear industry?

Mr. President, the nuclear industry undoubtedly will argue that it would buy additional private insurance if the private insurers would sell it. But currently the private insurers will only make available for each reactor $160 million of insurance against off-site damages. The reason for this minimal amount of insurance is simple: The liability limitation in the Price-Anderson Act removed all incentive for the nuclear industry to buy additional insurance, and for private insurers to sell it.

Consider the response of the private insurers to the accident at Three Mile Island. The nuclear industry always has had to absorb the on-site property damages caused by an accident—and particularly damage to the reactor itself. Prior to the Three Mile Island accident, private insurers for on-site property damages. The utility, contractor, or plant vendor had to pay for any damages in excess of $300 million.

Three Mile Island showed, however, that a nuclear accident causing little off-site damage could still cause substantial damage to the utility's powerplant and other on-site property—in this case over $1 billion.

Because the nuclear industry naturally wanted to minimize the exposure of its assets to such damages, it successfully encouraged the private insurers to increase from $300 million to $1 billion the amount of insurance they would make available for on-site property including the powerplant itself.

If the private insurers can respond with such remarkable speed to the needs of the nuclear industry, surely when the liability limitation has been removed they will respond with equally remarkable speed to the needs of the potential public victims of nuclear accidents.

This disincentive for private insurers to write coverage for injuries to public caused by a nuclear accident underscores a second season for removing the liability limitation: The limitation

transfers the risk of nuclear power from those who profit from the technology to those who could suffer from it. If the public were given the opportunity to recover fully for injuries from an accident, the companies who design nuclear powerplants, the contractors who build them, and the utilities who operate them would have far greater incentive to protect the health and safety of the public. This is precisely the type of economic incentive for safety that the Reagan administration would like to see replace direct Federal regulation.

Indeed, the Heritage Foundation, in supporting elimination of this liability limitation, has said:

> Safety would be improved because the insuring companies would have an incentive to work with the utility to improve design and operational safety. This has been the case in numerous industries; the nuclear industry would not likely be an exception.

There is a final reason for removing the liability limitation. This hidden subsidy distorts the market that allocates our energy resources. By enabling it to enjoy below-market insurance, the Price-Anderson Act relieves the nuclear industry of a significant cost of doing business.

The Reagan administration has a penchant for applying a free market test to other energy technologies—particularly when it cuts funding for conservation, solar and renewable energy technologies. Surely, consistency demands it apply the same test to nuclear power. The liability limitation for nuclear power has caused serious inefficiency and waste in the allocation of our energy resources. If nuclear power cannot survive in a market free of hidden subsidies, then we should allocate our energy resources to other technologies that can.

STRICT LIABILITY

Mr. President, although removing the limitation on aggregate public liability may seem the most significant change this bill makes in the Price-Anderson Act, the other two provisions are equally important.

The second provision eliminates the distinction between an extraordinary nuclear occurrence [ENO] and a nuclear incident —two of the most creative euphemisms imaginable. Currently, if the Nuclear Regulatory Commission [NRC] determines, based on the amount of radiation released and the damage to persons and property off-site, that an accident is serious enough to constitute an ENO, then the nuclear industry cannot defend against a damage suit by arguing either that it was not at fault or that it enjoyed some special immunity. The nuclear industry is strictly liable for the damages caused by an ENO.

By contrast, if the NRC determines, based on its criteria, that an accident was not serious enough to constitute an ENO, then regular State laws of tort liability and immunity would apply. The nuclear industry would be strictly liable for damages caused by a nuclear incident only if the State law so provides. Since State laws generally apply strict liability to ultrahazardous activities—and presumably for many States nuclear power would fall within this category—strict liability would often apply even to an accident not deemed an extraordinary nuclear occurrence.

Why, then, should not the Price-Anderson Act mandate strict liability for all nuclear accidents regardless of the State in which they occur?

The ENO distinction implies that victims of "less serious" nuclear accidents should have to meet tougher conditions in order to recover than should victims of more serious accidents. To a person suffering substantial property damage or serious radiation injury, however, it makes no difference whether the NRC finds that an accident was an ENO. The pain, suffering, and other damage remain the same, regardless of the injury caused to the surrounding community. By removing the ENO distinction and applying strict liability to accidents of any severity, the provision redresses this inequity.

STATUTE OF LIMITATIONS

Mr. President, the third, and final, provision of this bill replaces with a so-called discovery rule the existing 20-year statute of limitations on suits to recover damages.

Currently, the 20-year statute of limitations applies only to an ENO, while State statutes of limitations apply to less severe nuclear incidents. Since the second provision in this bill eliminates altogether the ENO distinction, this third provision would apply a discovery rule to all nuclear accidents—victims could recover damages caused by an accident if they file suit within 3 years after they discovered, or reasonably could have discovered, their injuries.

Many injuries caused by a nuclear accident are latent. They may not manifest themselves for decades, and often for periods longer than 20 years. Genetic damage caused by radiation may take one or even several generations to appear. Fairness dictates that we not preclude, with an arbitrary limitation, these victims of a nuclear accident from recovering damages simply because they were unlucky enough to suffer latent injuries. This new statute of limitations enables all victims of a nuclear accident to seek recovery for their injuries regardless of whether apparent or latent.

Mr. President, the modifications of the Price-Anderson Act contained in this bill are long overdue. This bill does not pass judgment on the nuclear industry or its prospects. Indeed, conservative groups such as the National Taxpayers Coalition and the Heritage Foundation have also argued for removal of the liability limitation in the Price-Anderson Act.

We must reject arguments used in the 1950's at the dawn of the nuclear age to justify preserving and extending the Price-Anderson Act today. Ultimately, enactment of the Civilian Nuclear Power Regulation Improvement and Safety Incentives Act should benefit the nuclear industry because it will enhance public confidence in nuclear power. If the nuclear industry can survive in the free market without the Price-Anderson subsidy and obtain sufficient private insurance to protect the public, it deserves to survive. If it cannot, then we should invest our energy dollars elsewhere.

There is concern about further reforming the process for licensing nuclear powerplants. I cannot imagine a reform more important than removing the liability limitation and creating a powerful economic incentive for safe design, construction and operation of nuclear powerplants. I believe it is important that we reform current rules of financial protection to insure safer operation of currently operating plants. This legislation will do just that.

Mr. President, I urge the Committee on Environment and Public Works to promptly consider, and the Senate to pass, this important legislation.

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. 445

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

SECTION 1. That this Act may be cited as the "Civilian Nuclear Power Regulation Improvement and Safety Incentives Act of 1985".

LIMITATION ON LIABILITY

SEC. 2. Section 170 of the Atomic Energy Act of 1954, as amended, is amended by striking out subsection 170e, and relettering the subsequent subsections as necessary.

EXTRAORDINARY NUCLEAR OCCURRENCE

SEC. 3. (a) Section 11 of the Atomic Energy Act of 1954 is amended—

(1) by striking out subsection j; and

(2) in subsection q by striking out ", including an extraordinary nuclear occurrence,".

(b) Section 170n of the Atomic Energy Act of 1954 is amended by striking out "extraordinary nuclear occurrence" and substituting "nuclear incident" in each place it appears.

STATUTE OF LIMITATIONS

SEC. 4. Section 170n(1) of the Atomic Energy Act of 1954 is amended in the first sentence—

(a) by striking out the clause immediately following subparagraph (c) up to but not including "(i)", and inserting in lieu thereof the following:

"the Commission must incorporate provisions in indemnity agreements with licen-

sees and contractors under this section, and must require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive"; and

(b) by inserting in clause (iii) a period after "thereof" and striking out the remainder of the sentence.●

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By Mr. DOMENICI:

S. 446. A bill for the transfer of certain interests in lands in Dona Ana County, NM, to New Mexico State University, Las Cruces, NM; to the Committee on Energy and Natural Resources.

TRANSFER OF CERTAIN LANDS

Mr. DOMENICI. Mr. President, today I introduce legislation that will transfer ownership of 4,242 acres near Las Cruces, NM, to New Mexico State University. The land in question has been under the control of New Mexico State University through a withdrawal order from the Bureau of Land Management dating back to the 1950's.

This land is currently being used by the university for a number of important facilities including an antenna range, an observatory, an insect laboratory, and a solar pond. There are many other activities going on elsewhere on this parcel.

I would like to point out that New Mexico State University, which has its main campus located just to the east of this land, is my State's land grant institution. This university has in its land grant capacity served varied interests in my State including a continuing commitment to the tricultural nature of my State's population with special programs aimed at our Hispanic population and our American Indian population.

New Mexico State has long been recognized across our country for its agricultural endeavors, as well as its engineering activities. In recent years its liberal arts program has gained nationwide prominence with its theater and drama department. As this great university has grown during the past three decades it has adapted to a changing society not only in the Southwest where it is located but has also adapted to changes in the United States and in the international arena with its many overseas projects.

With well over 12,000 students on the main campus, the university is large enough to fund major university programs. At the same time, it is still small enough to allow students that individual education that they need so much.

The land that this legislation would transfer is known as "A" Mountain.

Outright ownership by the university of the "A" Mountain lands is justified completely by the tremendous contribution made by the university to America's Space and National Defense Programs alone. Currently, one of the major installations on this land is the Physical Science Laboratory [PSL] antenna range. This is a NASA facility managed by the PSL, and is part of New Mexico State University.

The PSL/NMSU antenna test facility is one of the finest in the world and is used by many Government agencies.

Another user of the "A" Mountain lands which depends upon a clean unpolluted atmosphere is the NMSU Department of Astronomy. While astronomy at NMSU is basically concerned with teaching and research on alternative energy sources, the solar pond is a program relative to biomass and the research needs a greenhouse operation which requires about 30 acres for actual research and control over lands in a 500- to 1,000-foot perimeter surrounding the project.

I would like to quote from the researchers here as to the needs of the solar pond:

Special consideration relating to the use of BLM land for the biomass project are that no tall, solid structures capable of blocking sunlight be erected in the vicinity and that roads accessible to unregulated frequent traffic not be near the algae ponds. The dust of close-by, unpaved roads would be capable of introducing chemical contamination and unnaturally heavy inoculations of the open algae growing ponds with "wild" organisms which, if inoculated heavily, may overcome the biostatic equilibrium of the test and production of algae organisms. It will also be necessary to keep frequent motor vehicle traffic on paved roads removed from the ponds to prevent the introduction of exhaust pollutants, particularly of toxic heavy metals such as lead. A motor vehicle exclusion zone of 500 feet with respect to unregulated, frequent public traffic around the ponds is necessary. Dust-raising and air-polluting activities, in general, must be excluded.

This is important research for New Mexico and the Nation, and we cannot expect the university to continue to make the investment in time, facilities and personnel to conduct this research when this land might some day be pulled out from under them along with the tremendous investment they are placing on this land.

Also, located there is a New Mexico State University insect laboratory related to the livestock industry and wildlife. Because of the large Federal land acreage in New Mexico, research at this lab has great impact. There is no doubt in my mind that this operation will be expanded in future years. This legislation and the land it transfers will allow this project space for expansion.

Other facilities on the land include chemical storage areas, geothermal research holes, radiometers, and a geothermal greenhouse. The activities taking place on this land relate to eight different departments of the university.

It is time for control of this land to be transferred to New Mexico State University. Otherwise the city of Las Cruces, as it grows, could encroach on the land and the capital improvements made by New Mexico State University. That's the major reason the permanent management by New Mexico State University will be of great benefit to our Nation as the current research will continue undisturbed.

I would emphasize that it is time this land be transferred to the university. My legislation includes the conditions that it must always be used for education reasons. That by transferring this land, the best interests of the people of New Mexico and the United States will be well served. Further, I would point out that the university is willing to reimburse the Federal Government for administrative costs associated with the transfer. Further, I would point out that the legislation contains reverter clause language. This means that if the university uses the land for purposes other than research and education, then the land ownership reverts back to the Federal Government. I hope that Congress will act quickly on this legislation.

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By Mr. DECONCINI:

S. 447. A bill to amend the Sherman Act to prohibit a rail carrier from denying to shippers of certain commodities, with intent to monopolize, use of its track which affords the sole access by rail to such shippers to reach the track of a competing railroad or the destination of a shipment and to apply Clayton Act penalties to monopolizing by rail carriers; to the Committee on the Judiciary.

RAILROAD ANTIMONOPOLY ACT

Mr. DECONCINI. Mr. President, I am reintroducing today a bill titled the Railroad Antimonopoly Act of 1985. It is similar in principle to the bill I introduced during the past Congress as S. 2416. The goal of the bill is to foster competition in the rail industry and bring fair treatment to captive shippers, and ultimately the public, through clearly bringing the rail industry within the scope of the antitrust laws.

The heart of the bill provides that it shall be unlawful for an owner rail carrier to monopolize or attempt to monopolize by denying or threatening to deny to any shipper or another rail carrier the use on reasonable terms of a railroad facility which is the sole facility over which such shipper can move bulk commodities by rail to connect with the track of competing rail carrier or to reach the destination of shipment.

As a result of the Staggers Rail Act of 1980, the industry has been largely deregulated. Railroads no longer operate under the tight regulatory controls that marked their historical development in this country. In the 4½ years since passage of the Staggers Rail Act of 1980, two significant changes have occurred which make it imperative that the antitrust laws be amended to

avoid serious injury to the distribution system of many shippers which are heavily dependent on rail transportation.

First, there has been a significant reduction in the number of railroads and hence a reduction in rail competition since passage of the act. Deregulation of the airlines and the trucking industry has resulted in new entries and new competition in these fields. Deregulation has thus met the objective of providing the public with increased competition. Deregulation of railroads, however, has led to an unprecedented series of mergers resulting in less competition than ever before.

Second, the Commission has used its power to exempt certain classes of commodities and certain transportation services from regulation to a point where the carefully constructed remedies for captive shippers under the Staggers Act will soon be irrelevant, even if the Interstate Commerce Commission could be persuaded to administer the act the way it was intended.

The result has been that some large volume shippers, heavily dependent on rail for distribution of their products, have less rail competition and an ineffective remedy under the Staggers Act. Another large segment of rail shippers has no remedy at all under the Interstate Commerce Commission because they have been exempted by order of the Commission.

The antitrust laws, as presently written and construed, do not appear to provide adequate protection against abuse of market power. Since 1948, the railroads have been operating under a partial exemption from the antitrust laws. The Reed-Bullwinkle Act (49 U.S.C. 5(b)) gave the railroads, subject to approval of the Interstate Commerce Commission, the right to act in concert to fix prices for transportation services. Although the scope of this exemption was altered in the Staggers Rail Act of 1980 (49 U.S.C. 10706), the partial exemption still remains.

It is true that the courts have held that Reed-Bullwinkle did not modify the Sherman Act prohibition against predatory or anticompetitive practices. See, *United States* v. *B&O R. Co.*, 538 F. Supp. 200 (1982). Consequently, rates designed to drive out competition from other carriers might well be within the scope of the present antitrust laws. But what of the situation where a single carrier serves a shipper who depends in large part on rail to distribute his products? May such a carrier charge whatever price it desires for rail transportation with impunity from the antitrust laws? May such owner-carrier prohibit another competitive carrier from using its tracks to reach the facilities of the shipper? Does such a railroad have the right to discontinue service if a shipper objects to any unilateral proposals which would be damaging to his business? Unreasonably high rates, discrimination, joint use of rail facilities have all been subject to regulation for nearly a century and have not been subject of antitrust investigations. The Interstate Commerce Commission is the exclusive agency empowered to enjoin railroad rates and practices. Section 16 of the Clayton Act expressly prohibits shippers from seeking an injunction against the railroads in courts.

Under today's climate of deregulation for the transportation industry, both the proponents of deregulation and the railroads have argued that the restraints of the antitrust laws should provide the necessary protection against abuse of market power—not an independent regulatory agency. This is what our amendment to the antitrust laws is designed to accomplish. There is no desire to reregulate the railroad industry but merely to provide the captive shipper with a remedy under the antitrust laws which will prevent abuses of market power.

These abuses are not hypothetical or theoretical. They have happened. Shippers have been faced with demands for unreasonable rates. Shippers have been threatened with discontinuance of service. In some cases, the railroads have taken the position that they are no longer common carriers and, therefore, they have no duty to serve the public. They have claimed that they have an unrestricted right to cut off service unless shippers comply with the unilateral demands of the railroads. Moreover, the railroads have refused to negotiate or arbitrate disputed issues. For example, on two separate occasions, one shipper's business was critically threatened when a railroad called one day to say that, effective the very next morning, it would provide no more service. The shipments involved perishable commodities. The shipper's entire distribution system would have come screeching to a halt without rail service. This happened during the term of an existing contract between the shipper and the railroad. The railroad wanted to extend unilaterally the existing contract. The railroad forced acquiescence by threatening to cut off service with no notice. The shipper had no choice but to agree to whatever terms the railroad demanded.

This type of behavior is unconscionable. The railroads hold the ultimate weapon against captive shippers by threatening to discontinue service. There is no fair negotiation between equal bargaining partners in such an unbalanced situation.

In a largely deregulated environment there are no fair arguments against antitrust coverage. Yet, with railroad transportation there is much confusion over the coverage of the antitrust laws. After years of operating in such a tightly regulated environment, railroads and shippers do not know the ground rules for deregulation. Abuses have been documented. The time has come to make clear that the railroads are subject to the antitrust laws and that certain practices are unlawful abuses of market power.

The bill I am introducing today is similar in principle to the bill, S. 2417, I introduced last Congress. That bill was the subject of hearings in September 1984. I learned a great deal about this issue at those hearings and my desire to continue to press for antitrust coverage of the rail industry was only reinforced. As a result of the hearings, I have refined several of the specifics of my bill, but the goal remains the same: to restore competition to the rail industry and thus provide captive shippers with at least the opportunity to ship their commodities at reasonable rates.

This legislation has received support from many sectors of the economy: the coal industry, public utilities, forest products, agriculture interests such as growers and fertilizer producers, and the perishable food producers. I intend to push for hearings on the bill in the spring, at which all interested parties will be welcome.

I also applaud the efforts by Senators LONG, ANDREWS, and FORD to get at the problem of captive shippers through other means. I support their efforts and believe we are shooting at the same goal but taking different routes to that end. I look forward to working with them toward our mutual goals.

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. 447

*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 "Railroad Antimonoply Act of 1985".

SEC. 2. (a) The Congress finds that railroad rates and terms of service are best and most efficiently established in a competitive marketplace.

(b) The Congress finds that in many instances a competitive marketplace does not exist because of conditions such as those described below:

(1) The source of supply of a bulk commodity is served by a single rail carrier that has exclusive control of the railroad facilities from the source of supply to a point of interconnection with another rail carrier. Beyond such point of interconnection alternative rail routes exist to the destination to which the commodity is shipped, and such routes would be competitive were it not for the monopoly of the originating carrier over the movement from the source of supply to the point of interconnection. The originating rail carrier uses its monopoly to eliminate competition over the entire route and to assess charges or require other terms of service less favorable than those that would

be assessed or required in a competitive environment for the movement over its track or railroad facilities from the source of supply to the point of interconnection.

(2) A similar situation exists where a delivering or connecting rail carrier has exclusive control of tracks or railroad facilities which give it a monopoly from a point of interconnection with another carrier to the destination of the movement or to a second point of interconnection with another carrier.

(3) Situations also addressed by this Act exist where a rail carrier has exclusive control over track or railroad facilities and monopolizes movements within the area of its exclusive control, or where two or more rail carriers have joint or mutual exclusive control over track or railroad facilities and so monoploize its use.

(c) The purposes of this Act are to restore, establish, or enhance competition by eliminating the ability of the originating, connecting, or delivering carrier, as the case may be, to assess charges or to require other terms less favorable than those that would be assessed or required in a truly competitive environment.

SEC. 3. The Sherman Act (15 U.S.C. 1) is amended by adding after section 8 the following new section:

"Sec. 9. (a)(1) It shall be unlawful for an owner rail carrier to monopolize or attempt to monopolize by denying or threatening to deny to any shipper or another rail carrier the use on reasonable terms of a railroad facility which is the sole facility over which such shipper can move bulk commodities by rail to connect with the track of a competing rail carrier or to reach the destination of shipment.

"(2) A violation of paragraph (1) shall not occur where an owner rail carrier permits, on reasonable terms determined in accordance with generally accepted principles regarding just and reasonable rental of track, another rail carrier offering competing service to use such sole railroad facility. If the owner rail carrier permits such use of the sole railroad facility by a rail carrier and resulting bona fide competition exists for the transportation of the shipper's goods, the carrier transporting shippers commodities shall not be restricted in its rates by any provision of this Act.

"(3) If the owner rail carrier does not offer use of its tracks to a competing rail carrier, as provided in paragraph (2), or if no competition materializes from any competing rail carrier, the owner rail carrier shall offer rates to a shipper for transportation of its bulk commodities over the sole railroad facility at rates which are no higher than would yield a fair return on the proportion of the owner rail carrier's prudent investment in the sole railroad facility that the shipper's traffic bears to all traffic using such sole railroad facility.

"(b) It is unlawful for the owner rail carrier—

"(1) to condition the use of the sole railroad facility upon use of other facilities of the owner rail carrier, or

"(2) to suspend or threaten to suspend service over the sole railroad facility by reason of a shipper's asserting its rights under this section.

"(c) If connection with a water carrier exists at or within reasonable proximity of the first connection with a competing rail carrier, the shipper may elect to connect with the water carrier instead of or in addition to connecting with a competing rail carrier; provided that the cost of interconnection is no greater than would be occasioned by interconnection with the first competing rail carrier, or the owner rail carrier is reimbursed for the difference in cost.

"(d)(1) Any person injured in his business or property by reason of a violation of subsection (b) of this Act may bring an action therefor in accordance with the provision of section 4 of the Clayton Act.

"(2) Any person shall be entitled to sue for and have injunctive releif as provided in section 16 of the Clayton Act for threated loss or damage by reason of a violation of this section, notwithstanding any limitation contained in the proviso of such section 16 of the Clayton Act.

"(e) For purposes of this section the term—

"(1) 'rail carrier' means a person or persons providing for compensation railroad transportation in or affecting commerce;

"(2) 'owner rail carrier' means the rail carrier which owns or controls exclusively or jointly a sole railroad facility;

"(3) 'railroad facility' includes all facilities commonly included in the term 'railroad' which are necessary or practical for the movement of commodities over the sole railroad facility;

"(4) 'sole railroad facility' means a railroad facility which is the only facility by which a shipper can move bulk commodities by rail to connect with a competing railroad. Use of the sole facility 'to the destination of shipment' does not include use of railroad facilities beyond the point of connection or points of interconnection;

"(5) 'shipper' includes—

"(A) a person engaged in a business other than transportation who, in furtherance of such business, moves its own goods or arranges for transportation of commodities which it has sold; and

"(B) a person engaged in intermodal transportation who is a purchaser of rail service used in such intermodal transportation commonly called a 'shipper's agent';

"(6) 'bulk commodities' includes bulk goods moved in carload lots, such as coal, ore, grain, fertilizer, dry chemicals, primary forest or wood raw materials, and perishable commodities for human consumption when shipped in service which includes ToFC service;

"(7) 'primary forest or wood raw materials' includes logs, pulp wood, dressed or treated poles and saw mill or planing mill products;

"(8) 'service which includes ToFC service' means service to a shipper who customarily uses transportation by rail or trailers on flat cars (ToFC service) as a part of any given shipment, but does not exclude service to such shipper of some shipment by rail not employing ToFC service;

"(9) 'dry chemicals' means substances identifiable by chemical formulae and commonly described as chemicals, such as soda ash, silica gel, caustic soda, and sodium sulfate;

"(10) 'track of the competing rail carrier' means track subject to the competing carrier's use but does not include tracks jointly used by the rail carrier denying use of the sole facility; and

"(11) 'connect' includes connection from the point of origin, point of destination, and/or point of interconnection with another carrier.".

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By Mr. GRASSLEY:

S. 448. A bill to amend the Internal Revenue Code of 1954 to encourage contributions of equipment to postsecondary vocational education programs and to allow a credit to employers for vocational education courses taught by an employee without compensation and for temporary employment of full-time vocational educational instructors; to the Committee on Finance.

JOBS TRAINING

● Mr. GRASSLEY. Mr. President, today I am reintroducing legislation which will strengthen the partnership between the business sector and our educational institutions in providing needed job training for our work force. This measure is essentially the same as legislation which I introduced in the 98th Congress, S. 108, which passed the Senate as an amendment to the Deficit Reduction Act of 1984. Unfortunately, my bill, along with other tax credit provisions, was dropped during the conference session with the House last June. I am hopeful that the measure I am introducing again today, which is in exactly the same form passed by the Senate last session, will again receive prompt consideration and approval by this body in the weeks ahead.

We are well aware that our Nation is going through a time of fundamental economic change characterized by the decline of older manufacturing industries and the rapid growth of high technology and service industries. To remain competitive in a more highly technical global economy, our Nation must seek to achieve productivity gains and to generate economic growth. The importance of capital investment and technological innovation cannot be overlooked, however, we must also acknowledge that investment in American workers is crucial to our continued economic renewal. The application of new technology by industry will require our work force to be highly skilled and continually retrained. In fact, manpower experts now estimate that a worker currently entering the work force will have to be retrained seven times during his or her lifetime.

Yet, public incentives to date have overwhelmingly favored capital and technology investments over worker training as a route to improved national productivity. In 1984, for example, the annual expenditure on training by American firms, according to the American Society for Training and Development, was $300 per worker, versus a capital investment expenditure of $3,300 per worker. I feel that greater emphasis must be placed on providing for a growing and changing work force and that greater support is needed for the Nation's public and private training programs.

An important key to training and retraining our Nation's work force is the community college and technical institute system which spans the country. Offering more than 1,400 different occupational specialty and technician

training programs which train over 11 million workers annually, community colleges provides local residents with low-cost access to high-quality training programs. Because these schools can boost a job placement rate of nearly 90 percent, and because they have the ability to change their course offerings and alter training programs to meet local labor needs, community colleges have been recognized by the National Alliance of Business as the "Nation's preeminent adult education system." Members of the business community have a direct hand in community college policymaking because the schools are intimately tied with local businesses through their administration structure. Local industry also participate through advisory committees for each occupational program offered by the community college. The legislation which I am reintroducing today would further strengthen this partnership and aid our country's community colleges and technical institutes in becoming even more effective. My bill would encourage the donation of equipment for vocational training and provide incentives for the exchange of knowledge between industry and faculty.

Technical training programs often rely on expensive equipment which quickly become obsolete in this age of exploding technology. However, the need to train workers on equipment they will operate in the private sector is self-evident. Much equipment in our community colleges has fallen far behind the state-of-the-art. Many States, mired in budgetary pressures of their own, have been unable to make the commitment to meet the equipment needs of their community colleges. I know that in the State of Iowa, for example, funds for upgrading equipment were zeroed out of the 1982, 1983, and 1984 budgets. Iowa's $500,000 appropriation for 1985 will not go far among the State's 20 colleges and technical institutes, particularly when many schools have tremendous needs merely for the repair and maintenance of their old equipment. Furthermore, many colleges across the Nation have found it impossible to expand into the emerging job fields of robotics, laser optics, and other technologies because of the shortage of funds to initiate such programs. My legislation would offer tax incentives to industry to help underwrite the expense of modernizing training programs by donating technical equipment. Current law provides a tax deduction of the basis and one-half the unrealized appreciation—not to exceed twice basis—of equipment donated to educational institutions if used for research purposes. My bill expands the same deduction to apply to the donation of equipment used for vocational training. Although it would be a relatively small investment by the Federal Government, benefits to these training institutions would be significant.

The second part of my bill encourages the lending of industry employees to educational institutions to teach vocational education courses. Community colleges are finding it increasingly more difficult to compete with private industry in attracting and maintaining qualified technical instructors. Some college rely on part-time instructors who are often local practioners, however, industry needs incentives to make greater use of this tool. My bill allows a $100 corporate tax credits for every vocational training course taught by a qualified employee of that corporation, up to five courses a year per employee. These incentives would encourage industry to contribute needed technical instruction that colleges are currently unable to provide, particularly in highly specialized technologies. In addition, this legislation contains a similar tax credit for industry to create work opportunities for community college faculty members in order to upgrade their skills. A $100 tax credit would be provided for the temporary employment of a qualified vocational education instructor by a corporation, thus stimulating the sharing of current private sector technology and expertise with the education sector.

Mr. President, the impact of my bill on Federal revenues would be minimal, yet, this bill would encourage extensive industry contributions of much needed equipment and technical training to one of the best delivery systems for job training and retraining programs in our Nation. I hope the Senate will again give prompt consideration and passage to this legislation.

Mr. President, I ask unanimous consent that the bill and section-by-section analysis be printed in the RECORD.

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

S. 448

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

SECTION 1. CERTAIN CONTRIBUTIONS OF PROPERTY USED IN QUALIFIED VOCATIONAL EDUCATION PROGRAMS.

(a) IN GENERAL.—Subsection (e) of section 170 of the Internal Revenue Code of 1954 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF PROPERTY USED IN QUALIFIED VOCATIONAL EDUCATION PROGRAMS.—

"(A) LIMIT ON REDUCTION.—In the case of a qualified vocational education contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

"(B) QUALIFIED VOCATIONAL EDUCATION CONTRIBUTION.—For purposes of this paragraph, the term 'qualified vocational education contribution' means a charitable contribution by a corporation of tangible personal property described in paragraph (1) of section 1221, but only if—

"(i) such contribution is to—

"(I) a public community college or public technical institute (within the meaning of section 742(b) of the Higher Education Act of 1965 (20 U.S.C. 1132e-1)) and is made through the governing body of the donee, or

"(II) an area vocational education school (within the meaning of section 195(2) (C) and (D) of the Vocational Education Act of 1963 (20 U.S.C. section 2461(2) (C) and (D)), which is not a secondary school under State law, and such contribution is made through the governing body of the donee for use in programs enrolling principally nonsecondary students in courses in engineering, mathematics, or the physical or biological sciences, and the programs are designed to prepare the student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields which require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge.

"(ii) the property is scientific or technical equipment or apparatus,

"(iii) substantially all of the use of such property by the donee is for training students enrolled in a postsecondary nonsecondary vocational education program offered by the donee,

"(iv) the property is not computer software, a microcomputer, or any other computer designed generally for use in the home or other personal use,

"(v) the fair market value of the property exceeds $250,

"(vi) the property is manufactured, produced, or assembled by the taxpayer, and the contribution is made not later than six months after the date on which the manufacture, production, or assembly of the property is substantially completed,

"(vii) the original use of the property is by the donee,

"(viii) the property is accompanied by the same warranty or warranties normally provided by the manufacturer in connection with a sale of the property contributed,

"(ix) such property is not transferred by the donee in exchange for money, other property, or services within 5 years of the date of original transfer to the donee,

"(x) such property is functional and usable in the condition in which it is transferred for the purposes described in clause (iii), without the necessity of any repair, reconditioning, or other similar investment by the donee, and

"(xi) the taxpayer receives from the governing body of the donee a written statement, executed under penalties of perjury, representing that the property and its use and disposition by the donee will be in accordance with the provisions of clauses (iii), (ix), and (x).".

"(C) CORPORATION.—For purposes of this paragraph, the term 'corporation' shall not include—

"(i) an S corporation,

"(ii) a personal holding company (within the meaning of section 542), or

"(iii) a service organization (within the meaning of section 414(m)(3)).

"(D) NONSECONDARY STUDENT.—For purposes of this provision, a nonsecondary student means an individual who is not enrolled in—

"(i) a high school or secondary school,

"(ii) a course of study leading to a high school diploma or its equivalent, or

"(iii) a course of study in lieu of a high school or secondary education.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after December 31, 1985.

SEC. 2. POSTSECONDARY VOCATIONAL EDUCATION INSTRUCTION CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable against tax) is amended by inserting after section 25 the following new section:

"SEC. 25A. VOCATIONAL EDUCATION INSTRUCTION CREDIT.

"(a) IN GENERAL.—In the case of a corporation, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the product of—

"(A) $100, multiplied by

"(B) the number of postsecondary vocational education courses taught by qualified teaching employees of the taxpayer during the taxable year, plus

"(2) the product of—

"(A) $100, mulitplied by

"(B) the number of qualified vocational education instructors who were employed by the taxpayer during the taxable year.

"(b) LIMITATIONS.—

"(1) DOLLAR LIMITATION.—The aggregate amount allowable as a credit under subsection (a) to any taxpayer for any taxable year shall not exceed $20,000.

"(2) LIMITATION ON THE NUMBER OF COURSES TAUGHT PER EMPLOYEE.—No more than 5 postsecondary vocational education courses taught by the same qualified teaching employee may be taken into account under subsection (a)(1)(P).

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) POSTSECONDARY VOCATIONAL EDUCATION COURSES.—The term 'postsecondary vocational education course' means any course of instruction which—

"(A) is offered by an institution of higher education as part of an organized education program,

"(B) is in the physical, biological, computer, or engineering technologies, or electronic and automated industrial, medical, and agricultural equipment and instrumentation operation,

"(C) consists of a period of instruction which is at least equivalent to a course of instruction that provides 3 hours of instruction per week during an academic semester, and

"(D) has been completed before the close of the taxable year.

"(2) QUALIFIED VOCATIONAL EDUCATION INSTRUCTOR.—The term 'qualified vocational education instructor' means an individual who—

"(A) was employed by the taxpayer on a full-time basis for at least 3 months but not more than 12 months during the 2-year period ending at the close of the taxable year,

"(B) prior to such employment, taught postsecondary vocational education courses on a full-time basis at an institution of higher education,

"(C) is teaching such courses on a full-time basis at an institution of higher education at the close of such taxable year, and

"(D) is not employed by the taxpayer at the close of the taxable year.

"(3) QUALIFIED TEACHING EMPLOYEE.—The term 'qualified teaching employee' means an individual who—

"(A) taught at least one postsecondary vocational education course on a part-time basis at an institution of higher education during the taxable year,

"(B) is a full-time employee of the taxpayer for the entire taxable year,

"(C) does not receive any compensation from such institution of higher education, and

"(D) was not a qualified vocational education instructor at any time during the taxable year.

"(4) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 1201(a) of the Higher Education Act of 1965.

"(5) ALLOCATION IN CASE OF CONTROLLED GROUP OF CORPORATIONS.—

"(A) IN GENERAL.—In determining the amount of the credit under this section—

"(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

"(ii) the credit (if any) allowable by this section to each such member with respect to any qualified teaching employee or qualified vocational education instructor shall be in proportion to the member's share of the wages paid for the taxable year to such qualified teaching employee or qualified vocational education instructor.

"(B) CONTROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the same meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(6) CORPORATION.—The term 'corporation' shall not include—

"(A) an S corporation,

"(B) a personal holding company (within the meaning of section 542), or

"(C) a service organization (within the meaning of section 414(m)(3)).

"(7) DOUBLE BENEFIT.—Any credit allowable under this section for the taxable year with respect to any employee of the taxpayer shall be in addition to any deduction under this chapter which is allowable to the taxpayer for such taxable year with respect to compensation paid to such employee.".

(b) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 is amended by inserting after the item relating to section 25 the following new item:

"Sec. 25A. Vocational education instruction credit.".

(2) The heading for subpart A of part IV of subchapter A of chapter 1 of such Code as amended by striking out "Personal".

(3) The table of contents for part IV of subchapter A of chapter 1 of such Code is amended by striking out "personal" in the item relating to subpart A.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years begining after December 31, 1985.

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SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends § 170(e) of the Internal Revenue Code of 1954 to provide an augmented charitable deduction for corporate donations of certain newly manufactured tangible personal property to a public community college or public technical institute (within the meaning of § 742(b) of the Higher Education Act of 1965) or an area vocational education school (within the meaning of § 195(2)(C) and (D) of the Vocational Education Act of 1963), which is not a secondary school under state law. The contribution must be made through the governing body of the donee. For purposes of this deduction and the credit allowed by section 2 the term corporation does not include corporations, personal holding companies or service organizations.

To qualify, a donation of equipment must satisfy all of the following requirements:

(1) The property is scientific or technical equipment or apparatus;

(2) The property was manufactured, produced, or assembled by the taxpayer, and is property described in Code section 1221(1), and the taxpayer is in the business of manufacturing, etc., and selling or leasing such property;

(3) The contribution of the equipment is made within six months after the date the construction or assembly of the property is substantially completed;

(4) The fair market value of the donated item exceeds $250;

(5) The original use of the donated property is by the donee;

(6) Substantially all of the use of the property by the donee is for training students enrolled in a postsecondary or nonsecondary vocational education program offered by the donee;

(7) The donor transfers with the property the same warranties normally provided by the manufacturer in connection with a sale of such property;

(8) The property as transferred is usable and functional without need of any repair, reconditioning, or similar investment by the donee;

(9) The donated property must not be transferred by the donee in exchange for money, other property, or services within five years after receipt; and

(10) The taxpayer receives from the governing body of the donee a written statement, signed under penalties of perjury, representing that the use, condition, and disposition of the donated property are in accordance with these requirements (6), (8), and (9).

The augmented deduction does not apply to contributions of computer software, a microcomputer, or any other computer designed generally for use in the home or other personal use.

If all these requirements are satisfied, the augmented charitable deduction allowed for the donation of equipment generally is the sum of (1) the taxpayer's basis in the donated property and (2) one-half of the unrealized appreciation (i.e., one-half of the difference between the property's fair market value determined at the time of the contribution and the donor's basis in the property). However, in no event is a deduction allowed for any amount which exceeds twice the basis of the property, or any amount in excess of fair market value.

This provision is effective for contributions made after December 31, 1985.

Section 2. Amends the Internal Revenue Code of 1954 by adding a new section, § 25A. It would provide a new tax credit to corporations with respect to (1) post secondary vocational education courses taught by qualified teaching employees of the taxpayer and (2) qualified vocational education instructors temporarily employed by the taxpayer.

The amount of the credit generally is $100 for each postsecondary vocational education course taught by qualified teaching employees of the taxpayer during the taxable year (not to exceed five courses per employee per taxable year), plus $100 for each qualified vocational education instructor temporarily

employed by the taxpayer during the taxable year. The total of such credits allowed to a taxpayer (or to a controlled group of corporations) for a taxable year is $20,000.

A postsecondary vocational education course is defined as any course of instruction which (1) is offered by an institution of higher education (within the meaning of sec. 1201(a) of the Higher Education Act of 1965) as part of an organized education program; (2) is in the physical, biological, computer, or engineering technologies, or electronic and automated industrial, medical, and agricultural equipment and instrumentation operation; (3) consists of a period of instruction which is at least equivalent to a course of instruction that provides three hours of instruction per week during an academic semester; and (4) has been completed before the close of the taxable year.

A qualified teaching employee is defined as any individual employed full-time by the taxpayer for the entire taxable year who taught at least one postsecondary vocational education course part-time at an institution of higher education, does not receive any compensation from the institution of higher education, and was not a qualified vocational education instructor at any time during the taxable year.

A vocational education instructor is defined as any individual who (1) was employed full-time by the taxpayer for at least three months but not more than 12 months during the two-year period ending at the close of the taxable year; (2) prior to this employment, taught postsecondary vocational education courses full-time at an institution of higher education; (3) is teaching such courses full-time at an institution of higher education at the close of the taxable year; and (4) is not employed by the taxpayer at the close of the taxable year.

Any credit allowed under the bill with respect to an employee is in addition to any allowable deduction for compensation paid to the employee by the taxpayer.

This provision is effective for taxable years beginning after December 31, 1985.

The foregoing analysis employs the language contained in Senate Committee on Finance Committee Print (S. Prt. 98-169, Vol. 1 at 925-929) explaining similar provisions in the Deficit Reduction Act of 1984, as approved by the Committee. Those provisions were subsequently deleted by the conference agreement (H. Rep't. No. 98-861 at 1261-1262). It has been modified, where necessary, to reflect changes in language or dates.●

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By Mr. BINGAMAN:

S. 450. A bill to establish a commission to study and make recommendations concerning the international trade and export policies and practices of the United States; to the Committee on Governmental Affairs.

INTERNATIONAL TRADE AND EXPORT POLICY STUDY COMMISSION ACT

● Mr. BINGAMAN. Mr. President, today I am introducing a bill to establish a bipartisan national commission to study and make recommendations concerning the international trade and export policies and practices of the United States. Such a commission is badly needed in order to study the various pieces of our trade puzzle and to make recommendations for solutions to each of these problems. This commission would help to establish a coherent international trade and export policy.

In recent months, much has been written and spoken about the international trade problems which this country now faces and which it is expected to face in the years ahead. There is serious concern about our Nation's ability to successfully compete internationally, and the simple facts illustrate the problem well.

In 1973, trade in goods and services accounted for 8.3 percent of the U.S. gross national product. Today, according to some estimate, trade accounts for almost 12 percent of GNP. According to a Commerce Department study in 1980, 6.2 million American workers owed their jobs to U.S. exports. By 1982, the number had dropped to 4.9 million and in 1983 to 4.6 million, mainly because of the drop in export volume. We export 25 percent of our industrial production and 40 percent of our crops each year. However, despite the magnitude of our exports, they are dwarfed by our imports. Last year, we imported $123.3 billion more than we exported. This trade deficit is the largest in U.S. history.

From 1891 to 1970, the United States had an unbroken string of trade surpluses. Since 1971, however, we have had deficits in every year except two. The cumulative trade deficit since 1979 alone is a staggering $301.9 billion. If present trends continue, we will register a $150 billion trade deficit in 1985.

Our weakening trade posture is not confined to heavy industries. In traditionally strong sectors such as foods, feeds and beverages, our trade surplus dropped from $18.7 billion to $10.2 billion from 1981 to 1984, a 45-percent decline. In the service sector, a surplus of $41 billion in 1981 has declined to $22 billion in 1984, a $19 billion decrease in 3 years. Services decline combined with the large trade deficits have led to an estimated $100 billion current account deficit for 1984.

The future economic well-being of our Nation is clearly linked to the ability of American business to compete successfully in the world economy, and as the above figures show, we are not doing too well.

These sustained record trade deficits have resulted in a serious threat to our economy. These trade deficits have resulted in the loss of millions of U.S. jobs and, if left unchecked, will contribute to continuing troubles for many U.S. industries and cities. More than 1.5 million jobs are estimated to have been lost due to rising trade deficits. From 1980 to 1982, 40 percent of the increase in U.S. unemployment can be traced to the decline in U.S. exports. If these trends are permitted to continue, as many as 3 million Americans will be unemployed by late 1985. Much congressional attention has been focused on these issues, but little has been accomplished. I look forward to meaningful action in the very important area of reducing our record trade deficit.

There are many perceived reasons for our trade failures and even the degree of our failure is widely debated. Some cite looming budget deficits and imported oil prices. Still others have called for trade reorganization as a logical first step. Whatever is ultimately done, I would suggest that action is long overdue.

One further problem which exists, in my opinion, is the lack of a coherent and effective international economic policy. There now exists a serious failure on the part of the Federal Government to work in cooperation with American private enterprise to formulate a coherent and effective international economic policy that promotes trading opportunities for U.S. businesses. In the last Congress, the Senate Governmental Affairs Committee held several days of hearings on these issues and approved legislation to create a new Department of Trade to facilitate the formulation and implementation of cohesive and effective trade policies within the Federal Government. It was hoped by supporters of such proposals that the creation of a new Department of Trade would provide an organizational environment in which effective trade policy could be carried out. I supported this legislation as a good first step, but much more needs to be done to address our trade problems and coordinate our trade policy.

I believe there has also been a failure on the part of large segments of American business to seize trade opportunities. This issue is not directly addressed by Trade Reorganization. Only 12 percent of the Nation's 252,000 manufacturers market their products overseas. Available information, however, indicates that many more small U.S. manufacturers could begin to export if they had the right assistance to overcome impediments in doing so. It was recently estimated that 11,000 small export-capable firms could be induced to try to export if properly approached and assisted, and that the value of exports by such firms could amount to more than $4 billion a year.

I believe we also need to increase our familiarity with foreign needs and cultures in order to compete successfully. As a people, we are not nearly as familiar with other nations of the world as they are with us. Our people trying to do business overseas are hampered by a lack of language facility, a lack of understanding of the economic systems and business practices in other countries, a lack of familiarity with local cultures and customs, ignorance about appropriate marketing techniques and local financing arrange-

ments, lack of understanding about the local economic conditions and trading posture of other countries, and on and on. Because this expertise is not as well developed in our private sector, the Government may also be lacking a skilled cadre of individuals who can give advice or carry out trade policy. The need for such skills, experience, ties, and understanding in the Government and the private sector is paramount.

Mr. President, for these reasons, I am introducing legislation which calls for the creation of a bipartisan national commission to study and make recommendations concerning the international trade and export policies and practices of the United States. The 1-year study is to result in recommendations for changes in laws and regulations which are intended to facilitate the administration of the trade and export functions of the Federal Government, enhance export growth, provide for removal of trade barriers, provide for common understanding of international trade by businesses, develop expertise on foreign business practices and trade issues, and for other purposes. The commission is to be composed of six Members of the Senate, six Members of the House, and six members appointed by the President.

The issues to be studied and reported on include: existing impediments to exporting in American industries—legal, financial, and otherwise—the needs of American industry for information and opportunities to enhance exporting; methods for improving export incentives for U.S. businesses; the need for a closer integration of trade and international monetary policy; the need to coordinate American trade policies and practices with promotion of industrial revitalization; the need for high quality data to identify markets, new products, and industries; the need for directing Federal resources to provide sustained economic growth and employment; the need for cooperation among the principal sectors of the economy; the impact of State and local governments in exporting; the organizational structures of other industrial nations; the organizational structures of Federal agencies; and the need to promote institutional and noninstitutional educational activities that will contribute to the ability of U.S. businesses to succeed in marketing U.S. goods and services abroad. Each of these major issues represent a key area of our overall U.S. trade policy and deserve immediate consideration.

The purpose of the commission is to achieve a better national focus of the various trade problems that affect the United States at this time. A major national study would also provide the opportunity to develop an agenda of recommendations which would help the President and the Congress begin to solve our trade problems.

I urge my colleagues to join me in support of calling for adoption of this commission. Given the seriousness of our trade problems and current trends, which show lost jobs, rising deficits, and lost opportunities, we must focus our collective national attention on making trade a national priority. America, once the premier industrial power of the world, is losing its competitive edge. We must stop blindly traveling an unchartered course. Instead, we must begin to fill the gaps in our knowledge and determine the best path for expanding our exports and recouping our position in the world marketplace.

Let us begin this process by addressing the single most important problem in the trade area—the lack of any coherent and coordinated trade policy. This commission would help to formulate such a policy by bringing all the individual trade and export issues into focus and advancing recommendations for solutions.

Mr. President, I ask that the text of the bill be printed in the RECORD following my remarks.

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

S. 450

*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 "International Trade and Export Policy Study Commission Act of 1985".

ESTABLISHMENT

SEC. 2. (a) There is established the International Trade and Export Policy Study Commission (hereinafter in this Act referred to as the "Commission").

(b)(1) The Commission shall be composed of eighteen members as follows:

(A) Six members appointed by the President in accordance with paragraph (2)(A).

(B) Six members appointed by the President pro tempore of the Senate from members of the Senate in accordance with paragraph (2)(B), upon the recommendation of the majority leader or the minority leader of the Senate, as the case may be, with respect to members appointed from the political party of that leader.

(C) Six Members of the House of Representatives appointed by the Speaker of the House of Representatives in accordance with paragraph (2)(B).

(2)(A) The President shall appoint as members of the Commission under paragraph (1)(A) individuals who are especially qualified to serve on the Commission due to the education, training, or experience of such individuals. Of the members appointed by the President under such paragraph, at least five members shall be individuals who are not officers or employees of the United States, and at least two members shall be representatives of businesses or labor organizations. Not more than three members of the Commission appointed under such paragraph shall be members of the same political party.

(B)(i) In appointing members to the Commission, the President pro tempore of the Senate and the Speaker of the House of Representatives shall give special consideration to the appointment of members of the Senate or the House of Representatives, as the case may be, who are members of the committees of their respective Houses which have legislative jurisdiction over, or special concerns with respect to, matters relating to international trade.

(ii) Not more than three members of the Commission appointed under paragraph (1)(B) shall be members of the same political party, and not more than three members of the Commission appointed under paragraph (1)(C) shall be members of the same political party.

(3) The first eighteen appointments to the Commission shall be made by the date which is thirty days after the date of the enactment of this Act or by October 1, 1985, whichever is later. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) Members of the Commission shall be appointed to serve for the life of the Commission.

(5)(A) Each member of the Commission appointed under paragraph (1)(A) who is not an officer or employee of the United States shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the actual performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without additional compensation.

(B) While away from their homes or regular places of business in the performance of services for the Commission, all members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under section 5702 of title 5, United States Code.

(c)(1) Nine members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(2) The Chairman and Vice Chairman of the Commission shall be elected by and from the members of the Commission for the life of the Commission.

(3) The Commission shall meet at the call of the Chairman or a majority of its members.

(d)(1) The Chairman of the Commission, in consultation with the Vice Chairman, and without regard to the civil service laws, rules, and regulations, is authorized to appoint and fix the compensation of a staff director and such other additional personnel as may be necessary to enable the Commission to carry out its functions.

(2) Any Federal employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for GS-18 of the General Schedule under section 5332 of such title.

(e)(1) The Commission may, for the purpose of carrying out this Act, hold such hearings, sit and act at such times and places, take such testimony, and receive

such evidence, as the Commission considers appropriate.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(3) The Commission may accept, use, and dispose of gifts or donations of services or property.

(4) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(5) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative and support services as the Commission may request.

DUTIES

SEC. 3. (a) The Commission shall study and make recommendations concerning international trade and export policies and practices of the United States, including recommendations for such changes in laws and regulations as may be required in order to—

(1) facilitate the administration of the trade and export functions of the Federal Government;

(2) enhance export growth;

(3) provide for removal of trade barriers;

(4) provide for common understanding of international trade by businesses;

(5) develop expertise on foreign business practices and trade issues; and

(6) accomplish such other purposes as the Commission considers appropriate.

(b) In conducting the study required by subsection (a), the Commission shall review and make recommendations concerning—

(1) existing impediments to exporting by American industries, including—

(A) regulations, paperwork requirements, and procedures imposed by the United States Government, especially export controls;

(B) the impact of the antitrust laws on exports;

(C) insufficient financing, Government credits, and incentives for export expansion, and the lack of Export-Import Bank and the Foreign Credit Insurance Association support and responsiveness;

(D) the lack of a unified, coherent, and clearly enunciated United States Government policy which supports the export community and which is carried out by all Federal agencies; and

(E) the lack of research and development capabilities to help improve the ability of American industries to compete with foreign industries;

(2) the needs of American industry for information and opportunities to enhance exporting, particularly the needs of small and medium sized firms, including needs for—

(A) specific sales or representation leads;

(B) specific information on market conditions, practices, and potentials;

(C) information about and lists of individual foreign buyers and foreign representatives;

(D) opportunities to meet directly in the United States with individual foreign buyers and foreign representatives;

(E) opportunities for publicity of companies, products, and interests abroad;

(F) opportunities to display or otherwise expose products abroad;

(G) assistance in making sucessful bids for major overseas contracts;

(H) general information on methods of exporting and on countries to which products can be exported; and

(I) information on the benefits of exporting;

(3) methods for improving export incentives for United States businesses, including—

(A) export financing;

(B) export insurance;

(C) tax benefits; and

(D) the facilitation of the creation of trading companies;

(4) the need for a closer integration of trade and international monetary policy, including the need to relieve trade policy of major burdens created by the recurrence of currency exchange rate misalignments;

(5) the need to coordinate American trade policies and practices with the promotion of industrial revitalization in the United States;

(6) the need for high quality data in order to identify markets, new products, and industries, and the failure to effectively communicate such data to American industry;

(7) the need for directing Federal resources to provide sustained economic growth and employment;

(8) the need for cooperation and support among the principal sectors of the economy, including business, labor, government, and the public;

(9) the impact of, and the proper role for, international trade activities by State and local governments, including export promotion activities, State export-import banks, and State export trade companies;

(10) the organizational structures under which other industrial nations, such as Japan, Great Britain, Canada, and West Germany, carry out the international trade activities of those nations;

(11) the organizational structure of Federal agencies which make and carry out trade policies, including the need for strengthened and integrated implementation of international trade functions and improvements in the Foreign Commerical Service; and

(12) the need to promote institutional and noninstitutional educational activities that will contribute to the ability of United States businesses to succeed in the marketing of United States goods and services abroad, such as—

(A) government-sponsored work-study programs which allow United States representatives of business, labor, and government to live overseas and analyze foreign market opportunities, study existing trade and cultural barriers, and develop expertise on foreign business practices and trade issues; and

(B) the promotion of foreign language capabilities to facilitate United States commerce by overcoming language and marketing barriers.

FINAL REPORT

SEC. 4. Not later than July 1, 1987, the Commission shall transmit to the President and to the Congress a report containing a detailed statement of the study conducted by the Commission under this Act and the recommendations of the Commission with respect to the matters specified in section 3, including any recommendations for legislation the Commission considers appropriate.

TERMINATION

SEC. 5. The Commission shall terminate on July 1, 1987.

AUTHORIZATION

SEC. 6. For fiscal years 1986 and 1987, there are authorized to be appropriated such sums as may be necessary to carry out this Act.●

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By Mr. LEVIN:

S. 451. A bill to provide for an alternative to the present adversarial rulemaking procedure by establishing a process to facilitate the formation of regulatory negotiation commissions; to the Committee on Governmental Affairs.

REGULATORY NEGOTIATION ACT

● Mr. LEVIN. Mr. President, I am pleased to introduce today a bill that provides for an alternative to the present adversarial rulemaking procedure by facilitating the use of a process call regulatory negotiation.

The current approach to regulatory policymaking has evolved into a very adversarial and litigious process. Affected businesses, interest groups, and regulatory agencies all tend to adopt antagonistic postures during the promulgation and implementation of Federal regulations. Thus, it is not surprising that the policies and regulations that result are often considered inappropriate and ineffective by both business and interest groups and that litigation and conflict have become an integral and inevitable part of the process. The resulting regulatory policy crisis has become so severe that innovative alternatives are needed to encourage a more cooperative and productive process, where as many common positions as possible can be reached and incorporated into regulations.

One of the most exciting and promising new approaches to the regulatory policy procedure is a process called regulatory negotiation. Regulatory negotiation operates on the premise that industry, government, and interested groups can sit down together and with the aid of a mediator, attempt to fashion a consensus in areas of mutual concern. The basic notion is that if responsible people commit themselves to find points of agreement in a cooperative atmosphere, regulations can be designed which better meet true policy needs, and needless conflict and delay can be avoided.

The need for such an approach is apparent. Regulations often create anxiety among the parties who have an interest in their promulgation and implementation. Business often views regulation as limiting its freedom to function as it desires. Other interested groups believe that public welfare is sacrificed in the regulatory process and that interest groups are not represented and not heard in the current process. Legislators, who thought that the problem was solved when they adopted legislation are faced with a continuing battle throughout the rulemaking and enforcement process.

The need for the regulatory negotiation alternative has also been under-

scored by the Administrative Conference of the United States [ACUS], when in 1982, based on a detailed report prepared by a consultant, Phillip J. Harter, ACUS indicated that:

Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule that is acceptable to the respective interests, all within the contours of the substantive statute.

Attempts to use regulatory negotiation as an alternative have been successful in several areas, most recently in the areas of air transportation and the environment.

First, in the area of air transportation, the Federal Aviation Administration [FAA] is required by statute to promulgate rules and regulations governing the maximum pilot and air carrier employees flight and duty time.

Despite major changes in airline equipment and operation procedures, pilot and air carrier employee flight and duty time rules have remained the same for 30 years. This situation had been the source of many problems for the FAA, disputes between the airlines and their employees, and litigation involving the FAA. Each time the FAA attempted to issue a proposed rule, such controversy would arise that it was impossible for the FAA to issue a final rule. In light of this situation it was decided that it was time to try an alternative approach. It was time to try regulatory negotiation.

Thus, in June 1983, the FAA initiated its first regulatory negotiation project. After completing preliminary discussions with potential negotiation parties a committee was put together of various individuals representing affected and interested parties of the airlines industry. During the course of the summer the committee met regularly initially establishing guidelines for the process and objectives and then actually working toward developing a consensus on the appropriate solution to the problem of flight and duty time.

In February 1984, the committee members were able to agree to recommend the issuance of a notice of proposed rulemaking which had been drafted at the committee's request by the FAA staff. Although there was some disagreement on the contents of the proposed rules, it was published in March 1984, and public comment was received. The public comments that were received were far fewer and less contentious than those that had been received in the past. The comments were circulated to the committee members, and a meeting to develop a final recommendation was scheduled for September 1984. The committee subsequently submitted its recommendations to the FAA, and the FAA anticipates issuing a proposed rule in the near future, based at least in part on the recommendations of the committee.

In the area of the environment the Environmental Protection Agency [EPA] has recently successfully completed two regulatory negotiation projects.

First, in February 1983, through the Federal Register, the EPA solicited suggestions for rules to be negotiated by early 1984. After a detailed analysis the EPA selected nonconformance penalties as the first issue to be negotiated.

The purpose of nonconformance penalties is to provide temporary relief to manufacture of heavy-duty trucks or vehicles from engine pollutant standards. In April 1984, the EPA announced its intention to form a Federal advisory committee to negotiate nonconformance penalties, and in May 1984, the committee was formulated. The committee was made up of representatives of small and large, domestic, European and Japanese manufacturers; environmental organizations; State pollution control officials; and trade associations.

The first meetings got underway in June 1984. The committee met several times and formed working groups, which developed position papers on various issues.

On October 12, 1984, the full committee was able to arrive at a consensus on the resolution of key issues, and the EPA anticipates that a proposed rule will be issued shortly.

Second, on August 3, 1984, the EPA announced its intention to form an advisory committee to negotiate "Section 18 Emergency Pesticide Exemption".

Section 18 of the Federal Insecticide Fungicide and Rodenticide Act allows the Administrator of the EPA, at his discretion, to exempt Federal or State agencies from provisions of the act if he determines that emergency conditions exist which require such action. The regulations implementing section 18 were first promulgated in December 1973, and were designed to allow for specific quarantine and crisis exemptions.

In 1982 an EPA audit and congressional study indicated that the regulation could be improved. In August 1984, the EPA held an organizational meeting with potential negotiation parties. A committee consisting of representatives from environmental organizations, users, State agricultural and health departments, trade associations, and the U.S. Department of Agriculture was formulated. The committee met for the first time in September and continued to meet and negotiate for 4 months. The committee arrived at a consensus on the precise regulatory and preamble language on January 16, 1985, and the EPA will be publishing a proposed rule shortly.

In addition to the recent success of the FAA and the EPA, there was also another successful negotiation project involving the EPA, the steel industry and the Natural Resources Defense Council [NRDC].

In May 1982, the EPA proposed in final form a rather controversial regulation on the control of water pollution in the steel industry. The law set July 1984, as the deadline for companies to limit their water pollution to levels at or below those attainable with the best available technology, economically achievable. Of approximately 700 specifications outlined in the regulation, the industry challenged about 30 of them as being based on faulty information. In addition, the NRDC challenged the EPA's use of a bubble concept that would have allowed companies to make cost saving tradeoffs among effluent sources so long as the aggregate pollution result was no worse. Inevitably the matter landed in the courts.

However, in October 1982, the parties began a negotiation process in an effort to avoid the delays and conflicts of litigation. On the other hand, industry was concerned about ending the uncertainty attendant to the incomplete regulatory process, and on the other hand, the NRDC and the environmentalists were concerned with expediting the matter because the steel industry regulations were to be the forerunners to many industrywide regulations.

In a settlement reached in late February 1983, the steel industry won concessions on the technical numbers; the NRDC and the environmentalists won a modification of the bubble provisions; and costly and time-consuming litigation was avoided.

The most well-known regulatory negotiation success story is probably that of the National Coal Policy Project [NCPP]. The NCPP was an outgrowth of the recognition that it was important for the United States to shift from oil and natural gas to coal. In order to accomplish this, there had to be a reconciliation of environmental and industrial interests.

In July 1976, business representatives and environmentalists endorsed the regulatory negotiation concept and agreed to pursue important coal related environmental and energy policy issues using this approach.

The participants in the negotiations used the following principles known as the rule of reason to resolve differences and develop workable solution:

First. Data should not be withheld from the other side.

Second. Delaying tactics should not be used.

Third. Tactics should not be used to mislead.

Fourth. Motives should not be impugned lightly.

Fifth. Dogmatism should be avoided.

Sixth. Extremism should be countered forcefully but not in kind.

Seventh. Integrity should be given first priority.

The Georgetown University Center for Strategic and International Studies [CSIS] served as the neutral meeting place for the project participants. It also raised funds and provided administrative support for the project. The project itself was financed by grants and contributions from foundations, Government agencies, and industry.

Five task forces were established to cover the following coal policy issues: mining, transportation, air pollution, fuel utilization, and conservation and energy pricing. The governing body for the project was called the plenary group and was made up of task force cochairmen and vice cochairmen. The duties of the plenary group were to define the nature and scope of the project, provide guidance, review and finally approve task force recommendations, and resolve task force disputes. Of the 200 task force recommendations 90 percent were unanimously achieved.

The NCPP found that the project was very successful in dispelling sterotypes:

Quite apart from the substance of the recommendations, the project has been valuable in dispelling stereotypes. Those environmentalists who had previously regarded the position of industry of environmental and energy issues as being monolithic and intransigent were rather quickly disabused of that notion. This was largely because of the differing perspectives of the industry members. For example, producers of fuel, regulated utilities and industrial users of larger quantities of energy each tended to have different interests and views on questions of energy pricing.

In similar fashion, those industrialists who expected the environmentalist to be opposed to economic growth and to the introduction of new technology, and in favor of governmental rather than marketplace decisions on the allocation of resources, were pleasantly surprised to find that their suppositions were incorrect. The environmentalists opposed a pattern of growth that produced wasteful use of natural resources and an environmental impact which they felt was unacceptable; they did not oppose economic growth in itself. They welcomed new technology that would serve to increase efficiency and reduce adverse environmental impacts and demands on natural resources. They preferred marketplace decisions to economic regulation by government when markets were workably competitive; when this was not the case, or when important (external) environmental and social impacts were not properly valued in the market, the environmentalists were eager or explore methods of influencing the market (as with emission charges) so that the desired goals would be achieved while retaining the advantages of keeping detailed decisions in the private sector.

The report further stated that:

We are not proposing that the process of discussions and negotiation in which we have participated should replace the adversary process. Indeed many of the policy recommendations on which we have agreed would have to be implemented through the traditional adversary system; that is they require action by legislative and judicial bodies . . . there are others that simply do not lend themselves to negotiated agreements.

We believe, however, that exclusive reliance on adversial processes is likely to produce decisions that are less desirable (from the point of view of either of the parties) than those in which a common position serving both interest could have been agreed to in a non-adversarial context.

The NCPP recommendations have received agency support from the Office of Surface Mining [OSM] and the Federal Energy Regulatory Commission [FERC]. OSM adopted word-for-word project recommendations regarding bonding concerns and operations; [FERC] adopted the coal generation and small power recommendations.

Two bills were also introduced in May 1980: H.R. 7464 and HJ.R. 7465, which adopted the recommendations that called for the use of incentives to develop pollution control technology and development of plant siting procedures.

In addition to the projects that I have already mentioned, regulatory negotiation has also been tried in the environmental area of toxic substances. The Conservation Foundation was involved in this approach during the implementation of the Toxic Substances Control Act [TOSCA].

Specifically, approximately 13 business persons and environmentalists met to discuss the training of toxicologists, the testing of new chemicals, the prioritizing of what chemicals should be tested and the nature and scope of agency followup on the chemical after it reaches the market. Several valuable recommendations came out of this project.

In addition in the area of labor relations, regulatory negotiation has also emerged. For example, the joint labor management-committee for the retail food industry utilized the process to reach an agreement on an OSHA regulation for protective equipment for employees in the meat department of supermarkets. This consensus took several months of hard work, but once labor and management agreed, the two groups were able to reach an agreement with OSHA.

On July 29 and 30, 1980, the Subcommittee on the Oversight of Government Management, of which I was then chairman, and the Select Committee on Small Business, of which I was a member, held a hearing on the regulatory negotiation approach. We received testimony from representatives of both the private and public sectors who had specific experiences in regulatory negotiation including the NCPP, the Conservation Foundation, the EPA. These witnesses supported regulatory negotiation as a valuable aid to achieving more flexible and workable regulatory policy and suggested ways to strengthen the process.

Essentially the bill creates a process for establishing regulatory negotiation commissions. These commissions are composed of balanced interests in the areas being reviewed. These commissions are to develop proposed rules representing a consensus of the commissions' participants.

The bill gives ACUS and its Chairperson the responsibility for administering the program. A $1 million fund is authorized to fund the program for each of the 3 years beginning in 1986.

Specifically, an agency or interested party may request that the Chairman of ACUS conduct a preliminary investigation to determine the feasibility of using a regulatory negotiation commission to formulate a proposed rule. If the Chairman determines that the commission would be a viable means of developing a proposed rule, the Chairman will announce in the Federal Register, along with the agency involved the intention to establish a regulatory negotiation commission. The Chairman will then accept applications for participation on the commission from interested parties. The Chairman may also suggest that an interested party seek a grant from the Conference if it is determined that the party is eligible for participation but unable to afford the expense of such participation. Grants would be available to not only assist participants but also to cover the expenses of the operation of the commission. A commission could be established to develop a proposed rule in any area subject to Government regulation and conducive to resolution in the negotiation process; however, the decisions to select a particular area for negotiation would be at the discretion of the Chairman with the advice of the agency involved.

The bill outlines the status and function of the parties during the process and makes the agency an equal voting member. The commission would also have the responsiblity of reporting to the agency, OMB, and the Congress on the results of the negotiation.

Upon receipt of the commission's report, the agency must comment on the report and is permitted to amend and modify the proposed rule if it feels that amendments or modifications are necessary. However, it must give the commission and the public an opportunity to review and comment on the proposed rule and any amendments or modifications.

The NCPP and the environmental negotiations demonstrate the vital progress that can result from regulatory negotiation. Yet, despite the promise that this approach holds, its use has been limited. The failure to

use regulatory negotiation more frequently stems in part from our traditional reliance on the adversarial proceedings and in part from the possible costs involved in the process.

Expanding the use of regulatory negotiation will require some encouragement from regulators. Private parties need to know that there is a process and funds available to meet the cost of negotiation and facilitate the establishment of a workable negotiation mechanism. This will enable many parties in the private sector to participate in the process who would otherwise be left out; it demonstrates that the Government will take the results seriously; and it ensures that the negotiations will be fairly and impartially structured so that all points of view can be effectively represented. The program envisioned in this bill will give the concept of regulatory negotiation the impetus and the initial funding it needs and deserves.

I view this bill as a unique opportunity to foster more effective and appropriate regulations and to reduce conflict and delay in the regulatory process. I hope that you share this view and that you will join me in supporting it.

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. 451

*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 "Regulatory Negotiation Act of 1985".

FINDINGS

SEC. 2. The Congress finds and declares that:

(1) Government regulation of the economy has increased rapidly since the enactment of the Administrative Procedure Act.

(2) Although this increase in regulation has had commendable purposes, it has been accompanied by a formalization of the rule making process which has frequently resulted in unjustifiably expensive, contradictory, and often counterproductive rules.

(3) The adversarial nature of the rule making process has often resulted in unnecessary regulations which have a significant adverse effect on the economy.

(4) In the current rule making process, the parties often assume antagonistic positions and the best solutions to the problems under consideration are often ignored by the parties since the parties act in a manner which maintains their bargaining positions.

(5) In the current rule making process, the parties rarely have the opportunity to meet as a group and communicate directly with each other, and the lack of this opportunity effectively limits the ability of the parties to reach agreement on a rule that fulfills the intent of Congress and is acceptable to all parties.

(6) The adversarial nature of the rule making process frequently limits the extent to which the expertise, technical ability, and great resources of persons working in a regulatory area are used to solve the problem under consideration.

PURPOSE

SEC. 3. The purpose of this Act is to establish an alternative rule making procedure which permits the establishment of regulatory negotiation commissions that can be used in appropriate circumstances to permit direct participation of interested parties in a rule making, the negotiation of regulatory policy by such parties, and the development of rules that represent a consensus of the members of the commission.

DEFINITIONS

SEC. 4. For purposes of this Act—

(1) the term "agency" has the same meaning as in section 551(1) of title 5, United States Code;

(2) the term "person" has the same meaning as in section 551(2) of such title;

(3) the term "party" has the same meaning as in section 551(3) of such title;

(4) the term "rule" has the same meaning as in section 551(4) of such title;

(5) the term "rule making" has the same meaning as in section 551(5) of such title;

(6) the term "Conference" means the Administrative Conference of the United States;

(7) the term "Chairman" means the Chairman of the Administrative Conference of the United States;

(8) the term "consensus" means a unanimous agreement among all interests represented in the negotiation of a proposed rule under this Act, and does not mean a unanimous agreement among all individual members involved in the negotiation;

(9) the term "interest" means a position with respect to an issue that may be considered by a regulatory negotiation commission and that may be represented by one or more persons;

(10) the term "mediator" means an individual selected to mediate discussions between the members of a regulatory negotiation commission and to facilitate communications between such members in the development of a proposed rule;

(11) the term "member" means a person who is a member of a regulatory negotiation commission; and

(12) the term "regulatory negotiation commission" means a voluntary group established by the Conference in a accordance with this Act to consider issues for the purpose of reaching a consensus in the development of a proposed rule.

REQUEST FOR REGULATORY NEGOTIATION COMMISSION

SEC. 5. (a) An agency or a person who is qualified to represent an interest with respect to an issue may request the Chairman to determine whether to recommend to the agency having jurisdiction over the development of a proposed rule with respect to such issue that a regulatory negotiation commission be established to develop such a proposed rule. The request shall explain the reasons why the agency or person believes that the use of a regulatory negotiation commission would be an appropriate method of developing a proposed rule.

(b) The Chairman shall consider each request made under subsection (a) for the establishment of a regulatory negotiation commission to develop a proposed rule with respect to a particular issue. If the Chairman determines that there is a substantial likelihood that the agency having jurisdiction over the development of such a rule will seriously consider issuing a proposed rule relating to such issue, the Chairman may conduct an informal investigation with respect to the advisability of establishing a regulatory negotiation commission to develop such a proposed rule. In conducting such an investigation, the Chairman may consider and make determinations concerning—

(1) whether there are a limited number of interests which would be substantially affected by a proposed rule relating to the issue;

(2) whether persons can be selected as members of a regulatory negotiation commission who would represent the interests identified pursuant to paragraph (1), including recommendations for persons to be selected;

(3) whether the persons recommended for selection as members of a regulatory negotiation commission would be willing to make a commitment to negotiate in good faith to reach a consensus on a proposed rule concerning such issue;

(4) whether the agency having jurisdiction over the development of such a proposed rule would use the regulatory negotiation commission to develop such rule;

(5) the scope of the issues to be considered by the regulatory negotiation commission in developing such rule; and

(6) a preliminary schedule for the completion of the work of the regulatory negotiation commission.

(c) Within sixty days after receiving a request under subsection (a) with respect to the development of a proposed rule concerning an issue, the Chairman shall report to the Conference and the agency having jurisdiction over the development of such a proposed rule the determinations of the Chairman under subsection (b) and the recommendations of the Chairman as to whether a regulatory negotiation commission should be established to develop such a proposed rule.

(d) The Chairman, with the advice of the agency having jurisdiction over the development of a proposed rule with respect to an issue for which a request is submitted under subsection (a), shall have complete discretion in determining the subjects to be considered by any regulatory negotiation commission established to develop such a proposed rule. Any determination by the Chairman with respect to the subjects to be considered by a regulatory negotiation commission shall not be subject to judicial review in any court.

USE OF REGULATORY NEGOTIATION COMMISSION

SEC. 6. (a) If, on the recommendation of the Chairman, an agency decides to use a regulatory negotiation commission, the agency shall publish in the Federal Register a notice concerning the proposed use of such commission in the development of a proposed rule. Such notice shall include—

(1) an announcement that the agency intends to use a regulatory negotiation commission in the development of the proposed rule;

(2) a general description of the subject matter to be considered by the regulatory negotiation commission; and

(3) a list of mediators compiled and approved by the Conference, from which persons applying for membership on the commission may select a proposed mediator.

(b)(1) For a period of at least thirty days after the date on which an agency publishes a notice with respect to a regulatory negotiation commission under subsection (a), the Chairman shall accept applications from persons who are qualified to represent an

interest on the commission. Each such application shall specify—

(A) the name of the person submitting the application and a description of the interest such person will represent;

(B) the persons recommended for membership on the commission and the reasons of the applicant for such recommendations;

(C) whether a mediator will be needed by the commission, and, if necessary, the name of a proposed mediator;

(D) recommendations for the issues to be considered by the commission;

(E) recommendations for rules for the operation of the commission;

(F) a proposed organizational plan and a proposed agenda for the commission;

(G) a proposed schedule for completing the work of the commission; and

(H) a written commitment that the applicant will—

(i) negotiate the issues under consideration by the commission in good faith; and

(ii) produce a report on the negotiation within a time period appropriate to the issues under consideration.

(2) In order to ensure that all interests, including interests represented by public interest groups, have an adequate opportunity to participate in a regulatory negotiation commission, the Chairman may suggest that a person submitting an application under paragraph (1) request a grant under section 9 to pay the expenses that will be incurred by such person as a result of participation on the regulatory negotiation commission.

(c) During the period in which the Chairman is accepting applications under subsection (b)(1), an agency which published a notice under subsection (a) with respect to a regulatory negotiation commission shall submit to the Chairman a written statement specifying—

(1) the name and position of a senior official of the agency who will represent the agency on the commission;

(2) whether a mediator will be necessary for the commission, and, if necessary, the name of a proposed mediator;

(3) the persons recommended for membership on the commission and the reasons of the agency for such recommendations;

(4) recommendations for the issues to be considered by the commission;

(5) recommendations for rules for the operation of the commission;

(6) a proposed organizational plan and a proposed agenda for the commission;

(7) a proposed schedule for completing the work of the commission; and

(8) a written commitment that the agency will—

(A) negotiate the issues under consideration by the commission in good faith; and

(B) produce a report on the negotiation within a time period appropriate to the issues under consideration.

(d) After the period for applications for membership on a regulatory negotiation commission under subsection (b)(1) has expired, the Chairman shall consider all of the applications submitted under such subsection and the statement submitted by the agency under subsection (c). If, after considering such applications and statement, the Chairman determines that all necessary interests will be represented on the regulatory negotiation commission for which the applications are made and that persons representing such interests will have an opportunity to contribute to the negotiation of a proposed rule, the Chairman shall announce the establishment of such a commission in accordance with subsection (e).

(e) The Chairman shall announce the establishment of a regulatory negotiation commission for the development of a proposed rule through publication of a notice in the Federal Register and through notices in appropriate journals, newsletters, and other media. Such notice shall include—

(1) a description of the issue to be considered by the commission;

(2) a tentative list of the subjects to be considered by the commission in negotiating with respect to the issue described pursuant to in paragraph (1);

(3) the name and position of the senior official of the agency having jurisdiction over the development of such a rule who is proposed to represent the agency on the commission;

(4) the name of each person proposed for selection as a member of the commission, and a specification of the interest to be represented by each such member;

(5) the name of a proposed mediator for the commission, if any;

(6) a proposed schedule for the completion of the work of the commission; and

(7) a request that members of the public comment on the proposed commission, including comments on—

(A) whether each appropriate interest will be represented on the commission;

(B) the persons selected to represent each such interest;

(C) the official proposed to represent the agency; and

(D) the issues to be considered by the commission.

(f) For a period of at least thirty days after the date on which the notice required under subsection (e) is published in the Federal Register, the Chairman shall accept comments from the public with respect to the matters specified in such notice. The Chairman, with the advice of the agency having jurisdiction over the proposed rule to be developed by the commission, shall consider all relevant matter and comments submitted, and may modify the proposal for the use of a regulatory negotiation commission specified in such notice with the agreement of the agency and the members proposed by the Chairman in such notice to represent the major interests on the commission.

(g) The agency shall publish in the Federal Register a final notice concerning the establishment of a regulatory negotiation commission to develop a proposed rule. The notice shall specify the matters described in paragraphs (1) through (6) of subsection (e) with respect to the regulatory negotiation commission that will be established.

PROCEDURES FOR REGULATORY NEGOTIATION COMMISSIONS

SEC. 7. (a) Each regulatory negotiation commission established pursuant to this Act shall consider the subjects specified by the Chairman for consideration by the commission and shall attempt to reach a consensus concerning a proposed rule with respect to such issues.

(b) The official representing the agency on a regulatory negotiation commission shall participate in the deliberations and activities of the commission as a voting member who is equal to all other members of the commission.

(c)(1) Any mediator selected by the Chairman for a regulatory negotiation commission shall—

(A) chair the meetings of the commission;

(B) assist the members of the commission in conducting discussions;

(C) keep the Congress informed of the activities of the commission; and

(D) assist in the deliberations of the commission.

A mediator shall not vote on any matter before the commission or participate in any agreement made by the commission.

(2) If the Chairman has not selected a mediator for a regulatory negotiation commission, the commission shall elect a chairperson from among its members to carry out the functions of a mediator described in paragraph (1). A chairperson elected under this paragraph shall be entitled to vote on any matter before the commission paticipate in any agreement made by the commission.

(d) Whenever possible, not more than fifteen members of a regulatory negotiation commission shall participate in the deliberations of the commission at any one time. The total number of members of a regulatory negotiation commission may exceed fifteen.

(e) A regulatory negotiation commission may change its membership, rules, or agenda if a majority of the interests represented on the commission agree to such change and if the commission submits such change to the Chairman for review. If the Chairman determines that any such change will substantially impair the ability of the commission to carry out the purposes of this Act, the Chairman may—

(1) suggest additional changes in the membership, rules, or agenda of the commission in order to assure consistency with the purposes of this Act; or

(2) require that the commission, and any members thereof, repay the Government the amount of any grant provided under this Act which has not been obligated or expended.

The chairman may not require a commission to make repayment under paragraph (2) of this subsection unless the Chairman detemines that efforts by the commission to assure consistency with the purposes of this Act have failed.

(f) At the conclusion of negotiations, each regulatory negotiation commission shall prepare and transmit to the Chairman, the head of the agency participating in the commission, each committee of the Senate and House of Represenatatives having legislative jurisdiction over the subjects considered by the commission, and the Director of the Office of Management and Budget a report with respect to the negotiations conducted by the commission. If the commission reached a consensus and developed a proposed rule, the report shall contain the proposed rule developed by the commission and a concise general statement of the basis and purpose of that rule. If the commission did not develop a consensus and a proposed rule, the report shall specify the areas in which the commission reached a consensus, the areas of disagreement among the commission, and such recommendations and background material the commission may consider appropriate.

(g) Any meeting of a regulatory negotiation commission shall be open to the public, unless a majority of the members of the commission determine by vote that a closed meeting is necessary to achieve the purposes of the commission. Each open meeting shall be announced in the Federal Register at least fifteen days prior to the date of the meeting if possible, and a record shall be prepared of each such meeting.

(h)(1) A regulatory negotiation commission which developed a proposed rule shall be terminated—

(A) on the date on which the agency that participated in the commission publishes a notice of proposed rule making under section 8(a) for such proposed rule; or

(B) in any case in which the agency chooses not to publish a notice of proposed rule making for such proposed rule, on a date determined by the Chairman which occurs—

(i) after the commission has had an opportunity to comment on the agency action with respect to such proposed rule; and

(ii) after the commission has transmitted the report required under subsection (f) to the committees of the Senate and the House of Representatives referred to in such subsection.

(2) A regulatory negotiation commission which did not develop a proposed rule shall terminate fifteen days after the date on which the commission transmits the report required by subsection (f) to the committees of the Senate and the House of Representatives referred to in such subsection.

AGENCY ACTION

SEC. 8. (a) An agency shall publish in the Federal Register a notice of proposed rule making in accordance with section 553 of title 5, United States Code, for any proposed rule developed by a regulatory negotiation commission unless the agency determines that there is good cause for not publishing such notice. The agency may propose amendments to or modifications in the proposed rule developed by the regulatory negotiation commission and shall publish such amendments or modifications in the Federal Register with the notice of proposed rule making. The agency may publish with such notice such additional explanatory material as the agency considers appropriate.

(b) The agency shall make available the report transmitted under section 7(f) by the regulatory negotiation commission concerning the proposed rule developed by such commission.

(c) The agency shall allow a period of at least thirty days for the public to review and comment on—

(1) the notice of proposed rule making published under subsection (a);

(2) any amendments or modifications proposed by the agency under such subsection to the proposed rule developed by a regulatory negotiation commission; and

(3) any other material published under such subsection.

(d) The agency shall provide a regulatory negotiation commission which developed a proposed rule an opportunity to review and comment upon any material received by the agency pursuant to the notice of proposed rule making for such rule published under subsection (a) and an opportunity to participate in any additional proceedings the agency conducts with respect to such proposed rule.

GRANTS FOR REGULATORY NEGOTIATION COMMISSIONS

SEC. 9. (a) In order to carry out the purposes of this Act, the Conference, through the Chairman, shall make grants to—

(1) regulatory negotiation commissions for the payment of administrative expenses of such commissions; and

(2) members of a regulatory negotiation commission who are unable to afford to pay the costs of participation in the commission.

(b) The Chairman shall announce through publication in the Federal Register and through notice in appropriate journals, newsletters, and other media, the availability of grants under this Act, and shall take such other actions as may be necessary to provide notice to the public concerning the availability of such grants.

EXEMPTIONS FROM CERTAIN PROVISIONS OF LAW

SEC. 10. (a) The Federal Advisory Committee Act shall not apply to any regulatory negotiation commission established pursuant to this Act.

(b) Notwithstanding any other provision of law, no written or oral communication—

(1) between the members or staff of a regulatory negotiation commission and the staff of an agency;

(2) between the members of a regulatory negotiation commission or their staff; or

(3) between any person and a regulatory negotiation commission and its staff;

shall be regarded as an improper ex parte communication subject to any sanction imposed by statute, regulation, or judicial precedent.

(c) Information or records submitted to a regulatory negotiation commission shall not be regarded as agency records for purposes of section 552(a)(3) of title 5, United States Code.

(d) The members of a regulatory negotiation commission and any mediator of such commission shall not be regarded as employees or agents of the United States solely because of their participation in the commission.

STAFF FACILITIES AND RESEARCH

SEC. 11. (a)(1) The Chairman of the Administrative Conference of the United States is authorized to—

(A) employ an individual to carry out the duties of the Chairman under section 5(b); and

(B) subject to paragraphs (2), (3), and (4), enter into contracts with individuals to serve as mediators for regulatory negotiation commissions.

(2) The Chairman may not enter into any contract under paragraph (1)(B) with an individual if such individual—

(A) may represent any interest with respect to the issue to be considered by a regulatory negotiation commission in developing a proposed rule; and

(B) is a member of, or is associated with, any organization which may represent such an interest.

(3) The Chairman may compensate any individual employed under paragraph (1)(B) at a daily rate equal to the maximum daily rate of pay for level 15 of the General Schedule under section 5332 of title 5, United States Code.

(4) The authority of the Chairman to enter into contracts under this subsection shall be to such extent or in such amounts as are provided in appropriation Acts.

(b) A regulatory negotiation commission is authorized to utilize the services and facilities of Federal agencies and public and private agencies and instrumentalities with the consent of such agencies and instrumentalities and with or without reimbursement to such agencies, and to accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31, United States Code.

(C) Members of a regulatory negotiation commission may agree to share the research and scientific and technical data available to such members.

AUTHORIZATION OF APPROPRIATIONS

SEC. 12. To carry out this Act, there are authorized to be appropriated to the Conference not in excess of $1,000,000 for each of the fiscal years 1986, 1987, and 1988.●

By Mr. BRADLEY (for himself, Mr. DODD, and Mr. PELL):

S. 452. A bill to enact the Gifted and Talented Children's Education Act; to the Committee on Labor and Human Resources.

GIFTED AND TALENTED CHILDREN

● Mr. BRADLEY. Mr. President, today I am pleased to introduce along with my colleagues, Senator DODD and Senator PELL, the Jacob J. Javits Gifted and Talented Children's Education Act of 1985. The Federal Government began its involvement with the education of gifted and talented students over 15 years ago. In 1969, Senator Jacob Javits of New York led the fight for the passage of the Gifted and Talented Children's Education Assistance Act. This legislation, in addition to focusing Federal attention on talented and gifted youth and giving them priority in several Federal education programs, directed the Commissioner of Education to report to Congress on the current status of educational programs for gifted and talented children and the unmet educational needs of these children.

In 1974, Senator Javits provided the leadership needed to appropriate $2.5 million, through Public Law 93-380, to help local educational agencies aid these children. Again in 1978, Senator Javits introduced legislation leading to the passage of title IV-D of Public Law 96-561, the Gifted and Talented Children's Education Act. Appropriations reached $6.3 million in 1980, allowing for the support of many excellent and innovative educational programs.

Since 1980, we have witnessed a major retreat in aid for the gifted and talented. In 1981, at the request of the Reagan administration, the Gifted and Talented Childrens' Education Act of 1978 was eliminated as a separate program and merged with 29 other education program under a block grant—chapter 2 of the Education Consolidation and Improvement Act. Funding for the block grant has been cut in real terms by 53½ percent. And in 1982, as a further retreat, the Reagan administration closed the Office of the Gifted and Talented in the U.S. Department of Education. The Federal Government now plays virtually no role in helping schools provide opportunities for the gifted and talented.

Recently, the National Commission on Excellence in Education, in its report, "A Nation at Risk: The Imperative for Education Reform," stated:

The Federal Government, in cooperation with States and localities, should meet the needs of key groups of students such as gifted and talented, the socioeconomically disadvantaged, minority and language minority students, and the handicapped. In combination these groups include both national resources and the Nation's youth who are most at risk.

All of the above groups, with the single exception of the gifted and talented, receive significant Federal assistance.

Mr. President, the needs of the gifted and talented are real. We have nearly 2.5 million gifted and talented elementary and secondary students in the country, but 40 to 60 percent of this population has never even been identified. Further, 50 percent of the identified students achieve below their ability level, and only 20 percent of the teachers in gifted education are properly trained to design curriculum for these students. Despite the popular notion that our gifted and talented children will succeed on their own, many need services not readily available through regular school programs.

In New Jersey there are presently 61,000 school age children who have been specifically identified as gifted and talented and are receiving supplemental services of some kind. Few of these children receive all that they deserve and thousands more receive no supplemental services at all. In large part this is because almost all schools are caught in a financial squeeze. Local revenues are insufficient, Federal funds are virtually nonexistent and only little State aid is available—for example only $100,000 is available from the State of New Jersey for gifted and talented programs, less than $2 per identified student.

Since local schools don't have the financial resources to provide fully adequate services for these children, I propose that we reverse directions: the talented and gifted need more attention, not less. And to this end, today I am introducing a bill to reestablish a Federal program to aid the gifted and talented. We must have a focused effort to see that our best and our brightest do succeed. We need to pull this program out of the education block grant and get it funded at least at minimally adequate levels. My bill includes an authorization for appropriations of $50 million for each of the next 4 fiscal years—almost 10 times the maximum funding level achieved in the late 1970's.

The bill includes two key provisions to help target funds to needy schools. First, the bulk of the funding will be in the form of grants to States for distribution of funds to local schools on a competitive basis. If schools have a new idea worth trying out, they can apply for Federal aid through the State departments of education. Second, half of the funds will be targeted to gifted children from disadvantaged and low-income backgrounds to ensure that the gifted children from inner city schools will not be left behind.

My bill would also require the Secretary of Education to reestablish the Office of Gifted and Talented in the U.S. Office of Elementary and Secondary Education to ensure that information and research on the talented and gifted is collected and share with local school districts.

Many school districts around the country have established excellent programs for the gifted. We need to support these programs nationally. In New Jersey, the efforts underway in Montclair, Bayonne, Elizabeth, Union City, and other places need to be encouraged—not only with our best wishes, but also with our financial support. And that is why I am proposing this new legislation.

Mr. President, Federal aid can help solve problems. For example, the convocation model project set up in New Jersey to provide advanced science for the gifted was funded in 1979 through the old Federal talented and gifted legislation. Over 3,000 New Jersey students and 500 New Jersey teachers benefited from the project. Unfortunately, that program died in 1981 when funding was cut off. We need to encourage efforts such as these, not discourage them.

Mr. President, in order to move from the rhetoric of educational reform to true reform, we must come to grips with the fact that children vary considerably in their abilities. It is our task to see that each and every student, including the gifted, receive a challenging education, an education designed to allow that child to reach his or her potential. We cannot rob the students who are struggling to learn basic skills, but neither can we continue to ignore our gifted children who quickly become bored and nonlearners because of a lack of challenge. We need to increase standards for all of our students. In sum, we need—at the Federal, State, and local level—to make a commitment to all of our students, whether they be disadvantaged, gifted or in-between. We need—through chapter 1 compensatory education programs—to help the disadvantaged student achieve his or her potential; but we also need—through Federal aid to talented and gifted programs—to help the gifted and talented student achieve his or her potential.

Gifted and talented children represent an invaluable national resource, one that remains sadly underdeveloped. I truly believe that our leadership position in the world depends on our commitment to our youth. Our goal must be to do everything in our power to help all students reach their potential level of intellectual development. Special attention to gifted and talented students is called for if our Nation is to maintain and improve its position as a world leader in technology, the sciences, the humanities, and the arts. This legislation is a small step in the right direction to achieve this end.●

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By Mr. GRASSLEY:

S. 453. A bill to amend the Internal Revenue Code of 1954 to safeguard taxpayer's rights; to the Committee on Finance.

TAXPAYER'S PROCEDURAL SAFEGUARD ACT

● Mr. GRASSLEY. Mr. President, I rise to introduce a measure to set forth new requirements for levy and seizure of property and other taxpayer protections. This legislation was the centerpiece for the hearings of my Subcommittee on Oversight of the Internal Revenue Service in March 1984.

In my view, it is important to examine specific segments of IRS procedures to be certain they are both effective and fair to taxpayers. While very few taxpayers are subject to the levy and seizure provisions, they are among the most sweeping powers available to a Federal agency. We have the responsibility to be certain that they are exercised with restraint and that citizens are certain of their rights.

My bill lengthens the period during which a taxpayer must pay a deficiency after notice and demand by the service from 10 to 30 days. A more detailed explanation of a taxpayer's remedies on receipt of notice and demand is also required of my bill. This bill also increases the amount of a taxpayer's wages and salary that is exempt from levy, and it prohibits the IRS from levying if the cost of selling the asset exceeds the asset's fair market value or the liability the Service is attempting to satisfy. New procedures are outlined for the release of a levy and I have inserted the restrictions on unwarranted subsequent levies.

This legislation also provides for review of jeopardy levies and assessments. Taxpayers have frequently complained of the Service's abrogation of installment sales agreements. Barring any dramatic increase in a taxpayer's economic fortunes, this bill provides better protection for taxpayers who have installment agreements with the IRS.

If the IRS provides a taxpayer with inaccurate written advice, my bill abates the portion of the deficiency which is based on incorrect information. The bill also requires the IRS to advise taxpayers that oral advice from the Service is not binding on them in subsequent litigation.

This legislation also contains new rules for the conduct of taxpayer interviews, so a citizen knows what to expect when questioned by the IRS. Also, it stresses the importance of arranging an interview at a location convenient to the taxpayer.

Also, this legislation requires the ombudsman to be a Presidential appointee, outlines his or her specific duties, and gives the ombudsman certain taxpayer relief powers in specific situations.

Finally, my bill enables the taxpayer to appeal an administrative lien and it provides a taxpayer with a cause of action against the Service for wrongful lien or levy.

To assemble the provisions of this bill, I have worked with taxpayers and taxpayer advocate groups throughout the Nation. This legislation has been endorsed by the National Taxpayers Union, Citizens Choice, and the National Taxpayers Legal Defense Fund. Many of these provisions will need further refinement and some may be rejected as unnecessary or ineffective in achieving their purpose. It is my hope that this legislation will address valid taxpayer concerns and promote better understanding and relations between the IRS and taxpayers.●

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By Mr. GRASSLEY (for himself, Mr. SYMMS, Mr. DURENBERGER, and Mr. BOREN):

S. 454. A bill to amend the Internal Revenue Code of 1954 to provide a 20 per centum investment tax credit for certain soil or water conservation expenditures; to the Committee on Finance.

INVESTMENT CREDIT FOR CERTAIN SOIL AND WATER CONSERVATION EXPENDITURES

● Mr. GRASSLEY. Mr. President, I rise to introduce a soil and water conservation tax credit measure with my colleagues, Senators SYMMS, BOREN, and DURENBERGER. The purpose of this legislation is to increase incentives for taxpayers to improve their soil and water conservation practices.

It is commonplace for Members of Congress who represent farm States or arid States to make speeches decrying the Federal Government's current conservation effort. The rate of soil erosion and the impact of soil erosion on the future productivity of our land are serious issues for our Nation. Some analysts have questioned whether the lack of Federal and State attention to this growing problem will jeopardize our efforts to produce an adequate supply of food to meet future domestic and world needs. The increasing depletion of soil is alarming because it shows a disregard for an important natural resource and indicates poor management of our Nation's farmland.

The Council for Agricultural Science and Technology (CAST), in a 1982 report, concluded that soil erosion was most serious in 12 north central States. In the Corn Belt, losses of 10 tons per acre or more were common on 19 percent of the row cropped land; on some parcels, the soil loss exceeded 40 tons per acre annually. Unfortunately, soil loss is not limited to these 12 States. In the southeastern States, erosion rates of more than 11 tons per acre occurred on 32 percent of the land used for row crops. The highest soil erosion rates in the Nation are on the 26,000 square miles of the upper Mississippi Valley which includes the States of Tennessee, Kentucky, Mississippi, Louisiana, and Arkansas. Mountain States are plagued by wind erosion of their soil. The average annual wind erosion rate on cropland is 9 tons per acre in Colorado, 11 tons per acre in New Mexico, and 15 tons per acre in Texas. On the Columbia plateau in the Pacific Northwest, average long-term erosion rates of 15 to 25 tons per acre are common with occasional erosion rates as high as 50 to 100 tons per acre.

Farmers' dramatic increase in crop yields have masked the damaging effects of soil and water erosion. In the CAST report, one scientist noted that studies with corn have shown a yield reduction of 1 to 9 bushels per acre for each inch of topsoil loss. These losses are offset by planting better crop varieties, increasing the use of fertilizer, and improving pest control. It is not prudent for us to gamble that improved technology in the future will enable us to offset the damage we are currently inflicting. In our present economic climate, many farmers feel it is necessary to deplete their soil to stay in business.

My bill permits farmers to claim a 20-percent credit for installing certain approved soil and water conservation practices. This list was recommended by the Soil Conservation Service, and is specific enough to eliminate the possibility of any taxpayer claiming a creditable expense for building swimming pools or planting trees in their front yards. To be certain the expenditure meets the standards imposed by the Soil Conservation Service, this bill requires certification by SCS. This certification requirement relieves the IRS of the responsibility of assessing whether or not a conservation technology is properly employed.

While this provision does not repeal current law, it limits the total amount of tax benefit from soil and water conservation measures a taxpayer may claim to 25 percent of a taxpayer's gross income from farming. This cap is designed to discourage investors from claiming the credit who do not derive any gross income from farming. The 20 percent credit will apply to eligible improvements to land. If the 20 percent credit is elected, a taxpayer would be limited to straight line depreciation. For the acquisition of eligible depreciable property, the taxpayer would be limited to the 10 percent investment tax credit and a 10 percent add-on credit for a total credit of 20 percent. The remaining depreciation is deducted by using the straight line method. The regular recapture and carryover rules will apply to this credit.

We selected the credit approach because it is easier to administer and more easily understood by taxpayers. In my discussions with farmers and agriculture experts, they overwhelmingly favored this approach as opposed to more complicated schemes.

This bill is narrowly drafted to stimulate soil and water conservation without stimulating tax shelter activity. It addresses a serious problem which we can no longer afford to ignore. I hope my colleagues will join me in this important effort.●

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By Mr. GRASSLEY:

S. 455. A bill to permit a married individual filing a joint return to deduct certain payments made to an individual retirement plan established for the benefit of a working spouse; to the Committee on Finance.

SPECIAL RULES FOR CERTAIN MARRIED INDIVIDUALS

● Mr. GRASSLEY. Mr. President, I rise to introduce a measure designed to enable nonworking spouses to enjoy full individual retirement account benefits. Under current law, individuals receiving compensation are permitted to exclude 100 percent of compensation up to $2,000 from their income if such an amount is deposited in an IRA—Individual Retirement Account. A married nonworking individual may participate in a spousal IRA if the working spouse elects to contribute an amount for both spouses. The maximum amount which may be contributed to a spousal IRA is $2,250—up to 100 percent of compensation. A nonworking spouse halves the benefits from this IRA, but is not permitted to perpetuate the IRA if he or she is divorced or widowed and is not receiving compensation.

The retirement crisis is a pressing concern of the 99th Congress. As a larger percentage of the population joins the ranks of the aging, new retirement solutions will be needed. In my view, it is imperative that we enact tax incentives to encourage people to plan for their retirement. All Americans need to develop personal retirement alternatives to prevent exclusive reliance on Social Security benefits.

My legislation will permit a working spouse to set aside a full $2,000 contribution for a nonworking spouse in a spousal IRA. This will permit improved retirement planning for much of our population as well as acknowledge the contributions of homemakers and house-husbands in furthering the family as an economic unit. These uncompensated individuals make critical contributions to the family enterprise. In may home State of Iowa, farm wives are an integral part of the success of a family operation. The Internal Revenue Code should recognize this contribution and permit individuals to participate in these tax deferred retirement plans.

All savings incentives have the beneficial effect of increasing capital formation. A greater poll of national savings increases the supply of money for

capital investments. This legislation increases the class of individuals eligible for an IRA account. Greater IRA contributions boost total long-term savings and create additional capital for economic growth. To conclude, this legislation is important because it provides retirement security for nonworking spouses and acknowledge their important contribution to the family unit. It encourages more Americans to actively plan for their retirement years. Finally, it encourages capital formation.●

By Mr. BOSCHWITZ (for himself and Mr. DURENBERGER):

S. 456. A bill providing for a 5-year extension of two patents relating to cardiac drugs; to the Committee on the Judiciary.

EXTENSION OF TWO PATENTS RELATING TO CARDIAC DRUGS

● Mr. BOSCHWITZ. Mr. President, today I'm introducing a bill to extend the patents on two life-saving drugs. These drugs have been developed by the University of Minnesota and have the potential to save the lives of thousands and thousands of people who suffer from heart problems that often result in sudden death.

It is very important to the University of Minnesota and the general public that we extend the patents so that clinical studies can be conducted to compare these drugs with other drugs that are currently being used. If the studies are not conducted, it is certain that the drugs will not be widely used, if used at all, when the patents expire.

Because the first patent expires in April 1986, the timing of the process makes it appropriate for me to recount the circumstances demonstrating the need for the patent extensions. As my colleagues on the Judiciary Subcommittee on Patents, Copyrights and Trademarks are well aware, obtaining drug approval from the Food and Drug Administration is often a lengthy procedure. I'm not suggesting that the FDA acted inappropriately or in an untimely manner in approving the use of the drugs. Indeed, I do not know the circumstances leading to the FDA's approval. However, the fact still remains that the FDA did not approve the drugs for general use until 1981. And, physicians have not been using these life-saving drugs because the studies I referred to earlier have not yet been done.

Since FDA's approval in 1981, efforts have been made to have the studies conducted by private industry. But, because of the short remaining life of the patents, it has become economically impracticable for private industry to finance the studies and overcome this obstacle. The University of Minnesota has pledged to finance the studies if the patents are extended.

I believe it is clearly in the public interest to extend the patents, and to do so at the earliest possible time. Although the first patent does not expire until 1986, and the second in early 1987, it is necessary to extend the patents now, because the studies themselves may take up to 2 years.

I had originally intended to offer this legislation last year as an amendment to H.R. 6286. However, the fact that no hearings had been held to evaluate the merits of extending the patents prompted me to withdraw my amendment. Although I would have preferred to accomplish this goal last year, I have been assured by my colleague from Maryland, Senator MATHIAS, that his subcommittee will hold hearings early this year on the need for additional patent protection for these two drugs.

To accomplish our goal, I am looking forward to working closely with the Senator from Maryland on this matter and will appreciate his assistance in scheduling hearings and committee and floor action at the earliest possible time. I plan to coordinate my efforts with Congressman SABO who has been very helpful. In addition, I am confident that the other Members of the Minnesota delegation in the House will join our efforts in achieving enactment of this important patent extension legislation.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 456

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of Commerce, acting through the Commissioner of Patents and Trademarks, shall—

(1) when patent numbered 3441649 (for the cardiac drug Bretylium Tosylate) expires; and

(2) when patent numbered 3495013 (for the cardiac drug Bethanidine Sulphate) expires;

extend such patent for five years, with all the rights pertaining thereto.●

By Mr. CRANSTON (for himself, Mr. MURKOWSKI, Mr. DECONCINI, Mr. SIMPSON, Mr. SPECTER, and Mr. LEAHY):

S.J. Res. 47. Joint resolution designating the week beginning November 10, 1985, as "National Women Veterans Recognition Week"; to the Committee on the Judiciary.

NATIONAL WOMEN VETERANS RECOGNITION WEEK

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I am delighted today to be introducing Senate Joint Resolution 47, a measure to designate the week beginning November 10, 1985, as "National Women Veterans Recognition Week." I am introducing this measure on behalf of myself and Senator MURKOWSKI, the acting chairman of the Veterans' Affairs Committee, the past chairman, Senator SIMPSON, as well as Senators DECONCINI and SPECTER, members of our committee and the Judiciary Committee, to which the resolution will be referred, and Senator LEAHY, also a member of the Judiciary Committee, as is Senator SIMPSON. This measure is very similar to a measure I authored in the last Congress, Senate Joint Resolution 227, which was enacted into law as Public Law 98-438. Pursuant to that law, the week of November 11 of last year was designated as "National Women Veterans Recognition Week."

Mr. President, last year's effort made a very good start in creating greater public awareness and recognition of the contributions of women veterans; many activities were carried out across the Nation honoring women veterans. We are proposing the designation of such a week again this year as a reflection of our view that much remains to be done to make the public more aware of the many contributions of women veterans over the years so as to gain for them the recognition they so richly deserve and to make the women veterans themselves aware of the many benefits available to them because of their service.

Mr. President, with reference to this second goal—of making women veterans themselves more aware of the benefits that relate to their status as veterans—it has become clear, beginning with a 1982 General Accounting Office report, then through the work of the VA Advisory Committee on Women Veterans, and, most recently, through a September 1984 VA report, that far too many women veterans are not aware of the implications of their status as veterans. For example, the recent VA report, entitled "Data on Female Veterans, Fiscal Year 1983," found that, although women veterans represent 4.1 percent of the overall veteran population, they accounted for only 2.1 percent of the population in VA medical centers on census day in June 1983 and for only 1.8 percent of the total VA hospital discharges in fiscal year 1983.

The VA Advisory Committee on Women Veterans was first established administratively on a temporary basis but later, in November 1983, given statutory permanance by virtue of the enactment of legislation I first proposed. In its first report, issued in July 1984, the Advisory Committee made the following points:

Two fundamental problems cut across the issues discussed by the Committee. First: Many women veterans are not aware of their entitlement to the benefits administered by the VA and other women who may be aware of their entitlements are reluctant to initiate claims for their benefits. Second: VA information materials, brochures, and outreach programs designed to inform vet-

erans of their rights and benefits have been aimed at a male constituency. In part, this is merely a reflection of a traditional societal mindset that a veteran is, almost by definition, male.

I concur fully with these concerns of the Advisory Committee and believe that the measure we are introducing today is one concrete response to those concerns. In this regard, I note that VA Administrator Harry Walters, in a November 6, 1984, letter to me in response to my request for the VA's views on the Advisory Committee's report, indicated that the VA was taking various steps to address these concerns of the Advisory Committee.

So that my colleagues and others with an interest in the work of the Advisory Committee may have a better appreciation of its work and the VA's response to it, I ask unanimous consent that the Advisory Committee's July 1984 report, which includes as appendix A a list of the members of the Committee, my September 14, 1984, letter to Administrator Walters requesting the agency's views on the recommendations in that report, and this November 6, 1984, reply be reprinted in the RECORD at the conclusion of my remarks.

Mr. President, as I did last year, I look forward to working with my good friends, the Chairman [Mr. THURMOND] and ranking minority member [Mr. BIDEN] of the Judiciary Committee, as well as my other colleagues on that committee, as they consider this measure. The sponsors of the resolution invite all our colleagues to join with us and help ensure its quick enactment so as to allow sufficient time for the advance publicity that can bring about maximum awareness among the public about National Women Veterans Recognition Week.

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

REPORT OF THE VETERANS' ADMINISTRATION ADVISORY COMMITTEE ON WOMEN VETERANS

INTRODUCTION

This is the first report of the Veterans' Administration Advisory Committee on Women Veterans. The Committee was originally established by the Administrator of Veterans Affairs, Mr. Harry N. Walters, in April 1983, as an internal advisory group. His decision was in response to growing concerns within the Congress, the Agency, and veterans' groups that women were not receiving equal access to programs and benefits to which they were entitled as veterans.

The first meeting was held September 14-16, 1983. In November 1983, PL 98-160 mandated a committee. Since all the members of the Administrator's Committee satisfied the legal requirements of the Congressional mandate, the membership remained the same. Subsequent meetings were held February 14-16, 1984 and May 14-15, 1984. All meetings were open to the public.

Each member of the Committee is either a veteran, a current member of the armed forces, and/or actively involved in veterans activities. Each, therefore, brings first-hand knowlege of many of the issues discussed in this report. In addition to participating in the regular meetings, individual members have visted, on their own and at their expense, VA field activities in order to acquaint themselves with current operations and problem areas. It is worth noting that, during these visits, it was obvious that significant progress had been made over the past two years in raising the level of awareness of officials at all levels to the need for providing better care for women veterans. In many cases actions were already under way to correct deficiencies where it could be done within existing policies, facilities, and funds. The emphasis was coming directly from the top—the Administrator or his immediate staff.

The Committee wishes to acknowledge and express appreciation to Mr. Harry Walters for his unstinting support of women veterans and the work of this Committee.

We thank Nora Kinzer, Ph.D., Special Assistant to the Administrator, for her wise counsel and her considerable assistance throughout our deliberations. We would also like to thank Susan Mather, M.D., Chief, Pulmonary and Infectious Diseases, Department of Medicine and Surgery; Mrs. Mary Leyland, Deputy Director, Education Service, Department of Veterans Benefits; Ms. Nan Nave, Staff Assistant, Department of Memorial Affairs, and Mrs. Barbara Brandau, Program Assistant, Office of the Administrator, for their cooperation and assistance. We commend the excellent briefings provided by the Veterans Administration and particularly commend the special efforts of Mr. Robert Schultz, Director, Office of Information Management and Statistics, and his staff.

The Committee wants to acknowledge the presence and interest of the Disabled American Veterans, American Veterans of WWII, Korea and Vietnam, Veterans of Foreign Wars, American Legion, Paralyzed Veterans of America, Vietnam Veterans of America, American Nurses' Association, and Women's Equity Action League.

BACKGROUND

As of March 1984 there were an estimated 1,158,900 women veterans comprising 4.1 percent of the total veteran population. Their numbers and proportion to the total have increased significantly during the past decade as a direct reflection of the rapid expansion in the numbers of women entering the all-volunteer Forces. Women currently constitute nearly 10 percent of the armed forces today as compared to roughly one percent at the beginning of the 1970's and this trend is projected to continue, albeit at a slower pace, for the next several years. As these growing numbers of women leave the military ranks their presence will impact proportionally on the veteran population in a variety of ways.

By law men and women have equal rights as veterans to the benefits and services administered by the Veterans Administration (VA). However, evidence has mounted over the years that this has often not been the case in practice—that, for a variety of reasons, women veterans were being shortchanged. This was cited in September 1982 by the General Accounting Office. After an investigation of VA activities, the GAO reported that, although progress had been made in insuring that medical care and other benefits were available to women veterans, the VA had not adequately focused on their needs. The report specifically pointed out the need for action to insure that:

Men and women have equal access to VA treatment programs and medical facilities; women treated in VA facilities receive complete physical examinations; needed gynecological care is provided; sufficient plans are made for the anticipated increase in female veterans, and female veterans are adequately informed of their benefits.

It is the objective of this Committee, and, we believe, of the Administrator of Veterans Affairs, as well as the Congress, to insure that all veterans, regardless of gender, receive the benefits to which each is entitled under the laws and policies administered by the Veterans Administration. This has been, and remains, the guiding principle of the Committee, and it is within this context that we have addressed the issues.

ISSUES AND RECOMMENDATIONS

*Outreach*

Two fundamental problems cut across the issues discussed by the Committee. First: Many women veterans are not aware of their entitlement to the benefits administered by the VA and other women who may be aware of their entitlements are reluctant to initiate claims for their benefits. Second: VA information materials, brochures, and outreach programs designed to inform veterans of their rights and benefits have been aimed at a male constituency. In part, this is merely a reflection of a traditional societal mindset that a veteran is almost by definition male.

The VA has recently become aware of these problems of communication and recognizes that it has a responsibility to reach out to women veterans informing them of their rights and encouraging them to take advantage of benefits provided by the VA to all veterans. Notable progress has already been made. One noteworthy initiative is a display board depicting women veterans to be used at conventions and meetings.

The VA's Office of Public and Consumer Affairs has prepared an outreach action plan that includes a women-oriented publication, a poster, a public service announcements and other activities designed to inform women veterans of their entitlements and to encourage them to use their VA benefits. Women Veterans, VA employees, veterans service organizations, the news, and specialized media have been targeted.

*Recommendations*

The VA continue an aggressive outreach program for all women veterans with a coordinated and integrated public information campaign utilizing the various media.

The VA revise the cover of the current brochure on Federal Benefits for Veterans and Dependents to depict both service man and women and develop a separate pamphlet or flyer on women veterans with the contents prepared with the advice and assistance of the Advisory Committee.

The VA contact the National Advertising Council to pursue public service announcements on women veterans.

The VA continue issuing press releases on women veterans.

A film or video tape be developed that would highlight women veterans' issues, to be made available to veterans and all other community groups. The film should be made with consultation and advice of the members of the Advisory Committee.

The term "women veterans" be used instead of "female veterans" in VA communications except when "female" is clearly preferable.

The VA adopt the slogan "WOMEN ARE VETERANS TOO" for use in their outreach campaign.

The VA Advisory Committee members be used as a resource to the VA for outreach.

*Health care facilities and staffing*

One of the most important benefits of veterans is health care provided by VA medical centers. Historically, medical facilities and services have been designed primarily to meet the needs of the large male veteran population while the needs of the women veterans have received little or no attention.

Since 1981, a concerted effort has been made to accommodate women patients. Within the VA medical system there are 172 hospitals, 103 nursing home care units, and 227 outpatient clinics serving veterans. All of the hospitals, outpatient clinics and nursing homes now serve women; however, the level varies from minimal to the full range of services, depending on the physical plant and staffing at individual facilities.

The medical system also includes 16 domiciliaries. Only nine currently have the facilities and staffing to accept women.

Although much has been accomplished to meet the needs of women veterans, clearly much still remains to be done before women can be fully integrated into the VA health care system.

To provide comprehensive care for both male and female veterans, facilities such as adequate bathrooms, bedrooms and examination areas are necessary to meet acceptable privacy standards. Furthermore, appropriate diagnostic and treatment facilities are required to provide inpatient and outpatient care, including gynecology.

To date, 22 centers have submitted proposals for changes in their 5-year plans to meet these needs. Also, centers have asked for funds of less than $50,000 at the district level to begin immediate renovations.

Construction and renovation to meet those needs require high priority. However, changes of less than $50,000 allocated at the district or hospital level are not always assigned a priority that will guarantee funding. For example, a medical center requesting only $18,000 for installation of private shower stalls was denied those funds because the district did not give it a high enough priority.

In order to keep faith with women veterans, changes identified in 5-year plans must be accomplished within the next five years and not relegated to subsequent 5-year plans. We urge the Administrator to establish a requirement for annual progress reports on construction and renovation projects for privacy.

Inadequate staffing has been given as a reason for not integrating women into the health care system. Consequently, budgetary considerations must include adequate staffing of all health care facilities. For example, nurse practitioners trained/certified in gynecologic care could provide some gynecological services as well as health counselling where those services are not available.

*Recommendations*

Construction and renovation projects regarding privacy be given first priority and not relegated to subsequent 5-year plans.

Privacy renovations costing less than $50,000, where approval authority rests at district or medical center level, be assigned a priority that will guarantee funding.

The Administrator establish a requirement for annual progress reports on construction and renovation for privacy.

Budgetary considerations include adequate staffing of all medical facilities to fully integrate women into the health care system.

Nurse practitioners certified in gynecological care be used to provide some gynecological services as well as health counselling where those services are not currently available.

*Women Veteran Coordinators*

Some women veterans have not used the VA medical care system in the past because of inadequate information or a perception of being unwelcome in a male-oriented facility. Some women have also complained about an unsympathetic attitude toward women projected by the staff. In general, women veterans have not had an effective method through which to channel their concerns.

To address this problem, in July 1983, Medical District 12 (Florida), with ten health care facilities, launched a new program by appointing women coordinators. The VA, by a Chief Medical Director's Letter in December 1983, recommended that a coordinator program be considered by all VA health care facilities. Medical facilities in other states have successfully initiated programs but programs have not been established systemwide. Where these programs exist, they have been well received by women veterans and local VA staff. The programs would be more effective if the VA established uniform guidelines and a method to exchange information among coordinators.

District 12 could provide the model for uniform guidelines. The model should include a description of the duties and responsibilities of the position. Actions which might be included are:

Publicizing the coordinator's name and responsibilities to all VA staff, personnel and patients,

Establishing direct reporting procedures from the coordinator to the director,

Scheduling period meetings/conference calls within a district.

Ideally the coordinator should be a woman sensitive to needs of women veterans. Her position should allow coordination with the director and chiefs of services to correct problems or effect needed policy or procedural changes.

Another mechanism to improve the health care delivery to women veterans is the appointment of a local in-house Advisory Group on Women Veterans. Groups already formed have begun to address such subjects as gynecological care, privacy, security and sensitivity training of VA staff at the local facilities.

Establishing coordinators in all VA health care facilities and encouraging the use of women's advisory groups would demonstrate the Veterans Administration's commitment to women veterans.

*Recommendations*

The VA establish a policy that each medical facility appoint a women veteran coordinator.

The VA publish uniform guidelines for the women veteran coordinator position.

The VA encourage the use of local women's advisory groups.

*Statistics*

It is significant that the acutal size, composition, and trends of the women veterans' population have been determined only recently. Despite the fact that women have served in the U.S. armed forces continuously since the turn of the century, and that 350,000 served during World War II, the entrance of these women into the veterans' ranks went largely unnoticed. Without adequate information, the needs of women veterans could not be adequately addressed and existing programs and services could not be evaluated.

It was not until after the proportions of women in the All Volunteer Force had jumped from 1 percent to 8.5 percent that the first serious attempt was made to accurately assess the female segment of the veteran population.

The 1980 Census was the first time that data were systematically obtained on women veterans. It was then discovered that the number of women veterans was far larger than previously estimated. Also, it was learned that there are significant differences between male and female veteran populations that could impact on VA programs. For example: While the median ages for the two groups are roughly the same, the proportions of older veterans differ. Whereas just under 29 percent of the male veterans are 60 years of age or older, nearly 38 percent of the female veterans are in this age category.

Using the new data provided by the 1980 Census, the VA has been able to conduct the first comprehensive analysis of the national population of living women veterans. A summary of the findings have been published in the monograph: The Female Veteran Population, (RMS 70-84-1) November 1983, a copy of which is attached.

Other data collected in recent years by the VA show that compared to men, women veterans have applied for fewer benefits due them, such as medical care, hospitalization and educational benefits under the G.I. Bill.

To better understand the reasons why many women veterans do not use their benefits, the Veterans Administration has awarded a contract to Louis Harris and Associates, Inc., to conduct a survey of women veterans. The survey, to be completed by February 1985, will consist of a random sample of personal interviews of 3,000 women veterans nationwide. It will provide in-depth information on socioeconomic characteristics, health status, and use of VA programs and facilities. This will aid the VA in making policy decisions on services provided by the Veterans Administration and in designing future programs and facilities.

The VA has recently mandated that all future studies of veterans conducted or contracted for by the VA will include women veterans. However, in studies based on sampling techniques, there is still the danger that, due to their relatively small numbers (4.1 percent of total veterans) the female population would be inadequately represented. This could lead to skewed results.

*Recommendations*

All major statistical reports compiled and published by the VA on veterans include separate break outs on women veterans.

The VA review and revise their programs based on the newly available data on women veterans.

All future studies of veterans include a subsample of women veterans analyzed separately.

*Agent orange*

According to the Special Assistant for Environmental Sciences, all U.S. personnel who served in South Vietnam are presumed to have been exposed directly, or indirectly, to Agent Orange. At this time, there is a difference of opinion in the scientific community as to the effects of dioxin exposure. The subject has been under intensive study worldwide with no definitive conclusion to

date. This uncertainty serves to heighten all Vietnam veterans' fears.

The approximately 7,000 women Vietnam veterans are not included in Agent Orange Studies conducted by the Veterans Administration, Centers for Disease Control and other agencies. Admittedly, compared to the number of men who served there, the number of women is proportionately small. But their small number does not justify their total exclusion from ongoing studies designed to determine the effects of exposure. Each veteran deserves the same level of public concern.

A separate corollary study of women and Agent Orange is clearly indicated and needs to be done without further delay.

The concerns of the female Vietnam veterans are genuine, and, in most respects, mirror those of the men. Like the men, many of these women fear that various health problems affecting them and their families may be connected with dioxin, the toxic by-product of Agent Orange—problems such as birth defects in their children, skin cancer, leukemia, liver disease and loss of memory. Additionally, the women are concerned that serious female reproductive system problems, such as: ovarian cancer, uterine cancer, miscarriages and spontaneous abortion, may also be related to dioxin exposure.

An additional problem stems from the fact that many women who served in South Vietnam are not aware of the determination that *all* who served there are presumed to have been exposed to Agent Orange. A special effort needs to be made to reach out to these women and encourage them to report for Agent Orange physicals.

*Recommendations*

A separate study be conducted on the health of women who served in South Vietnam and were exposed to Agent Orange and other chemicals.

All women Vietnam veterans be contacted and urged to participate in the Agent Orange Registry, if they have not already done so.

*Planning for diseases specifically or more commonly found in women*

The prevention of illness is more cost effective than treatment of chronic disease. An example of preventive strategy is counselling on hormone replacement, diet and exercise to prevent osteoporosis. Another is education on the hazards of smoking associated with hypertension, heart disease and cancer. It is worth noting that the incidence of lung cancer now surpasses breast cancer as the leading cause of cancer death in women.

Another aspect of prevention is early diagnosis. For women, breast and pelvic examinations and papanicolaou (PAP) smears as part of the routine physical examination are acceptable medical practice. Since 1981, the VA Department of Medicine and Surgery (DM&S) directives have stipulated that these diagnostic procedures be instituted during routine physical examinations of women veterans. In September 1982, the GAO Report, "Actions Needed To Insure That Female Veterans Have Equal Access To VA Benefits," cited VA non-compliance with their own directives. Committee members continue to receive complaints from women veterans that these examinations are not routinely done. Continued emphasis is needed by DM&S on the importance of complete physical examinations of women veterans.

Current studies show that low radiation mammography is efficacious in discovering very small breast tumors, particularly in women over 50. This procedure may detect disease in a curable form and thus shorten subsequent hospitalization. DM&S should assess the best methods for providing this service to women veterans, as mammography becomes the standard of practice.

In the past, gynecological care has been minimal. Future planning should recognize that an increasing number of women veterans will be seeking treatment for medical problems in the aging population, such as postmenopausal symptoms, endometrial cancer, ovarian hormone replacement, osteoporosis, and bone fractures.

One of the problems in planning for future health care is the lack of female outpatient population data. Currently these data are not being collected. Medical facilities should be required to collect outpatient visit data by gender.

Once the female outpatient data are known, more innovative and effective use of health care personnel can be organized. For example, GYN nurse practitioners trained in gynecological procedures can provide a large share of counselling, diagnosis and treatment for gynecological problems.

The Deputy Assistant Chief Medical Director for Nursing Programs, in her presentation to the Committee, discussed strides made by VA District #10 Nursing Services in identifying the changes needed to care for women patients in their six facilities. These changes included a list of needed supplies and equipment. Such a list would be helpful to other health facilities.

In areas where the size of the female population is small it is impractical to stock pharmaceuticals for common gynecological diseases. Therefore, the facility should establish procedures for timely local purchases.

There is an additional problem concerning health care for women. Policies concerning disability compensation require review, especially in the area of diseases that primarily affect women. Systemic Lupus Erythematosis (SLE), for example, is primarily a disease of women. In June 1983, Alfred D. Steinburg, M.D. of the National Institute of Arthritis, Diabetes and Digestive and Kidney Disease, reported that between the ages of 12 and 45 years, approximately 90 percent of the patients diagnosed to have SLE were females.

H.R. 5688, which has passed the House of Representatives, would add Systemic Lupus Erythematosis to the list of chronic diseases in Section 301 of Title 38 United States Code. The committee supports passage of this or similar legislation.

*Recommendations*

The VA continue to emphasize that breast and pelvic examinations and pap smears will be routinely accomplished as part of a woman's physical examination.

The VA assess the best methods for providing low radiation mammography to the woman veteran.

The VA include treatment for gynecological care in the aging population (e.g., postmenopausal symptoms, endometrial cancer, ovarian hormone replacement) in future planning.

The VA provide counselling on the prevention of osteoporosis.

The VA provide counselling to the patients and staff on the hazards of smoking.

The VA record outpatient visits by gender.

The VA disseminate to medical facilities a list of supplies and equipment needed to care for women patients.

The facility director establish procedures for timely local purchases in areas where the size of the female population precludes stocking pharmaceuticals for common gynecological disease.

Enact legislation adding Systemic Lupus Erythematosis to section 301 of the 38 United States Code.

*The Veterans Canteen Service (VCS)*

The Veterans Canteen Service is a non-appropriated fund activity created to meet the needs of veterans in VA hospitals, nursing homes and domiciliaries. It operates retail stores, snack bars, cafeterias, barber shops, beauty shops, laundry, tailor, vending machines, newspaper and/or magazine service, ward cart service and other services. Not all of these services are available at each medical center; rather, services are tailored to the needs of each facility. All medical facilities have cafeterias, retail stores and some vending. The objective is to make available to patients, at reasonable prices, articles of merchandise and services essential to their comfort and well-being.

In recent years, a concerted effort has been made to meet the specific needs of the growing population of women patients. However, complaints of women patients and observations of individual committee members during visits to VA medical facilities revealed serious deficiencies in the availability of the merchandise and the services provided to women patients. Some of tuate range of sizes.

Lack or insufficient variety of toiletries and sundries such as sewing supplies, shower caps, manicure supplies, change purses, and slippers.

Lack of pockets in women's slacks and robes.

The VA has recognized the problems noted by the Committee in the Canteen Services and has recently taken aggressive action to resolve them. Advisory Committee members have observed considerable improvement in some of the VA hospitals in recent months.

*Recommendations*

Each Veterans Canteen Service Chief be required to survey women patients to determine their needs and to evaluate whether they are being met.

The VA review population standards for stocking items essential to women patients.

The VA design a catalogue system for patients to order articles not readily available with a delivery date of no more than two weeks.

Each facility be required to stock toiletries designed expressly for minority women.

The VA continue to aggressively monitor the Canteen Services provided women veterans.

*WAAC and WASP service*

During World War II, between 15,000 and 16,000 women serving in the WAAC (Women's Army Auxiliary Corps) did not subsequently enroll in the WAC (Women's Army Corps). Another 900 served as members of the WASP's (Woman Airforce Service Pilots). Since service in the WAAC and WASP was not recognized as military active duty, these women were not granted veteran status after the war. The WASP's were recognized as veterans in 1977, and the WAAC's in 1980. Many of these newly recognized veterans have indicated that in general they are unsure of their entitlements under the law. Some report that the Veterans Administration field offices seem to be

unaware of their VA entitlements and/or unresponsive to their inquiries.

The Committee finds that the Veterans Administration is aware of the problem of getting the word out to these newly recognized veterans. Upon the enactment of the 1977 law, the Department of Veterans Benefits initiated a special letter which was, and continues to be, automatically sent to each former WASP as soon as the Department of Defense notifies the VA that such an individual has been issued a discharge certificate. This letter advises the individual of potential eligibility for VA benefits and encloses a pamphlet providing additional information about those benefits. With the 1980 acknowledgement of WAAC services as "active duty", former members have been sent similar letters upon the issuance of their discharge certificates.

In accordance with directions issued by the Chief Benefits Director, the Veterans Assistance Service has directed its personnel in the 58 Regional Offices to make a special effort to inform female veterans of their VA benefits. Each month these Veterans Service Offices are required to include in their narrative reports to Central Office a statement of their outreach efforts.

It is unclear how effective the VA's outreach efforts to these groups have been. The VA says it has received no reports of problems to date that might be associated with a lack of knowledge in its regional offices concerning the benefit eligibility of WAAC's and WASP's. Misunderstandings, however, do arise between VA offices and individual claimants due to procedural problems or misconceptions concerning *potential* versus *actual* entitlement to payments. For example, many former WAAC's and WASP's have filed claims with the VA not knowing that they must have previously obtained their discharge certificates from the Department of Defense. Until their service is verified by the military, the VA has no authority to grant veterans' benefits.

*Recommendations*

The VA determine how many of the former WAAC and WASP veterans who qualify for entitlements have, in fact, applied for benefits.

The VA continue to publicize WAAC and WASP eligibility; specifically by seeking out and working with service organizations to notify their membership of these entitlements to benefits.

*Flame retardant patient clothing*

The VA requires the use of flame retardant material for patient clothing. Since the requirement is being implemented as new clothing is purchased, newly stocked smaller sized garments for women are supposed to be bought in flame retardant fabric. It is well-known that currently available flame retardant fabric is irritating to the skin and uncomfortable for prolonged wear.

*Recommendation*

The VA reexamine its current policy concerning flame retardant clothing and explore the availability of alternative materials that would provide patient comfort and an acceptable level of protection.

*Memorial affairs*

Many women veterans do not know of their potential entitlement to burial benefits. In the summer of 1983, the VA implemented a campaign to inform funeral directors and veterans service organizations that women veterans are entitled to the same burial benefits as male veterans.

A series of reminder news releases which mention women veterans has been mailed to funeral industry trade publications and other media. The news releases detail the availability of a new, free pamphlet describing the VA program for marking the graves of veterans. In addition to details on eligibility, the brochure includes information on types of monuments available, replacement rules, additional inscriptions, how application is made, monetary allowance in lieu of a government-furnished marker, and shipment and setting of markers. VA offices and veterans service groups have received the pamphlet for distribution to the public. A planned release on eligibility for all VA burial benefits will carry a reminder on women veterans.

Until 1981, all war veterans were eligible for a $300 burial allowance. Under the law enacted in 1981, only veterans who are receiving disability compensation or pension are entitled to the allowance. The Committee notes that the change in the law may have had a disproportionate impact on women veterans because proportionately fewer women veterans have applied for and been granted disability benefits.

*Recommendation*

The VA continue its special efforts to inform women veterans of their burial benefits, individually and through veterans organizations, and continue to emphasize to funeral directors that a deceased woman may be a veteran with the same entitlements as a male veteran.

FUTURE COMMITTEE ACTIONS

The issues discussed in this report are only some of those identified for action and further monitoring. Others will be explored during future meetings and in visits by individual members of the Committee to VA activities throughout the country.

Among the topics identified for future investigations are:

Jobs and Training: Training, with subsequent employment, is the bridge which completes the transition for the veteran into the mainstream of civilian life. Second only to the health of a veteran, full-time unsubsidized employment is the foundation of social adjustment and social status. Presently two statutes are in force that are designed to enhance employment and training of veterans. They are the Jobs Training Partnership Act (JTPA) which is administered by the Department of Labor, and the Emergency Veterans Job Training Act, which is a joint venture of the VA and the Department of Labor. It is not known how these two laws impact on women veterans. The Committee believes it would be important to find out how many women are using these benefits and whether there are problems unique to women in the application of these laws. To determine this we will have to review data relating to such topics as women veterans and jobs; the use of the Vocational Rehabilitation Program by women veterans; and statistics on unemployment among women veterans—a whole range of employment information.

Research on Women's Diseases: Research in disease areas which affect mainly women has not been funded equitably in the VA research program in the past. With the increase in the number of women in the Department of Defense and the VA system, the VA has the potential to accomplish significant longitudinal studies on women's health. Continued emphasis is needed to encourage these studies.

CONCLUSION

The Advisory Committee on Women Veterans believes that much has been accomplished in recent years to recognize women as veterans and to reach out to them over the broad range of VA programs and services. Issues have been identified and numerous corrective measures have been initiated on various problems, many on the VA's own initiatives, others at the suggestion of the Committee. The most important action taken by the Administrator has been to sensitize the organization and its personnel at all levels to the presence of women in the veteran population. Although more needs to be done to insure that all personnel are sensitive to the needs and concerns of the women veterans, the positive effects of these efforts are already discernable throughout the organization. Progress can be monitored by requiring VA field inspection team reports to include a statement on the facility's effectiveness in meeting the needs of women veterans. This kind of emphasis from the top will be required on a continuing basis if real, sustained progress is to be achieved over the long haul. To sustain these positive effects, the VA's training and management courses should include awareness and sensitivity training to the needs of women veterans.

We believe that actions taken at the recommendation of this Committee for improving the health care delivery and access to benefits for women veterans will lead to overall improvement in care for all veterans.

APPENDIX A.—VETERANS' ADMINISTRATION ADVISORY COMMITTEE ON WOMEN VETERANS

Lenora C. Alexander, Ph.D., Washington, D.C.; Director, Women's Bureau, U.S. Department of Labor.

Karen Burnette, Knoxville, Tennessee; Nurse, Visiting Nurse Team Leader, Home Health Agency, Vietnam Veteran, Army Nurse Corps.

Cherlynne S. Galligan, Staff Sergeant, U.S. Army, Washington, D.C.; Office of the Secretary of Defense.

Pauline Hester, Colonel, U.S. Army Reserve, Greensboro, North Carolina; Nurse/Anesthetist, Forsyth Memorial Hospital, Vietnam Veteran, Army Nurse Corps.

Jeanne Holm, Major General, U.S. Air Force, Retired, Edgewater, Maryland; Former Director, Women in the Air Force, former Special Assistant to the President and author.

Charles Jackson, Washington, D.C.; Service Director, Non Commissioned Officers Association, Vietnam Veteran.

Margaret Malone, Trenton, New Jersey; National Vice-Commander American Legion, World War II Veteran.

Joan E. Martin, Tacoma, Washington; Public relations and banking executive. Active in AMVETS, Korean Conflict Veteran.

Carlos Martinez, San Antonio, Texas; Executive Director, G.I. Forum, National Veterans Outreach Program, Vietnam Era Veteran.

Sarah McClendon, Washington, D.C. Journalist and author, World War II Veteran.

Estelle Ramey, Ph.D., Bethesda, Maryland; Professor of Physiology and Biophysics, Georgetown University.

Lorraine Rossi, Colonel, U.S. Army, Retired, Alexandria, Virginia; Vietnam Veteran, Women's Army Corps.

Omega L. Silva, M.D., Washington, D.C.; Research Associate and Clinical Investigator, Veterans Administration Medical Center, Washington, D.C.

Jessie Stearns, Washington, D.C.; Journalist and author, World War II Veteran.

Alberta I Suresch, Staff Sergeant, U.S. Air Force, Retired, Washington, D.C.; National Service Officer, Disabled American Veterans, Vietnam Era Veteran.

Jo Ann Webb, Arlington, Virginia; Nurse, health planner, Vietnam Veteran, Army Nurse Corps.

Sarah Wells, Brigadier General, U.S. Air Force, Retired, Washington, D.C.; former Chief U.S. Air Force Nurse Corps.

June A. Willenz, Bethesda, Maryland; Executive Director, American Veterans Committee, author and columnist.

*Ex-officio members*

Mary Leyland, Deputy Director, Education Service, Department of Veterans Benefits, Veterans Administration Central Office.

Susan Mather, M.D., Chief, Pulmonary and Infectious Diseases, Department of Medicine and Surgery, Veterans Administration Central Office.

Until his death in December 1983, Charles A. Collatos, Commissioner of Veterans Services, State of Massachusetts, was a member of the Committee.

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U.S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
*Washington, DC, Sept. 14, 1984.*

Hon. HARRY N. WALTERS,
*Administrator of Veterans' Affairs 810 Vermont Avenue, NW. Washington, DC.*

DEAR HARRY: Thank you for sending the Report of the Veterans Administration Advisory Committee on Women Veterans. I agree with you that this Advisory Committee has accomplished much in its first year. I believe that this report provides useful information regarding the VA's ongoing efforts to meet the needs of our Nation's women veterans.

So that I and other members of the Committee might be better able to evaluate the appropriateness, feasibility, and likely impact of the Advisory Committee's recommendations, it would be very helpful if you would, pursuant to section 222(d)(1) of title 38, United States Code, provide any comments you may have regarding the specific recommendations contained in the report.

As always, Harry, I appreciate your cooperation and assistance, and I look forward to receiving your response.

With warm regards.

Cordially,

ALAN CRANSTON,
*Ranking Minority Member.*

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OFFICE OF THE ADMINISTRATOR
OF VETERANS' AFFAIRS,
*Washington, DC, Nov. 6, 1984.*

Hon. ALAN CRANSTON,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR ALAN CRANSTON: This letter is in reply to your September 14, 1984, letter requesting detailed responses to specific recommendations contained in the report from the Veterans Administration Advisory Committee on Women Veterans.

I am proud of the work of this committee and concur in their recommendations. My specific answers to each of the sections contained in the report are found below.

OUTREACH

Since November 11-17, 1984, is Women Veterans Recognition Week, the Veterans Administration is planning celebrations throughout the country. Mr. Donald Jones, Associate Deputy Administrator for Public and Consumer Affairs, and his staff have worked closely with Committee members in preparing a brochure informing women veterans of their benefits. (Copy enclosed).

Also enclosed is a poster prepared by the Veterans Administration's Office of Public and Consumer Affairs. This poster emphasizes contributions of women in the military and has been distributed to VA facilities, veterans service organizations and State governments. The Veterans Administration has planned Public Service Announcements for television distribution emphasizing the contribution of women in the military and urging women veterans to seek information regarding their benefits. Veterans Administration officials make a particular point of reaching out to women veterans in all public appearances and speaking engagements.

HEALTH CARE FACILITIES AND STAFFING

I strongly support the needs for privacy for both male and female patients in the renovation of the Veterans Administration facilities. The former Chief Medical Director and I have constantly emphasized the importance placed on health care for women veterans. Dr. Custis sent many memoranda and directives to the field emphasizing these points.

You understand the needs of balancing priorities between needs for construction, renovation, and budget constraints. I have directed my Associate Deputy Administrator for Logistics to emphasize to the field the necessity for upgrading hospitals, clinics, nursing homes, and domiciliaries regarding privacy for the woman patient.

I am proud of the important role that the nursing staff has taken to ensure continued improvement in the care of women veterans. We shall continue to provide support to the Department of Medicine and Surgery for innovative and creative ways nurses, and nurse practitioners, and all other health care professionals can meet the special needs of women veterans.

WOMEN VETERAN COORDINATORS

Former Chief Medical Director, Dr. Donald Custis, on December 6, 1983, issued a letter emphasizing his strong support for the idea of approving a high ranking woman counselor in hospitals, clinics, domiciliaries, and nursing homes. I have directed my staff to organize a conference of women counselors in order to discuss current successes and guidelines in implementing such a program.

STATISTICS

I concur with the commendations given by the Advisory Committee on Women Veterans to the Office of Information Management and Statistics for its groundbreaking research on women veterans. Given the dearth of knowledge on women veterans, I approved a grant of $789,449.00 for a contract to Louis Harris and Associates to conduct a survey of women veterans.

The Veterans Administration must continue to seek subsamples of women veterans in order to better plan for their special needs. Starting on October 1, 1984, we will gather data on outpatient visits of women veterans.

AGENT ORANGE

I have written to the Centers for Disease Control expressing my support for a study focusing on women who may have been exposed to Agent Orange while serving in the armed forces in Vietnam.

Because the responsibility for the design implementation, analysis and interpretation of the Agent Orange epidemiological study has been transferred to the Centers for Disease Control, they will make the final decision regarding the development of a protocol for such a study.

PLANNING FOR DISEASES SPECIFICALLY AND MORE COMMONLY FOUND IN WOMEN

The former Chief Medical Director, current Acting Chief Medical Director and I heartily support the need for research on gender specific illnesses and the need for insuring high level medical care for those women with gender specific illnesses and diseases. In a recent Department of Medicine and Surgery Conference call it was emphasized that service-connected female veterans could have a mammography performed on a fee basis contract. The Department of Medicine and Surgery is exploring ways to make this diagnostic tool more readily available in the Veterans Administration facilities.

Research and Development within the Department of Medicine and Surgery has sent out requests specifically asking for research proposals dealing with gender related diseases.

Starting on October 1, 1984, all data on outpatient visits will include gender of the patient. As you know, legislation was introduced in the 98th Congress to make Systemic Lupus Erythematosis a chronic disease for purposes of section 301 of title 38, United States Code, thereby entitling certain veterans who have the disease to a presumption of service-connection for purposes of laws administered by the VA. That legislation, however, was not enacted into law.

VETERANS CANTEEN SERVICE (VCS)

I concur with the suggestions given by the Veterans Administration Advisory Committee on Women Veterans regarding the need for improving service to women veterans regarding items sold in the Veterans Administration canteens.

Miss Marjorie Quandt, Assistant Chief Medical Director for Administration, and her staff are working very closely with Canteen Service representatives to ensure that the suggestions of the VA Advisory Committee on Women Veterans are implemented. Miss Quandt has informed me that a complete new line of women's clothing (chosen per the VA Advisory Committee on Women Veterans recommendations) will be introduced in 100 VA medical center canteens this fall.

WAAC AND WASP SERVICE

I recognize that former members of the Women's Army Auxiliary Corps (WAAC's) and Women's Airforce Service Pilots (WASP's) have been unsure of their entitlement to veterans' benefits and that the VA shares in this problem.

Miss Dorothy Starbuck, Chief Benefits Director, has made and continues to make special efforts to alleviate the difficulties experienced by WAAC's and WASP's. Miss Starbuck encourages her staff to work closely with both the WASP and WAC (Women's Army Corps) organizations. I have also requested, a search of our computer files to determine how many former WAAC's and WASP's are receiving veterans benefits. That information will be provided as soon as it is available. Dr. Nora Kinzer, my Special Assistant, and our committee member Major General Jeanne Holm, U.S. Air Force, Retired, have had close contact with the WASP organization. The Chairman of the Committee, Colonel Lorraine Rossi, U.S. Army, Retired, maintains a close liaison with the WAC organization.

FLAME RETARDANT CLOTHING

The Veterans Administration is currently reexamining its policy regarding flame retardant clothing. This issue was originally

brought to the attention of the Advisory Committee on Women Veterans but extends to both male and female patients. The Assistant Chief Medical Director for Administration in the Department of Medicine and Surgery is evaluating new flame retardant fabrics and has discontinued use of the previous irritating fabric product.

MEMORIAL AFFAIRS

Mr. Paul Bannai, Director of the Department of Memorial Affairs, instructed his staff to engage in a vigorous outreach program to inform funeral directors that a deceased woman may be a veteran and thereby be entitled to VA burial benefits. During the 1984 Veterans Day Observance at Arlington Cemetery the podium guests will include, for the first time, active duty military women and Colonel Lorraine Rossi, USA Retired, Chairman, Veterans Administration Advisory Committee on Women Veterans representing women veterans.

The Committee's work during the past year and its continued efforts will ensure that the special needs of our nation's female veterans are met and that efforts toward that end will continue to improve within the Veterans Administration.

Sincerely,

HARRY N. WALTERS,
*Administrator.*

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By Mr. LEVIN (for himself, Mr. PACKWOOD, Mr. SYMMS, Mr. HOLLINGS, Mr. MOYNIHAN, Mr. DOLE, Mr. PRYOR, Mr. SASSER, Mr. NICKLES, Mr. MITCHELL, Mr. METZENBAUM, Mr. COCHRAN, Mr. PELL, Mr. MATSUNAGA, Mr. CHILES, Mr. MELCHER, Mr. BOREN, Mr. MCCLURE, Mr. DECONCINI, Mr. CRANSTON, Mr. DODD, Mr. STENNIS, Mr. HEFLIN, Mr. JOHNSTON, Mr. NUNN, Mr. SARBANES, Mr. GARN, Mr. STEVENS, Mr. PROXMIRE, Mr. MURKOWSKI, Mr. SIMON, and Mr. RIEGLE):

S.J. Res. 48. Joint resolution to designate the year of 1986 as the "Year of the Teacher"; to the Committee on the Judiciary.

YEAR OF THE TEACHER

● Mr. LEVIN. Mr. President, there are more than 3 million teachers in the United States working at every level of the educational system. These teachers are a critical link in the learning process. Our society relies on its teachers to bring to students, both young and old, the information, knowledge, and skills necessary to develop their talents and to enrich their lives.

The individuals engaged in the teaching profession, taken as a whole, are performing in a dedicated and exemplary manner. Unfortunately, teachers frequently do not receive the recognition, rewards, and respect that their vital role in our society merits.

I am proud to introduce a joint resolution, with the bipartisan support of 31 of my colleagues in the Senate, which would designate 1986 the "Year of the Teacher." This designation, which would be accompanied by the appropriate ceremonies and other activities, is one small way to express the Nation's gratitude to its teachers and to elevate them in the public's esteem.

A largely symbolic act, such as this resolution, certainly does not replace the need to devote adequate resources to education in general and to teachers in particular. Nevertheless, it can be a significant stimulus for improving educational excellence and for recognizing the contributions and needs of our Nation's teachers.●

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## ADDITIONAL COSPONSORS

S. 11

At the request of Mr. HEINZ, the names of the Senator from Texas [Mr. BENTSEN], the Senator from Connecticut [Mr. DODD], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of S. 11, a bill to amend the Steel Import Stabilization Act.

S. 44

At the request of Mr. THURMOND, the name of the Senator from Florida [Mr. CHILES] was added as a cosponsor of S. 44, a bill to grant the consent of the Congress of the Southeast Interstate Low-Level Radioactive Waste Management Compact.

At the request of Mr. MOYNIHAN, the name of the Senator from Vermont [Mr. LEAHY] was added as a cosponsor of S. 194, a bill to identify, commemorate, and preserve the legacy of historic landscapes of Frederick Law Olmsted, and for other purposes.

S. 204

At the request of Mr. BUMPERS, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 204, a bill to provide a national program for improving the quality of instruction in the humanities in public and private elementary and secondary schools.

S. 205

At the request of Mr. BUMPERS, the name of the Senator from Wisconsin [Mr. PROXMIRE] was added as a cosponsor of S. 205, a bill to amend the Internal Revenue Code of 1954 to provide a mechanism for taxpayers to designate $1 of any overpayment of income tax, and to contribute other amounts, for payment to the National Organ Transplant Trust Fund.

S. 260

At the request of Mr. HEINZ, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 260, a bill to amend the Internal Revenue Code of 1954 to provide that the substantiation requirements of section 274(d) of such code may be met, in the case of passenger automobiles and other transportation property, if the taxpayer provides substantial evidence other than contemporaneous records.

S. 281

At the request of Mr. PRYOR, the names of the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Alabama [Mr. HEFLIN], and the Senator from Utah [Mr. GARN] were added as cosponsors of S. 281, a bill to amend the Internal Revenue Code of 1954 to add a section dealing with public safety vehicles.

S. 283

At the request of Mr. MITCHELL, the name of the Senator from Wisconsin [Mr. PROXMIRE] was added as a cosponsor of S. 283, a bill to amend the Clean Air Act to better protect against interstate transport of pollutants, to control existing and new sources of acid deposition, and for other purposes.

S. 356

At the request of Mr. GORTON, the names of the Senator from Idaho [Mr. SYMMS], the Senator from Washington [Mr. EVANS], and the Senator from Oregon [Mr. PACKWOOD] were added as cosponsors of S. 356, a bill granting the consent of Congress to the Northwest Interstate Compact on Low-Level Radioactive Waste Management.

S. 388

At the request of Mrs. KASSEBAUM, the names of the Senator from Iowa [Mr. GRASSLEY] and the Senator from Oklahoma [Mr. BOREN] were added as cosponsors of S. 388, a bill to amend the Consolidated Farm and Rural Development Act to establish a debt adjustment program for guaranteed loans, and for other purposes.

SENATE JOINT RESOLUTION 17

At the request of Mr. D'AMATO, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Florida [Mr. CHILES], the Senator from Indiana [Mr. LUGAR], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Arkansas [Mr. PRYOR], the Senator from Hawaii [Mr. INOUYE], the Senator from Nebraska [Mr. EXON], the Senator from Nevada [Mr. HECHT], the Senator from Texas [Mr. BENTSEN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Alaska [Mr. MURKOWSKI], the Senator from California [Mr. WILSON], the Senator from Vermont [Mr. LEAHY], the Senator from Tennessee [Mr. GORE], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of Senate Joint Resolution 17, a joint resolution to authorize and request the President to issue a proclamation designating April 21 through April 28, 1985, as "Jewish Heritage Week."

SENATE JOINT RESOLUTION 23

At the request of Mr. MOYNIHAN, the name of the Senator from Utah [Mr. GARN] was added as a cosponsor of Senate Joint Resolution 23, a joint resolution designating 1985 as the "Year of Social Security."

SENATE JOINT RESOLUTION 28

At the request of Mr. BOSCHWITZ, the names of the Senator from Alabama [Mr. DENTON], the Senator from

West Virginia [Mr. BYRD], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Florida [Mrs. HAWKINS] were added as cosponsors of Senate Joint Resolution 28, a joint resolution to designate the week of September 8-14, 1985, as "National Independent Retail Grocer Week."

SENATE CONCURRENT RESOLUTION 4

At the request of Mr. MOYNIHAN, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Concurrent Resolution 4, a concurrent resolution calling on the President to appoint a special envoy for Northern Ireland.

SENATE CONCURRENT RESOLUTION 6

At the request of Mr. GLENN, the name of the Senator from Hawaii [Mr. MATSUNAGA] was added as a cosponsor of Senate Concurrent Resolution 6, a concurrent resolution expressing the sense of the Congress that the policy of separate development and the forced relocation of South African blacks to designated "homelands" is inconsistent with fundamental American values and internationally recognized principles of human rights and should be discontinued.

SENATE RESOLUTION 50

At the request of Mr. CRANSTON, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of Senate Resolution 50, a resolution reaffirming the Senate's commitment to the Job Corps Program.

SENATE RESOLUTION 66

At the request of Mr. COHEN, the name of the Senator from Indiana [Mr. QUAYLE], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Resolution 66, a resolution expressing the sense of the Senate with respect to certain matters involving the Government of New Zealand and the United States.

## SENATE CONCURRENT RESOLUTION 13—REQUIRING IMPLEMENTATION OF A MODIFIED DEBT RECOVERY SYSTEM

Mr. DURENBERGER (for himself, Mr. BOSCHWITZ, and Mr. MELCHER) submitted the following concurrent resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. CON. RES. 13

Whereas the economic base which sustains the way of life in rural America is under stress from low farm commodity prices, the strong showing of the dollar in international currency markets, declining land values and high interest rates;

Whereas a significant portion of family farmers across the United States are experiencing financial difficulties that threaten not only their economic survival but that of the agricultural related businesses and small towns they support;

Whereas many capable agricultural producers could be returned to financial solvency if they were provided with a debt restructuring program which reduced the effective interest rate on their principal and granted them a longer repayment schedule;

Whereas the price of not taking immediate action to implement such a debt restructuring proposal would be the failure of hundreds of thousands of family farms, agricultural implement suppliers, rural lending institutions and the rendering of the rural fabric of life;

Whereas many of the current problems besetting rural America are by-products of the federal government's inability to control federal spending and keep the federal deficit from inflating the cost of credit and the value of the dollar.

Whereas the President's farm debt restructure initiatives, which were announced in October 1984 and revised in February 1985, while representing a positive step in assisting debt-burdened farmers, require additional flexibility to alleviate the agricultural credit crisis: Now therefore be it

*Resolved by the United States Senate (the House of Representatives concurring)* That

(1) the President direct the Secretary of Agriculture to implement a Modified Debt Recovery Program which would require that the following administrative changes be made in the existing Farmers Home Administration Approved Lenders Program, insured loan program, limited resource loan program, and guaranteed loan program, all of which would be designed to benefit family farmers;

(a) all commercial lenders approved for participation in the Farmers Home Administration Approved Lenders Program, be authorized to process regular and limited resource insured farm operating and ownership loan applications, as well as farm loan guarantee applications, with the Farmers Home Administration reserving the right of final acceptance or rejection of such loans;

(b) all Farmers Home Administration insured or guaranteed farm loans processed by private lenders and approved by the Farmers Home Administration, shall permit the security for the entire credit package to be allocated between the private lender and the Farmers Home Administration on a prorata percentage basis directly related to the percentage of exposure of each;

(c) under such Modified Debt Recovery Program the maximum interest rate on approved lender-processed Farmers Home Administration loan guarantees shall be set at a rate not to exceed 2½ percent above the Federal funds rate; and

(d) under such a Modified Debt Recovery Program, the maximum Farmers Home Administration farm loan guarantee shall be set at 50 percent of the amount of the loan being financed by the private lender.

(2) the Secretary of Agriculture shall immediately advise the President of the total amount of additional Farmers Home Administration insured farm loan funds and farm loan guarantees that will be needed to fully implement such a Modified Debt Recovery Program; and

(3) the President shall immediately forward to Congress an emergency supplemental request for additional Farmers Home Administration direct insured farm loan funding and loan guarantee authority funding, to immediately implement such a Modified Debt Recovery Program and thus provide emergency agricultural credit to farmers who would otherwise be unable to plant their spring crops.

● Mr. DURENBERGER. Mr. President, in case you weren't aware, America's farmers and the communities they support are experiencing severe difficulties. In Minnesota, some estimates place the number of farmers facing foreclosure in 1985 at 13,000. Nationwide, I'm sure the number exceeds 100,000.

What are farmers saying? They need higher prices for their products and lower priced credit. They want a chance to earn a living. They want credit to put a crop in this spring and they want a decent price for it at harvest. They want one program to help them through the next 10 months and another to help them make some long term planning decisions. And that's not much to ask for.

Well, until Congress figures out what kind of a farm policy farmers will have to guide them over the long term, the resolution I offer the Senate today may help them make it in the short term. Based on the Modified Debt Recovery Program developed by Rollie Lake and his colleagues at Communicating for Agriculture, this resolution simply requests the President to make additional modifications in existing Farmers Home Administration programs. My distinguished colleague from Montana, JOHN MELCHER, is familiar with this proposal, as Rollie Lake presented it to him at an informal hearing on agricultural credit problems last week. I ask unanimous consent that a description of the proposal be printed in the RECORD so that those who read it may better understand how the program works. While its implementation may require the extension of an additional $3 billion is direct, insured and guaranteed low interest loans, the price of not making the suggested changes could be the loss of rural America.

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

FARM DEBT RESTRUCTURING—CA MODIFIED DEBT RECOVERY PROGRAM

CA is proposing a farm-debt restructuring plan designed to build on present programs, and target farm borrowers who are in financial difficulty yet who can be helped with the right program.

Today, many farmers find themselves in a financial bind. While about 30% of farmers have little or no debt and are doing well economically, there are between 30% and 40% of all farmers who have substantial debt and are in various stages of financial difficulty.

WHO ARE THESE FARMERS IN DIFFICULTY?

Most agricultural production, about 60% in 1982, comes from 205,000 farms (out of 2.4 million total farms) with more than $150,000 in annual sales. Narrowing our focus somewhat, of these farms with sales of $40,000 to $200,000.

19% have a debt-to-asset ratio of greater than 70%. That means, for every $10 of assets, the farmer has more than $7 of debt;

44% have a debt-to-asset ratios greater than 40%;

Farms with debt-to-asset ratios greater than 40% account for 71% of debt on farms in this sales class but only 36% of assets.

For farms in all sales categories with a greater than 70% debt-to-asset ratio, there is little hope of economic survival. In a recent Iowa study, 10% of the farmers fall into this category, hold 9% of the assets and 25% of the total debt.

Farmers with debt-to-asset ratios of greater than 40% are also facing financial difficulties. In that same Iowa study, 28% of the farmers with 30% of the assets and 65% of the debt fall into that category.

The Iowa survey further shows that farmers from all sales/size categories are in the over 40% group and that the majority of these are full-time family farmers.

WHAT IS THE NATURE OF THE FARM DEBT?

Nationally, the total farm debt has increased dramatically. In 1971, total farm debt totalled around $54 billion; in 1976, around $91 billion; and in 1984, total farm debt stands at $215 billion.

Farmers as a group have a much higher debt to income ratio now than in the past. In 1950, the overall debt-to-income ratio stood at less than 1; in 1960, it doubled to 2, changed to over 3 in the early 1970's, to 8 in 1980 and to 10 in 1984. Today the average farmer is trying to support $10 of debt for every $1 of income.

But even more important, the nature of the debt has changed dramatically. Debt today has a much shorter maturity.

Much of the debt is short term with interest rates tied to current loan rates. Even real estate debt is based on variable interest rates or is based on relatively short contract purchases. Maturities on a great deal of real estate debt has moved from 20–25 years in the 1960's and 1970's to 10–15 years or less today.

CAN FARMERS WITH HEAVY DEBT LOADS BE SAVED?

For a substantial segment of the 30% to 40% of farmers who have substantial debt and who are in various stages of financial difficulty, economic survival is a serious question. To help this group, representing between 720,000 and 960,000 farms out of 2.4 million total U.S. farms, there must be a restructuring of farm debt. This group, mostly full-time family farmers, were caught with too much debt at the wrong time, debt that was manageable under the prevailing economic conditions when it was incurred but became a crushing burden when conditions changed.

In the group of farmers, there are many good farmers facing bankruptcy for lack of a way to make the transition from an economy of high inflation, rising land values and low interest rates to one of low inflation, sinking land values and high interest rates.

Many of the farmers in this group can be helped and saved with the right debt restructuring programs.

CA'S DEBT RESTRUCTURING PROPOSAL

In order for farm debtors to pay off debt obligations, a major restructuring of indebtedness will be necessary.

The number one feature of any debt restructuring program is to stretch out principal payments into a manageable debt repayment schedule. The second major feature must provide for a lower rate of interest, and third, for farm lending to continue, the risks must be shared.

The CA proposal utilizes existing FmHA programs and expertise of commercial lenders to accomplish this.

These are the Approved Lenders Program, Insured Operating Loan Program and Limited Resource Program. CA's Debt Restructuring Plan modifies slightly these existing FmHA programs to create a program of modified recovery debt credit.

The heart of the CA debt restructuring proposal is the utilization of FmHA's Approved Lender Program, with some minor modifications.

FMHA APPROVED LENDER PROGRAM

Under FmHA's Approved Lenders Program, a qualified commercial lender is approved in advance to process FmHA Guaranteed Loans. The approved lender makes the loan, services the loan and collects the loan, thereby reducing the paperwork and time required for FmHA approval of loan guarantees. The lender is responsible for seeing that proper and adequate security is obtained and maintained. FmHA makes the final decision on farmers' eligibility, use of funds, and creditworthiness.

WHO DOES THE APPROVED LENDERS PROGRAM HELP?

In today's farm economy, there are many farmers whose debt-to-assets ratio between 40% and 70% who are caught in a 'credit availability gap.' These farmers are not in serious enough financial difficulty for consideration by the lender of last resort, FmHA. Yet, they do not quite meet the credit standards of private commercial lenders.

This group is a relatively stronger class of farm borrowers than normal FmHA borrowers. The problem for this class of farm borrowers is that their cash flow is inadequate under current high interest rates and low commodity prices, though their basic personal net worth and equity remains relatively strong. The security behind the loan is strong enough to satisfy the bank lender, yet the loan is classified by bank regulators as a classified loan. For the bank, every classified loan reduces the amount of available assets against which credit can be made available, resulting in less credit being available to farm borrowers.

THE FMHA LOAN GUARANTEE PROGRAM

FmHA Loan Guarantees are designed to provide the credit necessary for family farmers to conduct successful operations. The loans are to be used for the purchase of farm machinery and equipment, basic livestock, annual operating expenses and refinancing for authorized operating loan purposes. They may not be used to purchase or refinance land, finance lease costs or exceed $200,000. Interest rates may be fixed or variable and cannot exceed the rate common in the area. The terms of the loan may be up to seven years on basic security. Quality loans may be guaranteed up to 90% while high risk loans may receive less than a 50% guarantee.

HOW WILL THE APPROVED LENDERS PROGRAM HELP?

Utilizing FmHA's Loan Guarantee Program, the commercial lender will have the additional security to make a bankable loan to farmers who find themselves in a "credit gap". The program is not a bailout for lenders. Unless the loan meets requirements, with a reasonable chance for success FmHA will not approve it.

The program will help, first, by making credit available. Second, the banker will use the banks own (pre-FmHA approved) loan forms familiar to both the borrower and the banker, reducing FmHA's paper-handling load. Third, credit will be available on a much quicker basis, assuring that available guarantee loan funds reach eligible farmers as quickly as possible. Fourth, the banker and borrower are familiar with each other, helping to insure that better loans will be made. Fifth, the borrower is most likely to stretch out the loan payback. A commercial lender will normally have a maximum of five years on the loan while under the FmHA Loan Guarantee Program, a maximum of seven years is possible. This extra two years can assist the farm borrower in achieving an attainable cash flow-payback program.

CA'S MODIFIED DEBT RECOVERY PROGRAM

CA proposes to utilize FmHA's Approved Lenders Program and Operating Loan Program to achieve a significant plan for farm debt restructuring. To achieve this will require some modification of each of these programs.

MODIFICATIONS TO THE APPROVED LENDERS AND DIRECT LOAN PROGRAMS

A basic modification to the Approved Lenders Program is to place a maximum rate to be charged on interest. Under the Approved Lenders Program, interest rates may not exceed the prevailing interest rate in the areas in which the loan is made. At present, this interest rate is approximately 14½%.

Under the modified Approved Lenders Program, a maximum interest rate would be set at 2½% above Federal Funds. This would yield an interest rate of 12½% at October 22, 1984 rates.

Clearly, there is a need to lower interest rates in order to create a more achievable positive cash flow-debt repayment plan for many farm borrowers. In addition to the obvious advantage of lower interest rates, by lowering the maximum interest rate which a commercial lender may charge under the Approved Lenders Loan Program, the result will be to create opportunities for additional farm borrowers to take advantage of the Loan Guarantee Program. A lower maximum interest rate will encourage the lender to graduate the borrower to a regular commercial status.

The second basic change in the Approved Lenders Program would help to expand the program to include the commercial lenders' ability to those in the creditability gap.

FMHA OPERATING LOAN PROGRAM

FmHA Operating Loans are made for both operating expenses and farm ownership. Ownership loans may carry an interest rate as low as 5½% and may be written up to 40 years. Operating loans may carry an interest rate as low as 7¼% and may be written up to 15 years. Under the Direct Loan Program, appraisals are done by the FmHA and security in the loan is named and itemized per lender.

MODIFICATIONS TO THE DISTRICT LOAN PROGRAM

In order to restructure farm debt, lower interest rates and longer payback terms will be required to attain a manageable, attainable cash flow for many farm borrowers.

The CA Modified Debt Recovery Program would incorporate into the Approved Lenders Program the use of FmHA Operating Loans in the same manner as the FmHA Guaranteed Loans. The pre-FmHA approved commercial lender would process the paperwork for FmHA Operating Loans, using the commercial lender's forms. FmHA would still have the final say-so on the loan under a shortened turn around approval or denial. Appraisals would be done by the pre-FmHA approved commercial lender or qualified appraiser. The main change in the present FmHA Direct Operating Loan Program would be to share security on a pro-

rated dollar value basis. This last change is important to create an environment where the financial risk is shared and one which will create far fewer complications than the present system of named security.

BLENDED CREDIT ILLUSTRATION

Under the CA Modified Debt Recovery Program, there can be a significant debt restructuring which will assist present financially troubled borrowers who have a stronger asset base yet who can neither qualify for FmHA loans or regular commercial lender loans.

As an illustration: Farm Borrower with $100,000 of indebtedness—cash flow shows $21,000 available for debt retirement.

Example 1—Farm Borrower with Commercial Lender: Loan Term—5 years; Loan Interest Rate—14½%.

| | |
|---|---|
| Cash Required for: | |
| Principal Reduction | $20,000 |
| Interest Payment | 14,500 |
| Total | 34,500 |
| Payment Deficit | 13,500 |

Example 2—Farm Borrower under Approved Lenders Program (no modifications): Loan Term—7 years; Loan Interest Rate—14½%.

| | |
|---|---|
| Cash Required for: | |
| Principal Reduction | $14,285 |
| Interest Payment | 14,500 |
| Total | 28,785 |
| Payment Deficit | 7,785 |

Example 3—Farm Borrower under CA Modified Debt Recovery Program Debt is divided between Approved Lender Loan and Limited Resource Loan (3A) and Insured Loan Programs (3B).

| | Approved lender loan (3A) | Approved lender loan (3B) |
|---|---|---|
| FmHA Guaranteed Loan | $50,000 | $40,000 |
| Loan Term (years) | 7 | 7 |
| Loan Interest Rate (percent) | 12½ | 12½ |
| Payment required for: | | |
| Principal Reduction | $7,143 | $5,714 |
| Interest Payment | $6,250 | $5,000 |
| Total | $13,393 | $10,714 |

| | Limited resource | Insured loan |
|---|---|---|
| $50,000 FmHA Operating Loans | $50,000 | $60,000 |
| Loan Term (years) | 15 | 15 |
| Loan Interest Rate (percent) | 7¼ | 10¼ |
| Payment required for: | | |
| Principal Reduction | $3,333 | $4,000 |
| Interest Payment | $3,625 | $6,150 |
| Total | $6,958 | $10,150 |
| Total Payment Required for: | | |
| Principal Reduction | $10,476 | $9,714 |
| Interest Payment | $9,875 | $11,150 |
| Total | $20,351 | $20,864 |
| Cash Flow Balance | $649 | $136 |

From the above example, the Modified Debt Recovery Program has accomplished a significant reduction in interest rates and has extended payments over a longer period of time to achieve a reasonable and achievable cash flow.

The Modified Debt Recovery Program covers the three areas of need: restructuring of debt, adjustment of interest and sharing of risk. The Modified Debt Recovery Program shares the risk by bringing the Government in on a percentage of the Approved Lender Program. Debt is restructured by adding the Direct Lending Program, and interest is lowered with a combination of ability through the Direct Lending Program to lower to a minimum of 7¼% and a maximum of 2½% plus Federal Funds on the Approved Lender portion. The Modified Debt Recovery Program utilizes the assets of the FmHA, the types of funds which are already available and adds the expertise of Commercial Lenders. The Modified Debt Recovery Program would only be in place long enough to carry agriculture through this present period of adjustment.

Prepared by: Communicating for Agriculture, November 13, 1984.●

## SENATE RESOLUTION 68—CONGRATULATING THE PEOPLE OF CYPRUS ON THE 25TH ANNIVERSARY OF THEIR INDEPENDENCE

Mr. TRIBLE submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 68

Whereas on October 1, 1985, the Republic of Cyprus will mark the twenty-fifth anniversary of its independence;

Whereas despite the hardship of twenty-five years of strife, the people of Cyprus have remained strong and steadfast in their commitment to a free and unified nation;

Whereas on January 17, 1985, under the auspices of the United Nations Secretary General, direct talks were held between Greek-Cypriot and Turkish-Cypriot leaders to establish a framework for negotiations and to identify principles to be addressed in an eventual agreement on reunification of Cyprus;

Whereas continuation of these talks holds out strong hope for resolving the divisions on Cyprus and bringing peace to that long-troubled island;

Whereas the United States supports the efforts of the United Nations to help the two communities on Cyprus reach a framework for bringing a just and lasting peace to that nation;

Whereas a resolution of the Cyprus situation would ease divisions within the North Atlantic Treaty Organization (NATO) which currently weaken NATO's southern flank, and would help to stabilize relations among the United States, Greece, and Turkey;

Whereas the United States can contribute to continuation of these talks and help foster intercommunal understanding on Cyprus by supporting cooperative efforts aimed at rebuilding a unified nation: Now, therefore, be it

*Resolved,* That (a) the Senate hereby congratulates the people of Cyprus on the twenty-fifth anniversary of their independence.

(b)(1) It is the sense of the Senate that the United States Government should strive to establish a Cooperative Development Fund for Cyprus (hereafter in this section referred to as the "Fund") similar to the fund proposed for establishment by President Reagan in May 1984.

(2) Monies from the Fund should be available only for—

(A) projects that would benefit all the people of Cyprus and foster intercommunal cooperation in that nation when a fair and equitable agreement to the Cyprus dispute has been reached; or

(B) projects that would foster intercommunal cooperation in Cyprus by substantially strengthening the commitment of both parties to good-faith negotiations leading to a just and lasting settlement on Cyprus.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the Secretary of State.

Mr. TRIBLE. Mr. President, I am submitting a resolution today aimed at helping to resolve the ongoing dispute on the island of Cyprus. This measure would congratulate the people of Cyprus on the 25th anniversary of their independence. It would also reaffirm America's intention of helping to rebuild a free and unified nation.

This resolution is similar to one that will be introduced in the House by Representative JAMES FLORIO, and it has two purposes. First, it would commend the people of Cyprus for the courage and forbearance they have shown during the past 25 years. Second, it would signal our intention to help the peace process by creating a cooperative development fund for Cyprus similar to that proposed by President Reagan during the 98th Congress.

Mr. President, the people of Cyprus attained independence through a long and arduous process. In the 25 years since independence, the Cypriots have continually faced strife and hardship.

As Americans, we admire those who persevere in the face of such challenges. We respect those who remain steadfast in their commitment to democracy and freedom. Throughout their first quarter-century of independence, the people of Cyprus have displayed these qualities in abundance. They have not wavered in their search for freedom, and I believe the United States should commend their heroism.

Today, the effort to achieve a unified Cyprus will also require acts of bravery. It demands trust where there has been little in the past. I believe the United States should help to foster that trust by supporting the idea of a cooperative development fund for Cyprus. Moneys would be provided by the United States and other nations when an equitable peace agreement is reached on Cyprus or when substantial progress is made toward that end. Some funds might also be provided prior to that time if the moneys would provide a significant boost to the Cyprus negotiations.

Many of my colleagues will remember that President Reagan proposed such a cooperative fund during the 98th Congress. At that time, the President said quite correctly that peace cannot be bought. But the President added that peacemakers should know that the United States is prepared to

make every effort to transform their labors into an enduring achievement.

The cooperative fund proposed by President Reagan would have been made available for projects that benefited both the Greek-Cypriot and Turkish-Cypriot communities. It would have nurtured the forces of democracy and cooperation on the island.

Though the House of Representatives approved the cooperative fund overwhelmingly, it did not pass the full Congress. I believe this is an appropriate time for Congress to reaffirm its willingness to pursue this course.

Our willingness to fund cooperative efforts can provide each party on Cyprus with a stake in the well-being of the other. We can also help to ensure that the seminal years of joint efforts take place in an atmosphere of growth and opportunity for both communities.

No one doubts that the stakes are very high in this search for peace. The people of Cyprus deserve it. The NATO alliance needs it. And the security interests of the United States and other Western nations would be well served by it.

I believe that we have rarely been closer to a just and lasting settlement to the Cyprus dispute than we are today. We, in the Congress, should seize the opportunity to nurture the forces of peace and reconciliation on the island.

This resolution commends the courage that the people of Cyprus have shown in the past. It also signals our intention to foster the courage that will be necessary in the future if Cyprus is to be a free, peaceful, and unified nation. I would welcome my colleagues' cosponsorship of this measure.

## SENATE RESOLUTION 69—PROVIDING FOR REPRESENTATION BY THE SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. BYRD) submitted the following resolution; which was considered and agreed to:

S. RES. 69

Whereas, the case of *Lawrence Jasper & Family U.S.A.* v. *Federal National Mortgage Association, et. al.,* Civil Action No. 83-2896DT, is pending in the United States District Court for the Eastern District of Michigan;

Whereas, plaintiff has served trial subpoenas for testimony and documents on Senators Donald W. Riegle, Jr., and Carl Levin;

Whereas, these subpoenas may be answerable by members of Senator Riegle's and Senator Levin's staffs;

Whereas, pursuant to sections 703(a) and 704(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(a) and 288c(a) (1982), the Senate may direct its counsel to represent members and employees of the Senate in civil actions relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony of a member or an employee of the Senate is needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

*Resolved,* That the Senate Legal Counsel is directed to represent Senator Riegle, Senator Levin and members of their respective staffs in the case of *Lawrence Jasper & Family U.S.A.* v. *Federal National Mortgage Association, et al.*

SEC. 2. That Senator Riegle and Senator Levin and members of their respective staffs whom they may designate are authorized to testify and to produce documents in the case of *Lawrence Jasper & Family U.S.A.* v. *Federal National Mortgage Association, et al.,* except when the Senators' attendance at the Senate is necessary for the performance of their legislative duties, and except concerning matters that they and the Senate Legal Counsel or his representative determine are privileged from disclosure.

## SENATE RESOLUTION 70—ORIGINAL RESOLUTION REPORTED AUTHORIZING EXPENDITURES BY THE COMMITTEE ON RULES

Mr. PACKWOOD, from the Committee on Finance, reported the following original resolution; which was referred to the Committee on Finance:

S. RES. 70

*Resolved,* That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Finance is authorized from March 1, 1985, through February 28, 1986, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

(b) The expenses of the committee under this section shall not exceed $2,539,000, of which amount (1) not to exceed $30,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of such act).

(c) The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1986.

(d) Expenses of the committee under this section shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

## ADDITIONAL STATEMENTS

### DEFENSE AUTHORIZATION ACT

● Mr. CHAFEE. Mr. President, I am pleased to join my colleague from Rhode Island, Senator PELL, in cosponsoring S. 401, legislation to repeal section 308 of the 1985 Defense Authorization Act.

This provision, added as an amendment to the fiscal year 1985 defense authorization bill last year, places a cap on Pentagon expenditures for consultants, studies and analyses, management support contracts, and other services. As such, I do not object to its intent; indeed, I support the concept of clamping down on excessive costs for outside consultants.

This provision had apparently caused little problem for the Army and the Air Force, both of which have managed to continue the funding of essential consulting services. In the case of the Navy, however, it has been so strictly interpreted that it threatens to cause major problems for a number of firms which have contracted for essential consultive services.

The problem seems to be one of overly strict interpretation. The Navy has officially advised me that it interprets the provision to "constitute a legal limitation on subdivisions of appropriations" and that "it will be necessary to cancel or defer sufficient planned contract effort in defense programs which were authorized and appropriated to ensure that they (Navy) complies with the functional limitation contained in the authorization act."

Essentially what this means is that the Navy will proceed very cautionary with regard to consultive contracts, even if they are part of ongoing programs for which money is routinely appropriated. Such a strict interpretation is what has caused the problem.

In Rhode Island, most notably in the Newport area where the Navy maintains a strong presence, section 308 has caused a great deal of consternation. Funding for essential support services has been interrupted, layoffs have been scheduled, and there has arisen a great deal of uncertainty. In

all, some 5,000 persons in the Newport area work for firms which have contracts with the Navy and who are potentially affected by this provision of the law passed last year, and their concern is both understandable and justified.

Mr. President, the bill introduced by Senator PELL and myself is motivated by the fact that in the absence of clear definitions and guidelines, section 308 is creating more problems than it is solving.

The bill we have introduced, S. 401, would repeal section 308, but would direct the Secretary of Defense to provide within 6 months a standardized auditing procedure to identify and control expenditures in the future. I am not opposed to legislation that is designed to control the costs of outside consultative services, but section 308, at least as it has affected Navy contracts in my own State, sweeps with too broad a brush to do the job properly.●

## D. MICHAEL HARVEY: 25 YEARS OF SERVICE

● Mr. McCLURE. Mr. President, tomorrow, February 8, 1985, marks the 25th anniversary of service to the Federal Government for D. Michael Harvey, the chief counsel for the minority of the Committee on Energy and Natural Resources. Yesterday, my colleague and ranking minority member on the committee, Senator JOHNSTON, detailed the long history of distinguished Federal service which Mike Harvey has had, and I will not repeat that history now.

I did want to join Senator JOHNSTON, and, I am sure, the other members of the committee and the Senate, in expressing my appreciation for his outstanding service and my deep admiration and respect for the knowledge and skill which he has brought to the Senate.

There is a tendency at times to make arbitrary characterizations of committee staff as either majority or minority. It is the true measure of the professional staff when they can overcome those characterizations and bring a professional approach to the committee business which commands respect from all members. Mike is and has been the epitome of such professionalism. He has been the definition of a civil servant and I know of no member who has relied on his advice who has ever been disappointed. The trust and respect which he earned while serving under Senator Metcalf and Senator Jackson on subcommittee and then as chief counsel to the committee until 1981 has not been diminished by his service on the minority staff of the committee.

I want to join Senator JOHNSTON in congratulating Mike on his past 25 years and to thank Mike for his service to the Senate. I am grateful that we in the majority continue to have his wise advise and counsel and I look forward to having that counsel for many years to come.●

## ON BEHALF OF SOVIET JEWRY

● Mr. GRASSLEY. Mr. President, while it may be true that we are entering a new stage in United States-Soviet relations, I wonder what effects the negotiations in Geneva will have on an issue very important in this country—human rights and specifically Soviet Jewry. We are experiencing an all time low in emigration from the Soviet Union at the present time. In 1984 only 898 Soviet Jews were allowed to leave their country. This compares with a figure of 51,000 back in 1979.

As we have seen a geometric decrease in Jewish emigration we have also seen a proportional increase in persecution of Soviet Jews. This places the community in a desperate catch-22 situation. They can't leave and if they stay they face extinction as a people. The recent illustration of this situation is the series of arrests and sentencings of a number of Hebrew teachers and Jewish culturalists.

Victims of such treatment include Mark Nepomniashchy, sentenced this week to 3 years in labor camp, Alexander Kholmiansky sentenced last week to 1½ years in prison, and Yuli Edelshtein, sentenced in December to 3 years in prison.

These three individuals were all actively involved in trying to maintain Jewish life in the Soviet Union. They were refused permission to leave and live as Jews elsewhere. As a result of their simple wish to live as they choose they have suffered at the hands of the Soviet authorities.

As we sit and negotiate with the Russians in Geneva let us remember our experience with them in other negotiations and insist on compliance with those human rights agreements—for without honoring those, real peace is truly impossible.●

## ERA-ABORTION CONNECTION FEARED BY CATHOLIC BISHOPS

(By request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

● Mr. GARN. Mr. President, the equal rights amendment and various versions of human life amendments have again been introduced in both Houses of Congress. Several bills on the subjects of equal rights and abortion have also been introduced. We all know that ERA and abortion are two of the most vexing public issues of the day. I favor a human life amendment and have been the chief sponsor of one version for a number of years. I oppose the equal rights amendment, and one of the reasons for this opposition is my fear that ERA will become a tool for strengthening and broadening abortion rights.

I have made occasional insertions into the RECORD on the subject of ERA's potential effect on abortion. For example, on April 25, 1984, I inserted a statement entitled "Catholic Bishops See Abortion-Era Connection." Today, I wish to update that information.

Last November the Nation's Catholic bishops met here in Washington. Their draft pastoral letter on the morality of the American economic system attracted much attention; less attention was given to their consideration of the equal rights amendment. Archbishop John L. May, chairman of the Ad Hoc Interdisciplinary Committee on the Equal Rights Amendment made his report to the assembled bishops. Accompanying the archbishop's report was a legal assessment of ERA prepared by the United States Catholic Conference's office of general counsel.

The report and the legal assessment total more than 30 pages. Pros and cons are discussed and interested readers will want to review both documents in full since only the abortion problem is being treated here. In his own report, the archbishop quoted extensively from the legal document's subsection on abortion which is reprinted below in full.

The archbishop concluded his report with this statement:

[T]he Ad Hoc Committee . . . does not now recommend a change in the Conference's position. However, it does suggest that the present text and legislative context of ERA demand serious reflection and a reasoned objectivity by all who must judge its value as an amendment to our Constitution. It is our hope that the Report of our General Counsel will contribute significantly to the process, and to that end we have authorized its public distribution. Meanwhile we continue to reserve definitive judgment on the proposed ERA as we continue to hope for a more fully developed formulation of the amendment. Such a version would, we believe, attract wider acceptance from all Americans and the Congress.

I ask that the introduction and subsection on abortion from section VII of the general counsel's be printed in the RECORD.

The material follows:

VII. IMPLICATIONS OF CONCERN FOR CHURCHES AND THE PEOPLE THEY SERVE

The implications of ERA have also given rise to concerns in diverse areas of law and public policy. There follows a discussion of certain areas of major concern to churches

and the people they serve. Such an analysis is essential to an objective consideration of ERA, and to provide balance in the public debate by augmenting the available public commentary.

A. ABORTION

*1. Substantive abortion rights*

The potential effect of ERA on a woman's right to terminate her pregnancy is limited because *Roe* v. *Wade* and kindred cases are the law. Courts will not attribute to Congress an intent to do an unnecessary act. There is no explicit indication in the text or legislative history that Congress intends ERA to reinforce a right of abortion. Indeed, the legislative history reveals the absence of a congressional consensus on abortion.

Notwithstanding the foregoing, it is reasonable to consider ERA as possessing the potential to buttress the substantive right of abortion. The possible permutations of fact and legal principle under the *Roe* v. *Wade* doctrine have not been exhausted. There is some room for the regulation of the abortion right based upon the compelling interest of the state in the life and health of the mother (second and third trimester) and unborn child (third trimester). This approach in the theory of the cases has already been criticized by three members of the Supreme Court, and the future course of the law seems somewhat uncertain. Although it is unlikely the Court will overrule the *Roe* v. *Wade* line of cases in their fundamental precepts, it is not unreasonable to anticipate more favorable consideration of well-founded restrictions of abortion in the law. The present Court has manifested its willingness to reassess its decisions in other vital areas, and no reason appears why abortion must be an exception to that salutary process.

These observations counsel a sensitivity to the more subtle potentialities of ERA in the field of abortion. If there is any room for the meaningful restriction of abortion under present legal theory or future holdings, ERA could serve to diminish those prospects. In *Roe* v. *Wade*, the Court grounded the woman's right to terminate her pregnancy in considerations of her health. The right to protect one's health and reproductive interests is grounded in the constitutional right of privacy. Under ERA, the Court would likely view abortion as a type of medical treatment, although not identical, to other types. Accordingly, there is legitimate concern that ERA could lead to the invalidation of laws which deny to women a right not denied to men, namely, access to forms of medical "treatment" needed to protect health, including abortion. In this way, ERA could buttress the *Roe* v. *Wade* right of abortion. It could fortify the principal holding in *Roe* v. *Wade*, i.e. the right of privacy encompasses "a woman's decision whether or not to terminate her pregnancy."

*2. Public funding of abortion*

Although *Roe* v. *Wade* and other cases have established a woman's right to terminate her pregnancy, there is presently no federal constitutional right to public financing of abortion. The denial of such funding does not deprive women of any constitutional right, including rights under the Equal Protection Clause. However, under ERA it is likely that funding restrictions would be invalidated if certain established principles are applied.

Like pregnancy and childbirth, abortion is a procedure which only women can undergo. Because ERA would probably render sex-based classifications suspect in the sense that term is used under the Equal Protection Clause, a law excluding abortions from a governmentally-sponsored, comprehensive medical program would be subject to strict judicial scrutiny. The Supreme Court has already held that the government's interest in fetal life does not become compelling until after viability. Consequently, a law excluding pre-viability abortions from a comprehensive health benefit program might well not survive strict judicial scrutiny, whether the program is based on the state's interest in fetal life or in encouraging childbirth over abortion. Further, in view of the mother's somewhat qualified right to terminate her pregnancy after viability, the same result could follow for this period of gestation as well.

In a very recent decision, a majority of the Pennsylvania Commonwealth Court upheld the state's exclusion of funding for abortions (with certain exceptions) against claims that it violated the Equal Protection Clause and Pennsylvania's ERA. The court held (two judges dissenting) that the exclusion did not involve a gender-based classification cognizable under that state's ERA. The decision has been appealed to the Pennsylvania Supreme Court. The fact that the court was divided points up the genuineness of this question with respect to the federal ERA. The case also confirms the difficulties of predicting results under ERA. Further, one decision involving a state ERA by a state intermediate appellate court is of slight precedential value. Especially is this so since the court did not apply the standard of strict judicial scrutiny, as ERA seems likely to require.●

## ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I wil indicate at the outset that the unanimous consent requests I am about to make have been cleared with the distinguished minority leader, Senator BYRD.

## ORDER FOR COMMITTEES TO FILE REPORTS DURING THE ADJOURNMENT

Mr. DOLE. Mr. President, I ask unanimous consent that during the adjournment of the Senate over until 12 noon, on Monday, February 18, 1985, committees may file reports on Monday, February 11, 1985, between the hours of 10 a.m. and 4 p.m.

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

## ORDER FOR CERTAIN ACTIONS ON MONDAY, FEBRUARY 18, 1985

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate reconvenes on Monday, February 18, 1985, the reading of the Journal be dispensed with, no resolutions come over under the rule, the call of the Calendar be dispensed with, and the second reading of any bill be waived; provided further, that the morning hour be deemed to have expired.

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

## ORDER FOR RECESS FROM MONDAY, FEBRUARY 18, 1985, UNTIL TUESDAY, FEBRUARY 19, 1985, AT 2 P.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business on Monday, February 18, 1985, it stand in recess until 2 p.m. on Tuesday, February 19, 1985.

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

## ORDERS FOR TUESDAY, FEBRUARY 19, 1985

NOMINATION OF EDWIN MEESE III TO BE ATTORNEY GENERAL

Mr. DOLE. Mr. President, it is the intention of the leadership that following morning business on Tuesday, February 19, 1985, the Senate will go into executive session and begin the consideration of the nomination of Edwin Meese III to be Attorney General.

ORDER FOR THE RECOGNITION OF CERTAIN SENATORS ON TUESDAY, FEBRUARY 19, 1985

Mr. DOLE. Mr. President, I ask unanimous consent that following the recognition of the two leaders under the standing order on Tuesday, February 19, 1985, there be special orders for the following Senators not to exceed 15 minutes each: Senators SPECTER, PROXMIRE, and BOREN.

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

ORDER FOR PERIOD FOR TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that following special orders, there be a period for the transaction of routine morning business not to extend beyond the hour of 3 p.m., with statements therein limited to 5 minutes.

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

## AUTHORIZATION FOR APPOINTMENT OF ESCORT COMMITTEE FOR RIGHT HONORABLE MARGARET THATCHER FOR JOINT MEETING FEBRUARY 20, 1985

Mr. DOLE. Mr. President, I ask unanimous consent that the President of the Senate be authorized to appoint a committee on the part of the Senate to join with a like committee on the part of the House of Representatives to escort the Prime Minister of Great Britain, the Right Honorable Marga-

ret Thatcher, into the House Chamber for the joint meeting to be held at 11 a.m. on February 20, 1985.

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

## ORDER FOR RECORD TO REMAIN OPEN

Mr. DOLE. Mr. President, I ask unanimous consent that the RECORD remain open until 4 p.m. today, for the introduction of bills, resolutions, and the submission of statements.

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

## ADJOURNMENT UNTIL MONDAY, FEBRUARY 18, 1985

Mr. SIMPSON. Mr. President, I move, in accordance with the provisions of Senate Concurrent Resolution 12, that the Senate stand in adjournment until 12 noon on Monday, February 18, 1985, for the sole purpose of the reading of George Washington's Farewell Address.

The motion was agreed to; and, at 3:08 p.m., the Senate adjourned until Monday, February 18, 1985, at 12 noon.

## CONFIRMATION

Executive nomination confirmed by the Senate February 7, 1985:

ENVIRONMENTAL PROTECTION AGENCY

Lee M. Thomas, of Virginia, to be Administrator of the Environmental Protection Agency.